

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)
- Substance abuse 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 abuse, but doesn't want to tell his parents.

Is Giovanni allowed to get outpatient counseling for substance abuse 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).

Sparks



ARIZONA MINOR CONSENT AND CONFIDENTIALITY LAWS

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CASE SCENARIO: SHAY, 15 Y/O GIRL

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PURPOSE OF VISIT

Sore throat

ISSUE THAT EMERGES FROM CLINICIAN INTERVIEW

Concerned about having a Sexually Transmitted Infection (STI)

PARENT INFORMATION

Shay says she is worried her mother will kick her out of the house if she knows Shay is sexually active

Can the provider screen Shay for STIs without her mother's consent?
Why or why not?



CASE SCENARIO: SHAY, 15 Y/O GIRL

PURPOSE OF VISIT

Sore throat

ISSUE THAT EMERGES FROM CLINICIAN INTERVIEW

Concerned about having a Sexually Transmitted Infection (STI)

PARENT INFORMATION

Shay says she is worried her mother will kick her out of the house if she knows Shay is sexually active



CONSENT

- Permission to act
- Parent/guardian must give consent before their minor child can receive services (except specific confidential services)

CONFIDENTIALITY

- How providers and staff keep certain information confidential

Consent ≠ Confidentiality

AZ LAW: PARENTAL CONSENT EXCEPTIONS

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** (independence from parents/guardians),
- The **type of service requested** (such as certain sexual health services)



A minor may consent to health care services without a parent/guardian's permission if they are:

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



Patients under 18 may consent to the following **without** parental/guardian consent:

- Emergency medical, surgical, hospital or health services
- Contraceptives and family planning services including emergency contraception
- Pregnancy and prenatal care
- Testing and treatment for STIs
- Testing for HIV
- Substance abuse treatment
- Exams and treatment for sexual assault

ARIZONA REPORTING REQUIREMENTS

Health care providers **must** override the minor's confidentiality and report if:

- 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

CASE SCENARIO: GIOVANNI, 17 Y/O BOY

Sparks



PURPOSE OF VISIT

Well visit

ISSUE THAT EMERGES THROUGH CLINICIAN INTERVIEW

States to clinician that he's ready to get treatment for alcohol abuse

PARENT INFORMATION

Doesn't want to disappoint parents

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

THE ROLE OF PARENTS/GUARDIANS



Minors need a parent/guardian's permission for:

- Vaccines, including HPV
- Inpatient and outpatient mental health screening and treatment
- Abortion
- Treatment for HIV



THE MATURE MINOR DOCTRINE

A MINOR MAY BE FOUND 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 (include the minor’s objection) for proceeding without parental consent

DOCUMENT IN MEDICAL RECORD:

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

CASE SCENARIO: SHAY, 15 Y/O GIRL

PURPOSE OF VISIT

Sore throat

ISSUE THAT EMERGES FROM CLINICIAN INTERVIEW

Concerned about having a Sexually Transmitted Infection (STI)

PARENT INFORMATION

Shay says she is worried her mother will kick her out of the house if she knows Shay is sexually active

- Can Shay receive STI testing without a parent's permission?
- Can she receive STI treatment without a parent's permission?
- Can the provider talk to Shay's mother?



Sparks



THANK YOU!



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Confidentiality/Minor Consent Laws

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PARENT/GUARDIAN CONSENT EXCEPTIONS

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. These exceptions are based on a minor's **status** or the **type of service** requested.

Minor Consent Based on Status: A minor can consent to health care services without a parent or guardian if they are:

- Married
- On active military duty
- Emancipated by court order -OR-
- Homeless (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)

Minor Consent Based on Service: Patients under 18 are able to do the following WITHOUT parental consent:

- 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
- Substance abuse treatment (a parent/guardian must be notified if minor is admitted for treatment)
 - 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
- A minor, 12 and older, may consent to exams and treatment for sexual assault if a parent/guardian cannot be contacted within the timeframe necessary to provide treatment

MINORS NEED A PARENT/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 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

HEALTH CARE PROVIDERS MUST OVERRIDE THE MINOR'S CONFIDENTIALITY AND REPORT IF:

- 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

Note: There is no state statute that requires providers to ask minor patients the age of their sexual partner.

