

## 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 Alabama Confidentiality/Minor Consent Laws Spark Handout
- Writing utensils for all participants

### Additional Resources

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

- [NASTAD Minor Consent and Confidentiality Laws for HIV](#)
- [Confidentiality Best Practices Spark](#)

### Citation

If you plan to modify this resource, please cite or credit as: Confidentiality Laws, Alabama-Specific. Spark Training developed by the Adolescent Health Initiative at Michigan Medicine; November 2022; 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: SHAY, 15 Y/O GIRL

This is Shay, 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. Shay says she is worried her mother will kick her out of the house if she knows Shay is sexually active. How does the right to confidentiality help or hurt Shay?

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 – AL LAW: PARENTAL CONSENT EXCEPTIONS

As this slide says, a parent or legal guardian must provide consent on behalf of a minor under age 14 before health care services are provided, with several important exceptions.

The exceptions are based on either status or the type of service requested (such as certain sexual health services).

Pass out the “Alabama Minor Consent & Confidentiality Laws” handout.

### 5 – AL LAW: MINOR CONSENT BASED ON STATUS

Here’s a handout that explains Alabama’s minor consent and confidentiality laws. As we see in the top section, Alabama’s law allows certain minors to consent to services based on their **status**. This includes:

- Minors 14 years of age or older
- Minors under the age of 14 who have graduated from high school
- Minors under the age of 14 who are married or divorced
- Minors under the age of 14 who are pregnant
- Minor under the age of 14 and a parent


### 6 – AL LAW: MINOR CONSENT BASED ON SERVICE

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


1. Non-prescription contraceptives such as condoms or over-the-counter emergency contraception
2. Testing and treatment for sexually transmitted infections, including HIV
3. Pregnancy and prenatal care (this does not include abortions)
4. Medical care for their children
5. Counseling and treatment for substance abuse
6. Counseling and treatment for mental health

Note that only minors aged 14 and older can consent to PrEP


 7- AL LAW: THE 21<sup>ST</sup> CENTURY CURES ACT

 Now, we will talk about the Cures Act. The Cures Act requires health care providers to make all health information, except for psychotherapy notes, easily accessible to patients in a reasonable time frame.


 8- AL LAW: THE 21<sup>ST</sup> CENTURY CURES ACT

 Here are some recommendations from the American Academy of Pediatrics regarding the Cures Act. They recommend that health care providers offer access to as much health information as possible through apps, portals, or other HIPAA compliant avenues, without requiring additional action or fees from the patient. In order to reduce the likelihood of someone other than the minor accessing the application, they recommend that an identity verification process is implemented and that a minor's access to their health information is separate from their parent's access to their medical records.

 9- AL LAW: THE 21<sup>ST</sup> CENTURY CURES ACT


 Some more recommendations from the AAP include establishing procedures for health information requests from different parties (such as parents and guardians) and creating protocols for what health information will not be shared with patients or parents, even if it is requested, based on state and federal law.

 10- AL LAW: THE 21<sup>ST</sup> CENTURY CURES ACT

 As we know, parents are allowed to have access to a minor's medical record with some exceptions. Listed here are some situations when providers can withhold access:


- If the minor did not need their parent's consent to receive a health care service.
- If the provider suspects that the minor may be at risk of physical harm by their parent.
- And if it is not possible to separate information protected by confidentiality laws from other information.

 11- 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 if there is reason to believe that a minor has been subjected to...

- There is suspicion of abuse or neglect by an adult  
The minor is at risk to themselves or someone else
- There is suspicion of sexual abuse and/or exploitation
- The minor is under 16 and has been sexually active with individual over the age of 18 (or over the age of 16 if the minor is at least two years younger)


 12 – CASE SCENARIO: SHAY, 15 Y/O GIRL

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

- Can Shay receive STI testing without her parent's permission? [*Answer: Yes, she can!*]

- Can she receive STI treatment without her parent's permission? [Answer: Yes, Alabama law allows minors to receive STI testing and treatment.]
- Can Shay receive contraception without her parent's permission: [Answer: Yes, Alabama law allows minors to receive treatment or advice about contraceptives. Check out the Alabama Minor Consent & Confidentiality Laws handout for more specific information.]

### 13 – CASE SCENARIO: SHAY, 15 Y/O GIRL


 If Shay's mother calls the clinic to ask if Shay received an STI test, can this information be disclosed? [Answer: No. When a minor is consenting to confidential services, as noted prior, HIPAA is applied and information cannot be disclosed to anyone unless the minor consents.]


Are there other ways that Shay's mother could find out that Shay received this service? [Answer: Yes, if she uses her parent's health insurance, an explanation of benefits (EOB) form is typically sent for each visit including medical services rendered. Additionally, with office copays and/or paying out of pocket, breaches in confidentiality are possible.

For maximum confidentiality, a minor may go to a provider that is able to provide services without billing insurance or using alternative coding for confidential services. The Spark on Confidentiality Best Practices covers more strategies to ensure confidential services for minors.


## Application (1 minute)

### 14 – CASE SCENARIO: GIOVANNI, 17 Y/O BOY


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

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

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

 The answer is yes. Alabama allows minors to seek treatment for substance abuse counseling without parental consent.

### 15 – 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).