

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 *Texas 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.

- Texas Health and Human Services: Adolescent Health Guide: www.dshs.texas.gov/thsteps/Adolescent-Health-Guide/
- Texas Health and Human Services: Online CE Credit – Teen Consent and Confidentiality: <http://www.txhealthsteps.com/185-teen-consent-and-confidentiality#overview>
- Texas Department of Family and Protective Services: Reporting Abuse, Neglect, or Exploitation: www.txabusehotline.org Hotline: **1-800-252-5400**

Citation

If you plan to modify this resource, please cite or credit as: Confidentiality Laws. Spark Training developed by the Adolescent Health Initiative at Michigan Medicine; September 2021; 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 understand adolescent confidentiality and minor consent. This training is intended to be an overview of the most relevant laws on confidential services for teens. Texas 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 to think about how it applies to your role specifically. To get us started, let's review a case scenario.

 2 – CASE SCENARIO: SHAY

 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 few moments to consider these questions.

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

 3 – CASE SCENARIO: SHAY

 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 protect confidentiality, 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 (10 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 mean that the provider is required to keep it confidential.

So, laws can protect a minor’s right to access a specific service like STI testing without requiring a parent’s permission, but it’s up to health care providers and staff to protect a minor’s confidentiality.

5 – TEXAS 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 behind the desk for quick reference in the future.

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

6 – TEXAS 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: If they are:

- Married -OR-
- On active duty in the armed services -OR-
- Serving in an adult prison (except abortion) -OR-

- Sixteen or older, living apart from their parents, and managing their own finances (except abortion).

7 – TEXAS 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:

- Pregnancy testing and prenatal care (other than abortion)
- Non-prescription contraceptives such as condoms and over-the-counter emergency contraception
- STI testing and treatment (for reportable STIs such as Chlamydia, Gonorrhea, HIV, Syphilis)
- Counseling and treatment for suicide prevention or substance abuse
- Inpatient mental health care (if they are 16 or older)
- Counseling and treatment for suspected abuse or neglect

8 – TEXAS 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 – TEXAS 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 information to The Texas Department of Family and Protective Services Hotline. A health care provider must make a report when:

- There is suspicion of abuse or neglect by an adult
- The minor is a risk to themselves or someone else
- The minor is under age 14 and sexually active, regardless of the age of their partner
- The minor is under the age of 17, not married, and has been sexually active and *any of the following* are true:
 - Their partner is more than three years older -OR-
 - Their partner is of the same sex -OR-
 - Force was involved -OR-

- Their partner is a registered sex offender

Reports should be made within 48 hours to a local law enforcement agency or the Texas Department of Family and Protective Services (DFPS).

10 – TEXAS REPORTING REQUIREMENTS

 Also, if the minor has a sexually transmitted infection or other disease on the DSHS list of Notifiable Conditions, such as Chlamydia, Gonorrhea, HIV, or Syphilis, it must be reported to the appropriate health department. In some limited circumstances, follow-up contacts for treatment could result in the minor’s parents finding out about the STI.

Application (3 minutes)

11 – CASE SCENARIO: GIOVANNI

 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 or may tell the parents without Giovanni’s consent.

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 next Spark, on confidentiality best practices, but let’s keep it in mind.

13 – 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 need a parent or guardian’s permission for:

- Vaccines, including HPV (Note: a minor who is pregnant or a parent may consent to certain vaccinations)
- Mental health treatment and medications other than for suicide prevention
- Inpatient mental health treatment (if under the age of 16)
- Prescription contraceptives, unless the minor is on Medicaid or being served in a Title X clinic
- An abortion, unless a judicial bypass is obtained

If a parent or guardian cannot be located, other adult relatives such as grandparents, siblings, aunts, or uncles may provide consent. An adult or educational institution with written permission from the parents may also provide consent.

14 – TEXAS LAW: CONFIDENTIALITY

 Here's an important final point. There's a provision in the law that says that even if a minor is allowed to consent to a confidential service (like pregnancy testing) without a parent's permission, a provider may decide to inform the parent or guardian. This kind of law exists in other states as well, and the way it's interpreted can vary based on the provider and the health center.

What does this mean for adolescent confidentiality? Is it possible for providers in a primary care setting to provide a confidential service to a teen who does not have Medicaid? Why or why not?

 [Take a moment for discussion.](#)

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.

15 – CASE SCENARIO, SHAY

 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 Chlamydia without parental consent, because it is reportable and therefore, does not require parent consent.]*
- Can she receive STI treatment? *[Answer: Yes]*
- Can the provider talk to Shay's mother without Shay's consent? *[Answer: Yes, under Texas law, 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.]*
- Because Chlamydia is on the DSHS list of reportable diseases, it must be reported to DSHS.

As we talked about at the beginning, there are a range of perspectives and feelings about parent involvement 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.](#)

 16 – 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 \(e.g., lunchroom\).](#)