

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 *Arizona Confidentiality/Minor Consent Laws Spark Handout* for all participants

Additional Resources

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

- Consent & Confidentiality in Adolescent Health Care: A Guide for Arizona Health Care Clinicians: http://c.ymcdn.com/sites/www.azmed.org/resource/resmgr/Adolescent_Health/ArMA_GuideFINAL.pdf


Citation

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Key of Icons


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


Intro/Hook  (3 minutes) 1 – ARIZONA MINOR CONSENT AND CONFIDENTIALITY LAWS


 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. Arizona law is complex, so if you want to do additional learning, resources are available in the facilitator guide to this Spark.

Each person here will have times where we need to know and comply with confidentiality laws, though it's different for our various roles. For each law and scenario we discuss, try think about how it applies to your role specifically. 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 provider finds out that Shay 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. Consider the answer to these questions quietly to yourself: Can the provider screen Shay for STIs without her mother's knowledge or permission and still follow consent laws? Why or why not?

 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.


 Think about this might play out at your clinic, and we will talk about the answer at the end of the presentation.

 3 – CASE SCENARIO: SHAY, 15 Y/O GIRL

 Shay's scenario brings up another issue, which is how our own values might affect the way we feel about teens accessing certain services without their parents being aware. In Shay's situation, she is concerned about her mother, which may affect how we feel about her getting STI testing without involving a parent.


We usually do not have complete information about a patient. When we know more details, could it affect how we feel about the patient's right to confidentiality? Even if a teen can legally receive some services without a parent's consent, it can be challenging when we think parents should be involved. What can go wrong if we 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.


Key Concepts (9 minutes)

4 – 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.

5 – AZ 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:

- A minor’s status, or
- The type of service requested

Again, these laws can sometimes be confusing, so I’m passing out a handout that summarizes these exceptions. If it’s helpful, you can keep this on hand for quick reference in the future.

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

6 – AZ LAW: MINOR CONSENT BASED ON STATUS


 First, let’s look at the exceptions based on status.

If a minor has any of these four statuses, they can consent to health care services without a parent or guardian’s permission.

- Married
- On active military duty
- Emancipated by court order -OR-


- Homeless, which in Arizona law is defined as not living with parents/guardians **and** lacking a fixed and regular night time residence or living in a shelter/halfway house or other place not normally used for sleeping by humans

7 – AZ LAW: MINOR CONSENT BASED ON SERVICE

 Now let’s look at the exceptions based on type of service. Each state has certain services that a minor may consent to without a parent or guardian’s consent. Remember, a parent may still find out about the service, so it may not actually be confidential, but it’s important to note that legally, a minor does not need a parent to consent to these services:

- Emergency medical, surgical, hospital or health services if a parent/guardian cannot be reached
- Contraceptives and family planning services including emergency contraception
- Pregnancy and prenatal care
- Testing and treatment for sexually transmitted infections (STIs)
- Testing for HIV (parents must consent to treatment for HIV)
 - There are no specific laws indicating that PrEP (HIV prevention) is allowed for adolescents.
- Substance use treatment (a parent/guardian must be notified if minor is admitted for treatment)
 - Additionally, a minor, 12 and older, who is under the influence of a drug or narcotic, including withdrawal, may be considered an emergency case and regarded as having consented to care
- Exams and treatment for sexual assault if the minor is 12 years old or older and if a parent/guardian cannot be contacted within the timeframe necessary to provide treatment

8 – ARIZONA REPORTING REQUIREMENTS


 Another important set of laws to be aware of are reporting requirements. Reporting requirement laws outline when a health care provider must break confidentiality and report the information. A health care provider must make a report when:

- There is suspicion of abuse or neglect
- The minor has had oral or sexual intercourse with a person aged 18 or older
- The minor has had oral or sexual intercourse with a person aged 13 or under

It can be helpful to note that the laws about oral or sexual intercourse do NOT apply to two people who are both ages 14-17 who engage in consensual sexual contact.


Application (3 minutes)

9 – CASE SCENARIO: GIOVANNI, 17 Y/O BOY


 Now that we’ve reviewed the laws, let’s take a look at another scenario. Giovanni is a 17-year-old boy who is struggling with alcohol use, 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 quietly to themselves or aloud.

 The answer is yes, though the provider may encourage Giovanni to tell his parents. Additionally, a parent must be notified if he is admitted for treatment.

10 – THE ROLE OF PARENTS/GUARDIANS


 A quick note about parents and guardians. Research shows that they can play a crucial role in their teenage children’s decision-making and health. It can be tricky to keep parents engaged and at the same time, it’s essential to provide the opportunity for adolescents to talk to a provider alone, and to provide confidential services where possible. We’ll talk about parent engagement more in the Confidentiality Best Practices Spark as well.

11 – COMMON QUESTIONS

 People often ask about the services listed on this slide, which are not protected for minors, and require the consent of a parent or guardian. Minors DO need a parent or guardian’s permission for:

- Vaccines, including HPV
- Inpatient and outpatient mental health screening and treatment unless an emergency requires it to prevent serious injury or save the life of the minor.
- Abortion, unless a judicial bypass is obtained; the pregnancy resulted from sexual contact with a relative, guardian, foster parent or unrelated male living with the adolescent and her mother; OR due to a medical emergency
- Treatment for HIV

12 – THE MATURE MINOR DOCTRINE

 The “mature minor” doctrine is often used to determine if care can be provided to minors without parental consent. This can be a little confusing because there is no legal definition of a “mature minor” nor is it recognized under Arizona law. However, because the courts have been willing to apply the mature minor doctrine in some legal cases, risk for providing treatment without parental consent to a minor considered “mature” is reduced. Other jurisdictions have found a minor to be “mature” when:


- They are 15 or older
- They are able to understand the risks and benefits of the proposed care
- The care is beneficial and necessary, *and*
- There is good reason (including the minor’s objection) for proceeding without parental consent

Additionally, despite the lack of Arizona statute, the routine obstetrical practice in Arizona is to allow for an adolescent to consent for her own prenatal care and all related treatments based on

the mature minor doctrine. Providers are encouraged to document factors in the medical record, including:


- The nature of the care
- That the care is beneficial
- That the care is necessary
- There is a good reason for proceeding without parental consent

13 – CASE SCENARIO: SHAY, 15 Y/O GIRL


 Let's wrap up by going back to our 15-year-old patient scenario, Shay. We'll answer these questions together as I read through them.

- Can Shay receive STI testing without a parent's permission? *[Answer: Yes, Shay can be tested for all STIs including HIV without her parent's consent.]*
- Can she receive STI treatment? *[Answer: Yes, unless she needs treatment for HIV]*
- Can the provider talk to Shay's mother without Shay's consent? *[Yes, her provider can tell her mother that Shay received the services. However, Shay may be less likely to seek out care if she is worried her confidentiality will not be maintained, and in this case, there may be other negative consequences of involving the parent.]*

As we talked about at the beginning, there are different perspectives and feelings about how parents should be involved in their teen's health care. It can be helpful to consider how each of our own feelings affects the care we provide.

 **If time allows, you may choose to discuss what approach your health center takes to protecting minor confidentiality.**

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).**