Minor Consent, Confidentiality, and Child Abuse Reporting:

A Guide for Title X Family Planning Providers in Nevada

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The **National Center for Youth Law (NCYL)** is a national, non-profit organization that uses the law to improve the lives of poor children. NCYL works to ensure that low-income children have the resources, support and opportunities they need for a healthy and productive future. www.youthlaw.org. Rebecca Gudeman, JD of NCYL created the third edition of this document in 2019 for the Nevada Primary Care Association. The fourth edition of this document was updated from the third edition by Abigail English, JD, of the Center for Adolescent Health & the Law, as a consultant to the Nevada Primary Care Association.

The **Nevada Primary Care Association (NVPCA)** is a non-profit membership organization that was founded in 1995. NVPCA serves Section 330 funded and prospective Federally Qualified Health Centers, tribal health centers, other primary care clinics, and community health providers throughout the State of Nevada. NVPCA supports collaboration and coordination among existing health centers and other community health providers to improve and expand access to comprehensive primary care services throughout the state. To learn more visit www.nvpca.org.

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Disclaimer

This manual provides information. It does not constitute legal advice or representation. For legal advice, readers should consult their own counsel. This manual presents the state of the law as of November 2021. While we have attempted to assure the information included is accurate as of this date, laws do change, and we cannot guarantee the accuracy of the contents after publication.

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I. INTRODUCTION

The Title X Family Planning program is part of the federal Public Health Service Act. "Title X is the only federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services."[1] The Title X program is designed to provide access to contraceptive services, supplies, and information—as well as related reproductive health and preventive health services beneficial to reproductive health—to all who want and need them, including adolescents.[2]

Agencies that receive Title X funding must comply with federal Title X regulations, including regulations on consent to care and confidentiality. Recipients also must comply with applicable state reporting laws, including mandatory child abuse reporting laws. Title X recipients sometimes have questions about their legal obligations regarding consent, confidentiality, and child abuse reporting when providing services to adolescent patients.

This document is intended as a legal resource for Title X grantees, delegate agencies, and their legal counsel. The document provides an overview of the pertinent federal and state medical consent, confidentiality and child abuse reporting laws that apply when adolescents seek family planning services in a Title X funded agency. The document does not address the confidentiality and reporting laws that may apply in other service settings, such as schools or domestic violence counseling centers, or with other patient populations, such as youth in the child welfare system. The document also does not address other factors that Title X grantees and health centers should consider in developing confidentiality and reporting policy, such as documentation. *The document provides legal information, not legal advice*. For this reason, the document should be used as a reference only and not as a substitute for clinic policy or advice from legal counsel.

II. GENERAL AGE OF CONSENT INFORMATION

What is the age of majority/minority?

The age of majority in Nevada is eighteen years.[3] Persons under age 18 are minors.

What is the age of consent for sexual activity in Nevada?

While no statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for sexual activity with a minor under 16 years of age.[4] There also can be criminal penalties for sexual activity with a minor under 18

[1] Excerpted from the U.S. Department of Health and Human Services, Office of Population Affairs description of the Title X program. Available at: https://opa.hhs.gov/grant-programs/title-x-service-grants/about-title-x-service-grants.
[2] Id.
[3] Nev. Rev. Stat. § 129.010.
[4] See, e.g., Nev. Rev. Stat. §§ 200.364; 200.368; 201.230.

years old when certain circumstances exist. For example, it is felony for a teacher or school administrator to engage in sexual conduct with a student under 18 years old, irrespective of consent.[5]

What is the age of consent for medical care?

Once someone reaches the age of majority, that person usually consents for their own health care. However, there are situations in which minors may consent for their own health care. The following sections provide examples.

III. TITLE X: Overview of Consent and Confidentiality Rules

What laws must a Title X funded provider follow?

When providing Title X funded care, health care providers must follow federal Title X law and regulations.[6] In addition, providers must follow applicable state and federal law to the extent possible. If a state law conflicts with a Title X regulation, the Title X regulation preempts the state law if the state law would limit access or eligibility to the services provided through Title X.[7]

Who must consent for a minor's Title X care?

The minor and only the minor. Title X regulations updated in 2021 explicitly provide that parent consent may not be required and notification of parents is not permitted for services funded through Title X.[8] In short, Title X funded services must be made available to all adolescents, regardless of their age.[9] Courts have prohibited implementation of any state law to the contrary, even if the state law explicitly requires parental consent or notification for the same service.[10] Thus, minors of any age may consent to services on their own behalf when those services are funded in full or in part by Title X monies.

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[5] Nev. Rev. Stat. § 201.540.

[6] See 42 U.S.C. § 300; 42 C.F.R. § 59.1.

[7] See *Planned Parenthood Federation v. Heckler*, 712 F. 2d 650, 663-664 (D.C. Cir. 1983)("[U]nder the Supremacy Clause of the Constitution states are not permitted to establish eligibility standards for federal assistance programs that conflict with the existing federal statutory or regulatory scheme."); *Planned Parenthood Assoc. of Utah v. Matheson*, 582 F. Supp. 1001, 1006 (D. Utah 1983); see also *County of St. Charles v. Missouri Family Health Council*, 107 F.3d 682 (8th Cir. 1997); *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10th Cir. 1985); *Doe v. Pickett*, 480 F. Supp. 1218, 1220-1221 (D.W.Va. 1979).

