

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 Maryland Confidentiality/Minor Consent Laws Spark Handout
- Writing utensils for all participants

Additional Resources

If you would like to learn more about this Spark topic, take a look at these additional resources.

- [Maryland Department of Health: Treatment of Minors](#)
- [American Academy of Pediatrics: Maryland Minor Consent Laws](#)
- [National Family Planning & Reproductive Health Association- Protecting Patients' Privacy in Health Insurance & Billing Claims: A Maryland Profile](#)
- [Rape, Abuse & Incest National Network: Maryland Mandatory Reporting Requirements](#)
- [Maryland Strengthens Efforts to Fight Human Trafficking and Support Survivors](#)

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 – 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.

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 scenario 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 an STI. 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 provide certain confidential services to teens without a parent's permission, 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 would probably 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.

4 – MD 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, legal independence from parents/guardians), or
- The type of service requested (such as certain sexual health services).

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

5 – MD LAW: MINOR CONSENT BASED ON STATUS

 Here’s a [handout](#) that explains Maryland’s minor consent and confidentiality laws. As we see in the top section, Maryland’s law allows certain minors to consent to services based on their **status**. This includes:

- If the minor is married; or
- The parent of a child
- Living separate and apart from the minor’s parent, parents, or guardian, whether with or without consent of the minor’s parent, parents, or guardian; and
- Self-supporting, regardless of the source of the minor’s income

6– MD 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** any minors can receive without parental or guardian consent.



Advance slide

1. Emergency care



Advance slide

2. *Abortion (Parental notification is required, but consent is not needed for the procedure.)



Advance slide

3. Diagnosis and/or treatment for sexually transmitted infections, including HIV/AIDS



Advance slide

4. Consultation, diagnosis, and treatment for outpatient mental health services (Only minors ages 16+)



Advance slide



7– MD LAW: MINOR CONSENT BASED ON SERVICE

5. Treatment or advice about:

- Drug use
- Alcoholism
- Pregnancy
- Contraception other than sterilization
- Examination and treatment of injuries from an alleged rape or sexual offense
- Examination to obtain evidence from an alleged rape or sexual offense
- Initial medical screening and examination upon admission into a detention center



Advance slide



8- MD LAW: CONFIDENTIALITY AND PARENTAL/GUARDIAN ACCESS TO HEALTH INFORMATION

The Health Insurance Portability and Accountability Act (HIPAA) determines whether a minor has access to the minor's protected health information (PHI, or any information in a medical record that can be used to personally identify an individual like names, diagnosis, etc.) and whether a parent or guardian also has access to that minor's PHI. HIPAA states:

- Maryland statutes permit a minor to obtain certain health-care services without the consent of a parent or guardian. In the situations listed above, a provider must treat the minor as the health-care decision-maker. HIPAA rules apply when the minor can consent to the services, therefore, their health information cannot be released to anyone unless the minor consents. (See above for those areas where a minor may obtain a health-care service without the consent of a parent.)
- Maryland statutes allow a parent or guardian to act on the behalf of a minor in making health-care decisions except as noted above. In those situations, when a minor cannot consent to their own care, a health-care provider must treat that parent or guardian as the health-care decision-maker and give that parent or guardian access to the minors non-

protected PHI. A licensed health-care provider must exercise professional judgment in making this decision.

9– REPORTING

 Now we're going to review when a minor's confidentiality must be overridden. Health care providers must override the minor's confidentiality and report if there is reason to believe that a minor has been subjected to...

- Abuse or neglect
- Physical or mental injury of a minor that indicates that the minor's health or welfare is harmed or at substantial risk of being harmed
- Sexual abuse
- Leaving the minor unattended or other failure to give proper care and attention to a minor by any parent or person who has permanent or temporary care for supervision of the minor

9 – 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 her parent's permission? [*Answer: Yes, she can*]
- Can she receive STI treatment without her parent's permission? [*Answer: Yes, Maryland law allows minors to receive STI testing and treatment.*]
- Can Shay receive contraception without her parent's permission: [*Answer: Yes, Maryland law allows minors to receive treatment or advice about contraceptives.*]

10 – 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: No. When a minor is consenting to confidential services, as noted prior, HIPAA is applied and information cannot be released to anyone unless the minor consents.*]

Are there other ways that Shay's mother could find out that Shay received this service? [*Answer: Yes, if she uses her parent's health insurance, an explanation of benefits (EOB) form is typically sent for each visit including medical services rendered. Additionally, with office copays and/or paying out of pocket, breaches in confidentiality are possible.*]

For maximum confidentiality, a minor may go to a provider that is able to provide services without billing insurance or using alternative coding for confidential services. The Spark on Confidentiality Best Practices covers more strategies to ensure confidential services for minors.

Application  (1 minute)

 11 – CASE SCENARIO: GIOVANNI, 17 Y/O BOY

 Let's take a look at one last scenario. Giovanni is a 17-year-old boy who is struggling with a substance use disorder, 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 silently to themselves or aloud.

 The answer is yes. Maryland allows for minors aged 16+ to seek treatment for substance abuse counseling without parental consent.

 12 – 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).