

# American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



## **Understanding Adolescent Confidentiality As It Relates To Billing** **American Academy of Pediatrics Committee on Coding and Nomenclature**

Ensuring adolescent confidentiality in the billing process has represented an ongoing discussion priority among key stakeholders including:

The American Academy of Pediatrics  
American Congress of Obstetricians and Gynecologists (ACOG)  
Center for Adolescent Health and the Law  
Society for Adolescent Health and Medicine  
National Institute for Health Care Management  
Guttmacher Institute

### Historical Background of CPT Modifier

Stakeholders focused on disclosure of confidential health care services and opportunities for collaboration. Among several complex topics discussed, a common theme was how to bill for health care services while complying with the legal issues related to consent and disclosure. The following provides some additional historical context to those discussions—especially as relates to a billing modifier.

The AAP Section on Adolescent Health proposed creation of a *Current Procedural Terminology* (CPT®) modifier to establish infrastructure to allow suppression of Explanation of Benefits (EOB) forms following the submission of claims involving confidential adolescent health information. Adolescents and young adults indicate that the provision of confidential care is essential for them to access sensitive health care services. Without assurance of confidentiality, many adolescents and young adults will forego needed screening and treatment of sexually transmitted infections (STIs), family planning services, and mental health and substance abuse screening and treatment even when protected by state laws. Therefore, physicians need a mechanism to communicate to third party payers the need for special treatment of claims.

Currently, many commercial health plans routinely send to the policy subscriber an EOB that indicates the services provided, including the office visit, labs, or other services which were indicated by the presenting complaint or diagnosis determined by the visit. EOBs and other mechanisms of notification are intended to communicate billing and insurance claims information to protect policy holders and insurers from fraud and abuse but can have unanticipated negative consequences for adolescents and young adults seeking confidential health care services. The proposed modifier would identify the particular service as all or partly

confidential, allowing third party payers to appropriately suppress information sent to the policy subscriber.

### Carrier Perspective

As part of the discussion on a code proposal for confidential adolescent health care services, AAP staff contacted some national carriers to get their feedback on the proposed modifier. They indicated that their sharing of information is dependent upon the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as state laws. While national carriers have a process to assure that confidential communications occur when requested by the adolescent or custodial parent, the degree to which the carriers may impose this process varies by carrier and is dependent upon the relevant state law(s).

### Key Stakeholder Input

Before submitting a proposal for the new CPT modifier, AAP contacted other specialty societies to obtain their approval. The American College of Physicians (ACP), the American Osteopathic Association (AOA), ACOG, and the American Academy of Family Physicians (AAFP) were all very supportive of the concept.

However, they also had some valid concerns, including:

- 1) Whether HIPAA and state laws allow the payers to not notify the insured of benefit payment (ie, issue the remittance to the insured) beyond what HIPAA has indicated regarding an adolescent who makes a direct request to avoid potential harm?
- 2) If this can be done and a physician practice either fails to submit the modifier or their clearinghouse drops it from the claim, what is the physician's liability?

Due to these compelling issues, AAP sought legal review for the proposal.

### Results of AAP Legal Review

AAP legal review advised that a “simple HIPAA amendment” would be required before an adolescent confidentiality modifier could be pursued. The ultimate goal of having such a modifier would be to trigger the suppression of a claim in order to prevent confidential adolescent health care information from being inadvertently shared with a parent/legal guardian.

### AAP Committee on Coding and Nomenclature (COCN) Position

There is nothing “simple” about a HIPAA amendment given that such a statutory change would be very challenging. More importantly, even if such a modifier was in place, it would give

providers a false sense of security that the confidentiality would be maintained since it relies solely on the compliance of payers. And, since HIPAA does not currently apply to all payers, significant gaps would exist in the confidentiality framework. Such a modifier would ask payers to treat a claim differently yet there is no way to enforce compliance.

Getting STI testing included on the Bright Futures United States Preventive Services Task Force (USPSTF) list might be a suitable alternative due to the fact that use of CPT modifier 33 (*preventive service*) triggers suppression of co-pays. However, since STI testing is not purely “preventive,” it would not qualify since the modifier 33 can only be placed on preventive services.

Therefore, it is the COCN position that a CPT modifier should *not* be pursued for purposes of ensuring adolescent confidentiality in adjudication of claims.

## References

### [Confidentiality Protections for Adolescents and Young Adults in the Health Care Billing and Insurance Claims Process](#)

Society for Adolescent Health and Medicine and the American Academy of Pediatrics (*Journal of Adolescent Health* 2016; 58; 374-377)

### [State Policies Affecting the Assurance of Confidential Care for Adolescents](#)

Discusses state laws, issues with EOBs, and the differences between Medicaid and Medicaid Managed Care use of EOBs for services that might require confidentiality.

1. Reddy DM, Fleming R, Swain C. Effect of mandatory parental notification on adolescent girls' use of sexual health care services. *JAMA* 2002; 288: 710-714.
2. Britto MT, Tivorsak TL, Slap GB. Adolescents' needs for health care privacy. *Pediatrics* 2010; 126: e1469-e1476.
3. Ford CA, Millstein SG, Halpern-Felsher BL, Irwin CE: Influence of physician confidentiality assurances on adolescents' willingness to disclose information and seek future health care. *JAMA* 1997; 278: 1029–34.
4. Jones RK, Purcell A, Singh S, Finer LB. Adolescents' reports of parental knowledge of adolescent use of sexual health services and their reactions to mandated parental notification for prescription contraception. *JAMA* 2005; 293: 340-348.
5. McKee MD, Rubin SE, Campos G, O'Sullivan LF. Challenges of Providing Confidential Care to Adolescent in Urban Primary Care: Clinician Perspectives. *Ann Fam Med* 2011; 9: 37-43.
6. Thrall JS, McCloskey L, Ettner SL, Rothman E, Tighe JE, Emans SJ: Confidentiality and adolescents' use of providers for health information and for pelvic examinations. *Arch Pediatr Adol Med* 2000; 154: 885–92. LOE III
7. Protecting Adolescents: Ensuring Access to Care and Reporting Sexual Activity and Abuse. Position Paper of the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians, and Gynecologists, and the Society for Adolescent Medicine. *J Adolesc Health* 2004; 35: 420-423. LOE III
8. Gold RB. Unintended consequences: how insurance processes inadvertently abrogate patient confidentiality. *Guttmacher Policy Review* 2009; 12: 12-16. LOE IV
9. NIHCM Foundation Issue Brief. Protecting Confidential Health Services for Adolescents & Young Adults: Strategies & Considerations for Health Plans. May 2011. <http://www.nihcm.org/images/stories/NIHCM-Confidentiality-Final.pdf> LOE IV