

Confidentiality/ Minor Consent Laws

Introduction

Encourage your team to consider how staff and providers in varied roles can create a climate where adolescents are more likely to discuss their sexual and mental health openly and honestly.

Objectives

By the end of this Spark training, participants will be able to:

- Identify which services minors have a right to access without a parent/guardian's consent
- State the circumstances that health care providers must override a minor's confidentiality and report

Supplies

Prepare these supplies prior to facilitating this Spark.

- Laptop
- Projector
- Copies of the Alaska Confidentiality/Minor Consent Laws Spark Handout

Additional Resources

If you would like to learn more about this Spark topic, take a look at these additional resources.

- Examination and Treatment of Minors statutes: <http://www.akleg.gov/basis/statutes.asp#25.20.025>
- Alaska Youth Law Guide: <https://alaskabar.org/youth/>
- Adolescent Health Program- Youth Friendly Clinics Project: <http://dhss.alaska.gov/dph/wcfh/Pages/adolescent/AYFC.aspx>
- State of Alaska Department of Health and Social Services. *Notice of Use Of Private Health Care Information*: http://dhss.alaska.gov/dhcs/Documents/PDF/HIPAA/HIPAA_Privacy_Notice.pdf
- U.S. Department of Health & Human Services-Health Information Privacy Frequently Asked Questions: *Does the HIPAA Privacy Rule allow parents the right to see their children's medical record?*: http://www.hhs.gov/ocr/privacy/hipaa/faq/right_to_access_medical_records/227.html


Citation

If you plan to modify this resource, please cite or credit as: Confidentiality Laws, Alaska-Specific. Spark Training developed by the Adolescent Health Initiative at Michigan Medicine; February 2019 ; Ann Arbor, MI.

Key of Icons


 = Slide change  = Estimated duration of topic  = Script for facilitator  = Note for facilitator


Intro/Hook  (3 minutes) 1 – TITLE SLIDE


 Today we are going to do a 15-minute mini-training, also called a Spark. As youth-serving professionals, it is important that we understand adolescent confidentiality and minor consent. This training is intended to be an overview of the most relevant laws on confidential services for teens.

Each person here will have times where we need to know and comply with consent and confidentiality laws, though it's different for our various roles. For each law and scenario we discuss, try to think about how it applies to your role. To get us started, let's review a case scenario.


 2 – CASE SCENARIO: CHEYENNE

 This is Cheyenne, who is 15. She is here today because of a sore throat. During her visit the clinician found out that she is concerned about having an STI. Cheyenne says she is worried her mother will kick her out of the house if she knows Cheyenne is sexually active. How does the right to confidentiality help or hurt Cheyenne?

 Give participants a moment to respond to the question on the slide. You may choose to have discussion here or just have people think about it.


 Usually, not all of this patient information is available to everyone who comes into contact with her. When we know more details about a patient, does it affect how we feel about the patient's right to confidentiality? Even though we know the law says we need to provide certain confidential services to teens without a parent's permission, it can be challenging when we think parents should be involved. What can go wrong if we accidentally break confidentiality?

 Have a couple of people respond briefly. Main point: If we don't follow the laws, it can have a negative impact on teens.

 Many teens choose to include their parent or guardian in decisions about their health. For some teens, however, having the option of certain confidential services makes it more likely that they will seek care when they need it. For instance, Shay would probably be more likely to get tested for STIs and possibly get a method of contraception if she's assured her mother's permission is not required.


Key Concepts (11 minutes)

3 – IMPORTANT DEFINITIONS

 Before we review the laws, it's important to recognize the difference between consent and confidentiality.

- **Consent** is permission to act. In general, a parent or legal guardian must give their permission – or “consent” – before their minor child can receive a medical service. However, there are important exceptions where a minor can consent to their own care, without a parent’s permission. We will discuss these exceptions today.
- **Confidentiality** refers to how health care providers and staff keep certain information private.
- **Consent does not equal confidentiality.**
 - Even if a minor is allowed to consent to a service without a parent’s permission, it does not necessarily mean that the provider is required to keep it confidential.
 - So, laws can protect a minor’s right to access a specific service, like contraception, but often, it’s up to health care providers and staff to protect a minor’s confidentiality.

4 – AK LAW: PARENTAL CONSENT EXCEPTIONS


 As this slide says, a parent or legal guardian must provide consent on behalf of a minor (under age 18) before health care services are provided, with several important exceptions.

The exceptions are based on either:

- Status (for example, legal independence from parents/guardians), or
- The type of service requested (such as certain sexual health and reproductive health services).

 Pass out the “Alaska Minor Consent & Confidentiality Laws” [handout](#).