[8] 42 C.F.R. § 59.10(b).

[9] See 42 U.S.C. § 300(a); 42 C.F.R. §§ 59.5(a)(1) and (4).

[10] *County of St. Charles v. Missouri Family Health Council*, 107 F.3d 682 (8th Cir. 1997), reh. den. 1997 U.S. App. LEXIS 6564, cert. den. 522 U.S. 859 (1997); see *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10th Cir. 1985); *Planned Parenthood Assoc. of Utah v. Matheson*, 582 F. Supp. 1001, 1006 (D. Utah 1983); *Doe v. Pickett*, 480 F. Supp. 1218, 1220-1221 (D.W. Va. 1979).

What is the confidentiality rule for Title X information?

The Title X regulations require Title X funded clinics to keep confidential "all information as to personal facts and circumstances obtained by the project staff" about patients.[11] The regulations prohibit the clinics from releasing this information unless (1) the clinic has written authorization for the release, (2) the release is necessary to provide services to the patient, or (3) state or federal law requires the release. (*See the next questions in this section for more information on these exceptions.*) The regulations also require that clinics implement "appropriate safeguards for confidentiality."[12] In addition to the Title X regulations, clinics also must follow applicable federal and state confidentiality law to the extent possible. As just one example, if the clinic is a "covered entity" subject to HIPAA, the clinic must follow the HIPAA Privacy Rule as well as Title X regulations.

Who may authorize disclosure of Title X funded service information?

The minor patient and only the minor patient. Federal Title X regulations state that the "individual" must sign the authorization to release information.[13] This means that the patient, even if that patient is a minor, must sign any authorization to release Title X related medical information. No one else has the authority to sign the release.

What disclosures are permitted without an authorization?

The Title X regulations prohibit clinics from releasing information unless the clinic has written authorization for the release, the release is necessary to provide services to the patient, or state or federal law *requires* the release.[14] If a state law allows but does not require release of information, then the clinic cannot release the information without authorization. There are a few Nevada state laws that *require* release of health information in certain situations. Here are examples:

- ***Mandated Child Abuse Reporting***
  Under Nevada law, certain individuals are required to make child abuse reports and are required to release certain medical information as part of the reporting process. (*See section V in this document for more detail on child abuse reporting*.) Because the law compels reporting once the reporting obligation has been triggered, Title X providers can and must comply with the child abuse reporting law.

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[11] 42. C.F.R. § 59.10.

[12] 42 C.F.R. § 59.10 ("All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipient must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client.").

[13] 42 C.F.R. § 59.10.

[14] See 42 C.F.R. § 59.10 (allowing Title X funded clinics to disclose information "as required by law").

- ***Reporting Certain Communicable Diseases***
  Nevada law requires health providers, facilities, and laboratories to report communicable diseases to the health authority.[15] Because this report is required by law, Title X regulations allow providers to comply.
- ***Reporting Certain Violent Acts and Injuries***
  Under Nevada law, certain named professionals, including health providers, are required to report certain incidents of burns and violence to law enforcement and are required to release certain medical information as part of the reporting process.[16] Because this is a mandate, Title X providers who are mandated reporters can comply with this law.
- ***Other Required Disclosures***
  Other federal and state laws require disclosures in other circumstances. Health care providers and clinics should consult legal counsel for more information regarding these laws.

Do parents have a right to Title X information regarding minor patients?

No. While Title X requires that grantees encourage family participation in Title X projects to the extent practical,[17] health care providers cannot disclose Title X service information to parents without the minor's written consent. The Title X regulations require Title X funded clinics to keep all individual client information confidential unless the clinic has written authorization for the release from the patient, the release is necessary to provide services to the patient, or the release is otherwise required by law.[18] Title X regulations, as updated in 2021, explicitly prohibit notification of parents[19] and no federal or Nevada state law requires disclosure of Title X funded service information to parents.[20] Thus, if a minor receives Title X funded services, records of and information about that service cannot be disclosed to parents without obtaining the minor's documented consent.

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[15] See Nev. Rev. Stat. § 441A.150.

[16] See, e.g., Nev. Rev. Stat. §§ 629.041, 629.045.

[17] 42 U.S.C. § 300(a); 42 C.F.R. § 59.10(b).

[18] 42 C.F.R. § 59.10("All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.").

[19] 42 C.F.R. § 59.10(b) (". . . Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services.").

[20] Even if there were a federal regulation or state law to this effect, Title X's confidentiality protections likely would prohibit disclosure. See, e.g., *Planned Parenthood v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983) (holding that Title X federal regulations drafted by DHHS that would have required informing parents about Title X services to adolescents were unlawful because they were inconsistent with Congressional intent and undermined the fundamental purpose of the Title X program). If any state or federal rule is passed that seems to require parent notification regarding Title X services, providers should consult legal counsel for advice.

IV. GENERAL MEDICAL CARE: Overview of Nevada Medical Consent and Confidentiality Rules

What laws control medical consent and confidentiality in general?

