

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 *Indiana 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.

- Adolescent & Young Adult Health Care in Indiana: A Guide to Understanding Consent & Confidentiality Laws https://nahic.ucsf.edu/wp-content/uploads/2019/01/Indiana-AYAH-Confidentiality-Guide_Final.pdf
- Indiana Code, Title 16: Health <http://iga.in.gov/legislative/laws/2020/ic/titles/016/#16-36-1-3.5>


Citation

If you plan to modify this resource, please cite or credit as: Confidentiality Laws, Indiana-Specific. Spark Training developed by the Adolescent Health Initiative at the University of Michigan Health; April 2023; Ann Arbor, MI.

Key of Icons


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


Intro/Hook  (3 minutes) 1 – INDIANA 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.

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 – IN 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 “Indiana Minor Consent & Confidentiality Laws” handout.](#)


6 – IN 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-
- 14 years old or older, living apart from their parents, not dependent on their parents for support, and managing their own financial affairs

7 – IN 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
- Testing and treatment for sexually transmitted infections (STIs) including HIV and PrEP. Per Indiana law, a minor of any age may give their own consent for medical care or treatment if they *"have, suspect that they have, or have been exposed to a venereal disease."* Minor consent for HIV testing and treatment is not explicitly stated in Indiana law but can be included under *"venereal disease."* It is also important to note that elsewhere in the law, HIV testing and treatment is guaranteed for all people, with no mention of age. Even though Indiana 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 your state public health officials, to develop institutional policies around providing PrEP without parental/guardian consent.
- There is no state law **allowing or prohibiting** minors to consent for contraceptives and family planning services. Under federal law, minors may consent for confidential family planning services through Title X sites or Medicaid and should be able to do so in other settings based on the constitutional right of privacy or the mature minor doctrine, which we will discuss later.
- Substance use treatment (inpatient and outpatient)
- Exams and treatment for sexual assault

8 – INDIANA 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 patient is 13 or under and has had oral or sexual intercourse with a person of any age
- The patient of any age has had oral or sexual intercourse with a person aged 13 or under
- The patient is 15 or under and has had oral or sexual intercourse with a person aged 18 or older
- The patient is 18 or older and has had oral or sexual intercourse with a person aged 15 or under

It can be helpful to note that the laws about oral or sexual intercourse do NOT apply to two people who are between ages 14-17 or between ages 16-18 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 concerned with his 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.

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. AHI also has a Confidentiality Best Practices Spark that includes more information on engaging parents if you are interested in learning more.

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:

- According to state law, for a minor that is at least 16, providers must make reasonable effort to contact the minor's parents/guardians for consent before providing pregnancy related services or care.
- Vaccines, including HPV
- Abortion, unless a judicial bypass is obtained of in the case of a medical emergency
- Mental health treatment including counseling and medication


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". 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

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.]*
- Can the provider talk to Shay's mother without Shay's consent? *[No, her provider can not tell her mother that Shay received the services unless she gives permission for them to do so.]*

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).