Table 2

Example Statutes, Regulations, or APA Code

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| **Statute, Regulation, or APA Code Section** | **Summary of Cited Reference** | **Relevance to Parental Mental Health in the Pediatric Setting** |
|  **Law or Regulation** |   |   |
| Tenn. Admin. Code § 1180-01-.09(1) and (2) | Incorporates the American Psychological Association Ethical Principles of Psychologists and Code of Conduct (APA, 2017) (“APA”) into the Tennessee state regulation.  | Ethics Code takes on the power of legal regulation; psychologists must follow; licensure discipline could be founded on violation of Ethics Code.  |
| Nev. Admin. Code § 641.250 | Incorporates the most recent edition of the APA Ethics Code into the Nevada regulations unless there is conflict with other Nevada regulations.  | Same as above.  |
| Ga Comp. R. & Regs. § 510-4-.02 | Incorporates the APA Ethics Code into Georgia law from 2002, effective 2003.  | Same as above.  |
| Tenn. Code Ann. § 63-11-213 | Establishes the legal privilege in Tennessee for confidential communications between licensed psychologist and client is equivalent to attorney/client privilege. Prohibits psychologist from disclosing secrets and protects psychologist from being compelled to testify to secrets covered by the privilege (so long as the court agrees the privilege applies). “The confidential relations and communications between licensed psychologist … and client are placed upon the same basis as those provided by law between attorney and client; and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.” | It is unclear if the privilege will protect information shared by parents who are not considered the psychologist’s patient.  |
| NY CPLR § 4507 | Establishes legal privilege in New York stating: “The confidential relations and communications between a psychologist … and his client are placed on the same basis as those provided by law between attorney and client, and nothing in such article shall be construed to require any such privileged communications to be disclosed.” | Same as above. |
| TX Rules of Evidence, Rule 501 | Establishes that a patient in Texas has a privilege to not disclose and to prevent others from disclosing in civil cases confidential communications between the patient and various professionals, including psychologists, regarding a mental health information.  | Same as above.  |
| WI Stat. Annot. 905.04 | Establishes that a patient in Wisconsin has a privilege to not disclose and to prevent others from disclosing confidential communications between the patient and various professionals, including psychologists, regarding the patient’s mental or emotional condition.  | Same as above.  |
| CMS hospital Conditions of Participation in Medicare regulations, 42 CFR § 482.24 | Requires hospitals to (i) maintain a medical record for every individual evaluated or treated in the hospital; (ii) ensure that unauthorized individuals cannot gain access to or alter patient records; and (iii) to have specified categories of content in each patient’s medical record. | Requires a medical record for each patient but does not explain what to do when it is unclear if the parent is the patient (in the pediatric setting).  |
| Tenn. Admin. Code § 1200.08.01-.06(5)(d) | Requires Tennessee hospitals to maintain a medical record for each inpatient and outpatient. | Requires a medical record for each patient but does not explain what to do when it is unclear if the parent is the patient (in the pediatric setting). |
| 10 NY Admin. Code 405.10 | Requires New York hospitals to maintain an “accurate, clear, and comprehensive medical record … for every person evaluated or treated …” | Requires a medical record for every person evaluated as well as treated. May impose a higher burden of documentation for a non-patient.  |
| Tenn. Admin. Code § 1180.01-.06 | Tennessee medical record documentation requirements for psychologists; requires a medical record for each patient of the psychologist. “As a component of the standard of care and of minimal competency[,] a psychologist … must cause to be created and … maintained a record for every patient for whom he or she … performs services or provides professional consultation.” | Requires documentation/medical record for each patient but does not explain what to do when it is unclear if the parent is the patient (in the pediatric setting). |
| 22 TX Admin. Code § 465.22 | Requires psychologists in Texas to create and keep accurate records of services rendered; records must be sufficient to permit planning for continuity of care if another provider is to take over.  | Same as above.  |
| HIPAA regulations, 45 CFR §§164.524(a)(1)(i), (a)(2)(i), 164.501  | Allow withholding of “psychotherapy notes” from a requestor and not treating them as part of the HIPAA designated medical record set. HIPAA narrowly defines “psychotherapy notes as notes “by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a … counseling session . . . and that are separated from the rest of the individual’s medical record” – but these do not include “Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.” | A psychologist could consider placing notes about the parent in separate, undisclosed psychotherapy notes, if the notes can meet that narrow definition.  |
| HIPAA regulation, 45 CFR §164.524(a)(3) | Authorizes a licensed health care professional to withhold from the patient PHI that the professional has determined, exercising professional judgment, is reasonably likely to endanger the life or physical safety of the patient or another person if access is granted if other technical requirements are met. | This regulation provides a mechanism for not sharing documented information that poses a risk to safety.  |
| Information Blocking Rule issued under the 21st Century Cures Act, 45 CFR Part 171 | Prohibits practices likely to limit or materially discourage access, exchange, or use of *electronic* health information when requested by patients, their decision-makers, and some third parties. May require disclosure of certain records upon request of certain parties.  | Requires pushing information to the patient portal, if there is one, and otherwise making records promptly available; means that parents may see the psychologist’s notes on the same date of service.  |
| **APA Code Section** |  |  |
| § 2.01 | Restricts psychologists to providing services to populations and in areas thar are within the boundaries of their competence. | Compels consideration of whether a psychologist focused on pediatric care has the expertise to provide care to the patient’s parent.  |
| § 3.05 | Prohibits psychologists from entering into a multiple relationship that could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists; requires psychologist to resolve any multiple relationship that arises.  | May limit a psychologist’s ability to treat the patient’s parent as well as the patient and requires resolution (which includes disclosure of the limits of confidentiality and the possible risks).  |
| § 3.07 | Requires psychologists agreeing to provide services at the request of a third party to attempt to clarify the nature of the relationship with all individuals or organizations involved, including the psychologist’s role, the client’s identity, and the possible limits to confidentiality. | Where a hospital requests care to the patient and parent, the psychologist must clarify the limits of confidentiality.  |
| § 4.01 | Requires taking reasonable precautions to protect confidential information obtained through or stored in any medium. | Raises concerns about whether it is acceptable to document about the parent in the patient’s chart. Lack of clarity the extent to which this duty applies if the parent is not the patient, indicating potential risks to the parent’s confidentiality.  |
| § 4.02 | Requires disclosure of the limits of confidentiality and the foreseeable uses of the information shared with the psychologist.  | Raises concerns about whether it is acceptable to document about the parent in the patient’s chart. Lack of clarity the extent to which this duty applies if the parent is not the patient. Requires informing the parent of the possible sharing of information, indicating potential risks to the parent’s confidentiality.  |
| § 4.04 | Imposes a duty to minimize intrusions into privacy. | Raises concerns about whether it is acceptable to document about the parent in the patient’s chart. Lack of clarity the extent to which this duty applies if the parent is not the patient.  |
| § 4.05 | States conditions under which psychologists may disclose of information, e.g., with consent, to protect the patient from harm, etc. | Lack of clarity the extent to which this duty applies if the parent is not the patient.  |
| § 6.01 | Establishes the duty to create records, and the purposes of doing so. One purpose is to facilitate provision of services later by that psychologist or other professionals. | The duty includes making sure that others know about what transpired if that will facilitate their care of the patient.  |
| § 6.02 | Requires psychologists so maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, regardless of medium. | Protection of parent’s privacy may not be possible if charted in the patient’s record.  |

*Note.* This summary is provided only as a guide; information is only partial, may be subject to exceptions, does not constitute legal advice, is not specific to every state, and is not a substitute for legal advice.