

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 *Louisiana 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.

- State Minor Consent Laws: A Summary, 3rd Edition:
<https://www.freelists.org/archives/hilac/02-2014/pdf/Ro8tw89mb.pdf>
- Fundamentals of the Pediatric Consent Process in Louisiana:
<http://www.ochsnerjournal.org/content/ochjnl/18/4/300.full.pdf>
- Louisiana State Health Department, Office of Behavioral Health, Rights of Minor Patients:
[https://ldh.la.gov/assets/docs/BehavioralHealth/MentalHealthLawForms/OBH%2016A%20Rights%20of%20Minor%20Patients%20\(2%20pages\).pdf](https://ldh.la.gov/assets/docs/BehavioralHealth/MentalHealthLawForms/OBH%2016A%20Rights%20of%20Minor%20Patients%20(2%20pages).pdf)
- Minor Consent and Confidentiality Laws for PrEP and HIV Treatment:
<https://nastad.org/resources/minor-consent-and-confidentiality-laws-prep-and-hiv-treatment>


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 – LOUISIANA 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 – LA 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:

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

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 “Louisiana Minor Consent & Confidentiality Laws” handout.](#)

6 – LA LAW: MINOR CONSENT BASED ON STATUS

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

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

- Emancipated
- Married
- Divorced

7 – LA 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:

- Receive surgical care or health services for any illness or disease
- Receive pregnancy related care, including care related to labor and childbirth
- Receive services for diagnosis and treatment of STIs, including HIV
 - Louisiana 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 Louisiana Department of Health STI/HIV Program at (504) 568-7474.]*
- Receive services for diagnosis and treatment of drug and alcohol problems, including preventive counseling or treatment.

8 – LA LAW: MINOR CONSENT BASED ON FUNDING SOURCE

Finally, let's look at exceptions based on funding source. Minors are able to receive confidential family planning services if the funding source is Medicaid or a Title X family planning program.

Health centers that cannot provide confidential sexual health services to patients using private insurance can often provide more assurance of confidentiality to teens using Medicaid. It's also good to be aware of local Title X clinics so a minor can be referred there if they need confidential sexual health services. If your health center is funded through Title X, you can provide nearly all reproductive health services to minors without a parent's consent. Abortion is the exception, as it requires parent consent or judicial bypass.

9 – INFORMING THE PARENT

There are a few circumstances where a provider is **permitted** (but not required) to notify a parent/guardian. In each of these contexts, the provider may exercise discretion in deciding whether parental notification would be in the best interests of the minor.

- A provider may inform the minor's parent/legal guardian of the minor's decision to get STI testing and/or care, but is not required for
- Testing positive for STI and receiving treatment
- Any reason


Again, this part of the law allows a provider to tell a parent about these specific confidential services if it's in the best interest of the young person.

The provider is required to tell the minor's parents/guardians about services in the following circumstances:

- Abortion with the exception of judicial bypass or medical emergency. However, since *Roe v. Wade* was overturned, abortion is largely banned in Louisiana for everyone and access to abortion services is limited.
- Sterilization
- Adoption placement

Research shows that teens are more likely to disclose personal information when they know which services will be kept confidential and which will not. Providers can inform minor patients about which services they can receive confidentially and which they cannot. Providers can also decide they will use their discretion and not break confidentiality unless there is a medical need. The next Spark about this topic covers strategies to protect minor confidentiality when appropriate, and will provide more time for our health center to consider privacy practices.

10 – LOUISIANA 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

Physicians are required to report instances of prenatal neglect to the Department of Children and Family Services (DCFS) by calling 855-4LA-KIDS (855-452-5437). The call is free and operates 24 hours per day, 365 days per year.


Application (3 minutes)

11 – 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 a substance use disorder 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 may be notified if he is admitted for treatment.

 12 – 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.

 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? *[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).