

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 *South Carolina Minor Consent and Confidentiality 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.

- [South Carolina Minor's Access to Confidential Reproductive Healthcare](#)
- [Title 63 - South Carolina Children's Code](#)
- [Mandated Reporter Guide](#)
- [South Carolina Laws Regarding Sexual Assault and Consent](#)

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; March 2019; 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 minor consent and adolescent confidentiality. 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**

 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 – SC LAW: PARENTAL CONSENT EXCEPTIONS

 Now let’s review the South Carolina laws in more depth. 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.

These exceptions are based on:

- A minor’s **status** (independence from parents/guardians),
- A minor’s **age**
- The **type of service** requested (such as certain sexual health services), or
- The **funding source** (such as a DHEC clinic or Title X clinic)

Again, these laws can sometimes be confusing, so I’m passing out a handout that summarizes these exceptions

 Pass out the “South Carolina Minor Consent & Confidentiality Laws” handout.

6 – SC LAW: MINOR CONSENT BASED ON STATUS

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

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

- Married -OR-
- Serving in the military -OR-
- Legally emancipated



7 – SC LAW: MINOR CONSENT BASED ON AGE

 Additionally, South Carolina has several laws that outline different health care services that minors can receive without their parent's or guardian's permission based on their specific age.

- Minors **16 or older** can consent to **any** health care services that do not require an operation.
- Minors **16 or older** may also consent to an operation if it is **essential to their health or life** in the opinion of the performing physician and a consultant physician if one is available

For example – a 16-year-old can consent for insertion of the contraceptive implant, such as the Nexplanon but cannot consent to have it removed because removal is considered an operation/invasive medical procedure. However, if the operation was deemed “essential to their health or life” by the performing physician and, ideally, a consultant, the operation could be performed.

- Minors **under 16** may consent to health services of **any kind** when, in the judgment of a person authorized by law to render a particular health service, **such services are deemed necessary**
 - Additionally, if the minor is under 16 and the health services involve an operation, it can only be performed only if it is **essential to their health or life** in the opinion of the performing physician and a consultant physician if one is available

As you can see, these laws allow for a broad exception for health care professionals to use their professional judgement. In these cases, it is advisable for the physician to consult another physician if one is available.



8 – SC 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. 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
- Family planning and contraceptive care, including Emergency Contraception
- STI testing and treatment (although some STIs must be reported to the health department)
- PrEP for HIV prevention for minors age 16+
- Treatment for abuse of controlled substances or alcohol
- Outpatient mental health services
- Emergency care if:
 - the proposed surgical or medical treatment is reasonably necessary (according to competent medical judgment)
 - a person authorized to consent is not readily available and
 - any delay in treatment would jeopardize the minor's life or health

 9 – SC 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.

 10 – SC LAW: BREAKING CONFIDENTIALITY

 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. However, a health care provider must break confidentiality and make a report when there is reasonable belief that the minor has been or may be abuse or neglected. The health care provider does not need to know for sure that the minor has been abused or neglect, only that there is a reasonable belief.

It's also important to note that the legal age of consent for sexual contact in South Carolina is 16. In addition, individuals as young as 14 years old are able to consent to have sex with a partner who is 18 years old or younger. For example, if a 13-year-old patient disclosed they he was sexually active, the provider would be required to break confidentiality and report this as abuse since 13 year olds cannot legally consent for sexual contact.

 11 – 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.

Application  (3 minutes) 12 – 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.

 13 – 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.]
- 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).