THE “MATURE MINOR” DOCTRINE

The “mature minor” doctrine is often used to determine if care can be provided to minors without parental consent. 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

**Although no Arizona statute specifically addresses family planning, an opinion issued by the State Attorney General in 1977 states that a minor may consent to family planning services. It is advisable for the provider to consider and document evidence of the maturity of the minor when providing such services without parental consent.*

***While no specific Arizona statute specifically addresses minor consent for pregnancy and prenatal care, minors are generally able to consent to treatment for pregnancy related care, including prenatal care, delivery services, treatment of complications and post-natal care.*

Reference: Birkholz K, Chulani VL, Murphy PS, Ritzman J, Stookey K; Quinn L, editors. Consent & Confidentiality in Adolescent Health Care: A Guide for Arizona Health Care Clinicians. Arizona Medical Association and Arizona Chapter, American Academy of Pediatrics. 2018. Online. http://c.ymcdn.com/sites/www.azmed.org/resource/resmgr/Adolescent_Health/ArMA_GuideFINAL.pdf



Briana, a 15-year-old girl who is covered by Medicaid, is requesting an IUD and does not have the consent of her parent. What do you do?

- a. Tell the patient that she has to come back with a parent's consent.
- b. Inform the patient that you can and will perform the procedure, but must call a parent to notify them.
- c. Explain to the patient that you can perform the procedure without parental consent, but her parents may receive an Explanation of Benefits.

Answer: (c.) Explain to Briana that you can perform the procedure without parental consent since she is covered under Medicaid, but her parents could receive an Explanation of Benefits.

Michael is 14 and is requesting a chlamydia test. He doesn't want to tell his dad, who's in the waiting room. Does he need consent from his father?

- a. Yes
- b. No

Answer: No. Minors may consent on their own to testing and treatment of sexually transmitted infections. Maintaining client confidentiality can be an important part of insuring access to care and a health care provider who treats a minor ordinarily must not notify the minor's parent or guardian about the treatment without the minor's express permission.



Remember, it's best practice in many cases for a provider to encourage teens to talk to their parents/guardians, even if consent is not required. Encouraging this dialogue can be an opportunity to set up successful parent/teen communication.



Jade is 16 years old. Can she receive a pregnancy test AND prenatal care without her parents' consent?

- a. Yes
- b. No

Answer: Yes. While no specific Arizona statute specifically addresses minor consent for pregnancy and prenatal care, minors are generally able to consent to treatment for pregnancy related care, including prenatal care, delivery services, treatment of complications and post-natal care.

Which of these options below DO NOT require parental consent for a teen living with her parents?

- a. HPV vaccine
- b. ADHD medication for a 13 year-old
- c. Treatment for controlled substances or alcohol
- d. Admission to an inpatient mental health facility

Answer: (c.) Minors may consent to outpatient treatment of controlled substances or alcohol. All other options require a parent's consent.

Remember, it's best practice in many cases for a provider to encourage teens to talk to their parents/guardians, even if consent is not required. Encouraging this dialogue can be an opportunity to set up successful parent/teen communication.



Carlos is 14 years old and needs mental health care. Which of these statements is true for him?

- a. He can consent to outpatient counseling without his parent's consent
- b. If he needs to, he can consent to depression medication without his parent's consent
- c. He needs to get his parent's consent for any sort of mental health treatment.

Answer: (c.) Minors need parental consent for inpatient and outpatient mental health screening and treatment unless an emergency requires it to prevent serious injury or save the life of the minor.

Which of the following require parent/guardian consent?

- a. Emergency care
- b. Any care for legally emancipated minors
- c. Contraceptives
- d. Vaccines
- e. Treatment for HIV
- f. Outpatient substance abuse treatment

Answer: (d.) and (e.)

- **Vaccines, including the HPV, require parental consent.**
- **Teens can be screened for HIV without parental consent but need consent from a parent or guardian if they are going to receive treatment.**

Remember, it's best practice in many cases for a provider to encourage teens to talk to their parents/guardians, even if consent is not required. Encouraging this dialogue can be an opportunity to set up successful parent/teen communication.