5 – AK LAW: MINOR CONSENT BASED ON STATUS


 Here’s a [handout](#) that explains Alaska’s minor consent and confidentiality laws. As we see in the top section, Alaska law allows certain minors to consent to services based on their **status**. A minor may consent to health care services without a parent/guardian’s permission if they are:

- Emancipated due to court order
- Living apart from the parent or guardian and is managing his or her own finances

Are there any questions about the **status** of minors who can consent to services without a parent or guardian’s permission?

6 – AK LAW: MINOR CONSENT BASED ON SERVICE

 **Note:** statements are animated to appear one after each click, with the answer showing after the last click. Read each statement aloud before advancing to the next one.

 Now let’s look at the **services** any minors can receive without parental or guardian consent.

**Advance slide**

1. Emergency Care.

**Advance slide**

2. Prevention, diagnosis, and treatment of pregnancy. There is a growing body of research that shows that sexually active young people are more likely to use birth control if they are assured that they don't need to involve a parent.

**Advance slide**

3. Diagnosis and treatment of venereal disease and other sexually transmitted infections, including HIV. Alaska law does not expressly allow minors to consent to HIV pre-exposure prophylaxis (PrEP) without parental/guardian involvement. It is considered best practice as part of routine STI prevention to counsel clients on PrEP use when indicated or requested. However, we recommend that you confer with your legal and/or risk management team, and state public health officials, to develop institutional policies around providing PrEP without parental/guardian consent. You can contact the Alaska Department of Health HIV Prevention Coordinator, Taylor Holsinger at 907-269-5221.

**Advance slide**

4. Abortion

**Advance slide**

5. Any medical service if:

- The parent or legal guardian cannot be reached
- The parent or legal guardian, when reached, refuses to provide or withhold consent

Are there any questions?

7 – HPV VACCINATIONS & MENTAL HEALTH MEDS



Can a minor in the state of Alaska give consent for the HPV vaccine? Alaska is silent on HPV, unlike California, that interprets getting an HPV vaccination as a protected reproductive health service.

So the answer in Alaska is no. A minor cannot consent for the HPV vaccine.

Minors must also obtain a parent or guardian's consent in order to receive mental health screening and treatment.

However, if the minor's parent or guardian cannot be reached, or when reached, refuses to provide or withhold consent- minors may receive any medical care, including HPV vaccines and mental health screening and treatment.

8 – REPORTING




Now we're going to review when a minor's confidentiality must be overridden. Health care providers must override the minor's confidentiality and report...

- There is suspicion of abuse or neglect, including;

- Physical injury or neglect
- Mental injury
- Sexual abuse
- Sexual exploitation
- Maltreatment

Please review the Examination of Treatment and Minors handout for more information about these specific definitions in Alaska state law.


10 – CASE SCENARIO: CHEYENNE

 Let's go back to our 15-year-old patient, Shay, and answer these questions together as I read through them.

- Can Cheyenne receive STI testing without a parent's permission? *[Answer: Yes.]*
- Can she receive STI treatment? *[Answer: Yes.]*
- Can she receive preventive care, such as an HPV vaccine? What about condoms or other contraception? *[Answer: She can't get an HPV vaccine without her mother's consent, but if her mother cannot be reached, or refuses to give or withhold consent, she can get the HPV vaccine if she chooses. She can get condoms or other contraception without her mother's consent.]*

A final note about Cheyenne. If she uses her mother's insurance, any health information may be disclosed in an explanation of benefits (EOB) form that could be sent to her parents. For maximum confidentiality, a minor may go to a provider that is able to provide services without billing insurance, like a Title Ten clinic. The Spark on Confidentiality Best Practices covers more strategies to ensure confidential services for minors.


12 – ACCESSING RECORDS


 In general, a minor's parent/legal guardian is authorized to access the minor's medical records. However, a minor's confidentiality must be protected if:

1. The parent/guardian's consent was not required for the service. So, for any of the special confidential services we've discussed today, a health care provider or staff is allowed to protect a minor's confidentiality.
2. The parent/guardian consented to a confidential relationship between the minor and health care provider.


Application  (1 minute)

 13 – CASE SCENARIO: TOBI


 Let's take a look at one last scenario. Tobi is a 17-year-old boy who is struggling with a substance use disorder, but doesn't want to tell his parents.


 Is Tobi allowed to get outpatient counseling for substance use without a parent's consent?

 Allow a moment for people to respond either quietly to themselves or aloud.

 The answer is no. However, according to Alaska law, if Tobi's parents cannot be reached, or when reached, refuse to give or withhold consent, he would be able to consent for substance use treatment.

 14 – THANK YOU!

 To keep this conversation going over the next month, I will share Sparklers, or quiz questions, about confidentiality. I'll post the Sparklers around the office in places that you all can easily see them. When you see a Sparkler, take a moment to read them and reflect on the responses. Thank you for your participation!

 Print and post Sparklers in areas your staff can see (e.g., lunchroom).