

PUBLICATION

Reporting Child Abuse [Ober|Kaler]

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Most health care providers believe they understand their duty to report child abuse, but...

There are a number of overlapping and apparently conflicting public policy objectives and the legal requirements can get confusing. In this article we hope to provide a simplified understanding of the reporting duty in cases of suspected child abuse.

The Health Insurance Portability and Accountability Act (HIPAA), Maryland's Medical Records Confidentiality Act, and professional ethics all require a health care provider to keep medical information, including, of course, psychological information, about a patient confidential. However, these laws have exceptions. HIPAA is perhaps this nation's broadest and most comprehensive effort to ensure the confidentiality of a patient's medical information, termed *protected health information* or *PHI*. However, HIPAA has an exception to protecting a patient's PHI. HIPAA states that a provider is excused from its confidentiality requirements when the provider is otherwise "required by law" to make a report. HIPAA expressly states that a health care provider may disclose PHI in order to comply with any state law requiring reporting child abuse. 45 CFR 164.512.

Maryland's Confidentiality of Medical Records Act, a predecessor and close analog to HIPAA, similarly protects a patient's medical information from disclosure. Like HIPAA, it, too, makes clear that it does not limit or create an exception to the reporting requirements relating to child abuse.

So with these laws that protect confidentiality in mind, we look to see if there are other state laws that nevertheless require disclosure and reporting of a patient's medical and health information.

The state law with regard to child abuse that clearly requires disclosure of confidential patient information gathered in treating and counseling children is found in Maryland's Family Law Article. Title 5, subtitle 7, dealing with reporting of child abuse, directs health care practitioners to report child abuse to the local Social Services Administration or the appropriate law enforcement agency. Under section 5-704(b) of this Article, a health care practitioner fulfills this obligation by making an oral report to the local department or law enforcement agency as soon as the practitioner has "reason to believe" abuse has occurred. Additionally, the practitioner has 48 hours to file a written report with the local department of social services and provide a copy to the local state's attorney.

According to the Family Law Article sections 5-704 and 5-705, health care practitioners, police officers, educators, and human service workers are required to report suspected child abuse or neglect even if the event occurred in the past, and even if the alleged victim is an adult when the incident comes to light. Moreover, reporting is required even if the suspected abuser is believed to be deceased. Of course, in either case the fact that the victim is now an adult or the abuser is believed to be deceased should be included in the report and may be taken into account by authorities when they determine the actions to take in response to the report.

As we have seen, the responsibility to make reports of suspected child abuse required under this section overrides any duty of confidentiality that might otherwise apply under HIPAA, the Maryland Confidentiality of Medical Records Act or psychiatrist-patient privilege established in the Courts and Judicial Proceedings Article. However, there is still a dangerous pitfall regarding the reporting of child abuse. The definition of abuse, including sexual abuse, found in section 5-704 of the Family Law Article is quirky and oddly prescriptive.

In this regard, *abuse* for reporting purposes is defined as that abuse caused by “any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. . . .” As a point of clarification, sexual abuse, of course, includes any act that involves sexual molestation or exploitation of a child, but again, reporting under this section is limited to perpetration of such an act upon “a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child or by any household or family member.”

Accordingly, whether the abuse is a physical or mental injury or sexual abuse, to be subject to reporting it must be perpetrated by a parent or other person who has “permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.” Similarly, *neglect* is defined as the leaving of a child unattended or other failure to give proper care and attention to a child by the child's parents, or other person who has “permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member” under circumstances that indicate that the child's health or welfare is significantly harmed or placed at risk of significant harm. Again, to break confidentiality and report the incident the act must have been perpetrated by a parent, guardian, custodian, or person who has permanent or temporary care or custody or household or family member.

Most importantly, the state law does not require the permission of the victim, or anyone else, in order to make such a report. However, any disclosure other than as authorized under section 5-704 will require the express agreement of your patient.

Finally, it is important to note that these requirements extend even if the suspected abuse or neglect is alleged to have occurred outside of the state and the victim is currently a child who lives outside of the state. The abuse or neglect needs to be reported to any local department. It is then the local department's responsibility to forward the report to the appropriate agency outside of this state.

When in doubt, without identifying the patient, it may be wise to contact the local department of Social Services to discuss the incident and obtain direction as to whether reporting is mandated.

So the bottom line:

Regardless of state and federal confidentiality laws, you are mandated to report all physical or mental injury or sexual abuse, **but** the act must have been perpetrated by a parent or other person who has custody or responsibility for the child or lives in the same house as the child.

Caveat

This article is only intended as a review of basic facts and law. Its purpose is to help spot issues for discussion and further inquiry and it is not a substitute for obtaining advice from your legal counsel or the government officials responsible for administering these laws.

The reader is advised that laws, regulations and especially published policies of state and federal agencies are constantly subject to amendment and changes in interpretation. Finally, reliance on this article in setting

practice protocols or as a defense to government action is further limited in that audit and enforcement actions are always, to some degree, subject to the discretion of government officials.

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