

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. Understanding the protections and limitations of minor consent laws is the first step!

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 Wisconsin Confidentiality/Minor Consent Laws Spark Handout

Additional Resources

If you would like to learn more about this Spark topic, or want to find health care services to refer teens to, take a look at these additional resources.

- Wisconsin Department of Public Instruction: [Confidential Services Available to Youth in Wisconsin](#) (May 2016)
- UW Health Office of Corporate Counsel: [Minors' Medical Records and Consent to Care](#) (November 2015)
- Wisconsin Office of Children, Youth, & Families: [Frequently Asked Questions from Mandatory Reporters](#)
- Vaccine Information Statement from CDC: <https://www.cdc.gov/vaccines/hcp/vis/about/facts-vis.html>


Citation

If you plan to modify this resource, please cite or credit as: Minor Consent and Confidentiality Laws, Wisconsin-Specific. Spark Training developed by the Adolescent Health Initiative at Michigan Medicine; November 2018; 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 know the protections and limitations of confidential services for minors. 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 situation, 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 a sexually transmitted infection. 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 respect teens' confidentiality, 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 might 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 when it’s possible.

4 – WI 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, emancipation from parents/guardians), or
- Type of service requested (such as certain sexual health services).

Here’s a handout that explains Wisconsin’s minor consent and confidentiality laws.

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

5 – WI LAW: MINOR CONSENT BASED ON STATUS

 Let’s look at what counts as “status.” A minor does not need a parent’s consent for any health care services if they are emancipated, legally married, or actively serving in the military.

Also, a pregnant minor may consent to prenatal, delivery, and post-delivery care. And a minor who is the victim of a sexual offense may consent to exams and treatment relating to the offense.

However, when a minor has been assaulted, the provider is a mandatory reporter and must follow relevant child abuse reporting requirements.

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



6– WI 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** that *any* minors can receive without parent or guardian consent.



Advance slide

1. Pregnancy testing and prenatal care.

Abortion is not included. A minor cannot consent to an abortion without a parent/guardian's consent, unless they have a court-approved waiver.

- The law includes a provision for judicial waiver for situations like sexual assault, suicide risk, incest, parental abuse, and an emergency.
- Another helpful point to note is that parental consent may be an adult family member who is 25 years of age or older. The details about this are listed on your handout.



Advance slide

2. Birth control information and contraception. While we always want to encourage open communication between parents and teens, 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. Testing, treatment, and prevention of sexually transmitted infections (STIs). Patients age 14 and up can consent to confidential HIV testing.

- Wisconsin does not have any specific laws on a minor's right to consent to PrEP for HIV prevention



Advance slide

4. Patients aged 12 and up can access outpatient substance use disorder treatment, including alcohol or drugs, and short-term inpatient detox under 72 hours.

Are there any questions?




7 – ACCESS TO MEDICAL RECORDS



If a parent/guardian requests access to their child's records, health centers must provide that information for most of the services we just reviewed. The exceptions are listed here. With these two services, specific substance use treatment and HIV testing, a minor has the right to withhold this information from their parents. To maintain confidentiality, a health center must obtain a minor's consent before billing a third party. If a minor refuses to consent, the minor is responsible for all charges.


So, basically, minors can receive certain confidential services without a parent's permission, but if a parent wants to look at their child's records, they can view almost all of them. This makes it hard for many health centers to guarantee that confidential services will remain truly confidential, but there are still a number of practices that we can follow to strengthen confidentiality. Also, it's important to note that if a parent requests access to their child's confidential service records, a provider may choose not to disclose if they feel it will endanger the patient.

8 – HPV VACCINATIONS & MENTAL HEALTH MEDS

 A minor cannot consent for the HPV vaccine. To get any vaccine, a parent or legal guardian must sign that they received a vaccine information statement (VIS).


On your handout, you'll see this toward the bottom. Note that mental health treatment and medications also require a parent or guardian's consent.

9 – REPORTING

 Now we're going to review the basics about reporting requirements. Health care providers must override the minor's confidentiality and report...

- If the minor poses a danger to themselves or others
- If there is suspicion of physical abuse or neglect by an adult
- If there is suspicion of sexual abuse, meaning any of the following:
 - The minor has had any involuntary sexual contact or intercourse
 - Sexual contact or intercourse occurred or is likely to occur with a caregiver
 - The minor cannot understand the consequences due to immaturity or mental illness
 - The minor is being exploited, or
 - The minor was unconscious or for any other reason physically incapable of communicating unwillingness.


10– 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 a parent's permission? [*Answer: Yes, she can receive testing without her mother's consent.*]
- 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 she can get condoms or other contraception without her mother's consent.*]

In the next slide, we're going to talk about ways Shay's mother might find out about her STI test.

11– 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 released? [*Answer: Yes.*]


As we talked about earlier, a minor may not deny parents or guardians access to medical records if they are requested. Could this be a situation where a provider uses their discretion and decide not to share this part of Shay's records? It depends on the situation, but yes, it's possible.

Finally, if Shay 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 clinic that is able to provide services without billing insurance, like a family planning clinic. The Spark on Confidentiality Best Practices covers more strategies to strengthen confidential services for minors.


Application (2 minutes)

12 – CASE SCENARIO: GIOVANNI


 Let's take a look at one last scenario. Giovanni is a 17-year-old boy who is struggling with a substance 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, because he is over age 12. The provider is not required to notify Giovanni's parents, but may encourage Giovanni to tell his parents. Again, it's usually best practice for providers to encourage a teen to talk to their parents about their health. It's also best practice for providers to counsel minor patients about their legal protections and limitations, so that they know what's confidential and what's not.

13 – 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, staff bathroom).