There are a number of federal and state laws regarding consent to treatment and confidentiality, and when they apply depends, among other things, on the person receiving the service, the type of service, the funding source, and the agency or clinician providing the service.

Who usually consents for a minor's medical care?

Generally, a parent, guardian, or other person *in loco parentis* must consent for health care on behalf of a minor. However, there are exceptions in federal and state law that allow or require the minor and others to consent for treatment. The following describes relevant exceptions.

When may others consent for a minor's health care?

There are times in which third parties may consent for a minor's health care or care may be provided without the consent of either a parent or guardian or the minor. Here are some examples:

- ***Health authority requiring care related to sexually transmitted disease***
  "[W]hen any minor is suspected of having or is found to have a sexually transmitted disease, the health authority may require the minor to undergo examination and treatment, regardless of whether the minor or either of the minor's parents consent to the examination and treatment."[21]

  "Except a person who has a communicable disease and depends exclusively on prayer for healing in accordance with the tenets and precepts of any recognized religious sect, denomination or organization is not required to submit to any medical treatment required by the provisions of this chapter, but may be isolated or quarantined in the person's home or other place of the person's choice acceptable to the health authority, and shall comply with all applicable rules, regulations and orders issued by the health authority."[22]

- ***Any person in loco parentis in an emergency***
  "Notwithstanding any other provision of law, in cases of emergency in which a minor is in need of immediate hospitalization, medical attention or surgery and, after reasonable efforts made under the circumstances, the parents of such minor cannot be located for the purpose of consenting thereto, consent for such emergency attention may be given by any person standing in loco parentis to such minor."[23]

[21] Nev. Rev. Stat. § 441A.310.
[22] Nev. Rev. Stat. § 441A.210.
[23] Nev. Rev. Stat. § 129.040.

- ***Investigators investigating suspected abuse/violence***
  "A designee of an agency investigating a report of abuse or neglect of a child may, without the consent of the person responsible for a child's welfare: (a) Take or cause to be taken photographs of the child's body, including the areas of trauma; and (b) If indicated after consultation with a physician, cause X-rays or medical tests to be performed on a child."[24]

  "As used in this section, 'medical test' means any test performed by or caused to be performed by a provider of health care, including, without limitation, a computerized axial tomography scan and magnetic resonance imaging."[25]

When may/must minors consent for their own health care under Nevada law?

When minors have the following characteristics:

- ***Emancipated minors***
  Minors who have been emancipated by a court are "held and considered to be of lawful age."[26]
- ***Minors who are parents or have borne a child***
  A local or state health officer, board of health, licensed physician or public or private hospital may examine or provide treatment for any minor who (1) is a parent or has borne a child, (2) understands the nature and purpose of the proposed examination or treatment and its probable outcome, and (3) voluntarily requests it. The consent of the minor to examination or treatment is not subject to disaffirmance because of minority. This does not apply to allow minors to consent to sterilization or to obtain do-not-resuscitate orders on their own.[27]
- ***Minors who are married or have been married***
  A local or state health officer, board of health, licensed physician or public or private hospital may examine or provide treatment for any minor who (1) is married or has been married, (2) understands the nature and purpose of the proposed examination or treatment and its probable outcome, and (3) voluntarily requests it. The consent of the minor to examination or treatment is not subject to disaffirmance because of minority. This does not apply to allow minors to consent to sterilization or to obtain do-not-resuscitate orders on their own.[28]
- ***Minors who are living apart from parents***
  A local or state health officer, board of health, licensed physician or public or private hospital may examine or provide treatment for any minor who (1) is living apart from

[24] Nev. Rev. Stat. § 432B.270.
[25] Nev. Rev. Stat. § 432B.270.
[26] Nev. Rev. Stat. § 129.010.
[27] Nev. Rev. Stat. § 129.030.
[28] Nev. Rev. Stat. § 129.030.

his parents or legal guardian, with or without the consent of the parent, parents or legal guardian, and has so lived for a period of at least 4 months, (2) understands the nature and purpose of the proposed examination or treatment and its probable outcome, and (3) voluntarily requests it. The consent of the minor to examination or treatment is not subject to disaffirmance because of minority. This does not apply to allow minors to consent to sterilization or to obtain do-not-resuscitate orders on their own.[29]

- ***Minors who are in danger of suffering a serious health hazard without services***
  A local or state health officer, board of health, licensed physician or public or private hospital may examine or provide treatment for any minor who (1) in a physician's judgment, is in danger of suffering a serious health hazard if health care services are not provided, and (2) the minor understands the nature and purpose of the proposed examination or treatment and its probable outcome and (3) voluntarily requests it. The consent of the minor to examination or treatment pursuant to this subsection is not subject to disaffirmance because if minority. This does not apply to allow minors to consent to sterilization or to obtain do- not-resuscitate orders on their own.[30]

When minors seek the following medical services:

- ***Abortion***
  Nevada passed a parental notification statute; however, the federal Ninth Circuit Court of Appeals barred its implementation. Thus, until further notice, minors may consent to abortion, and providers do not need to notify parents or obtain their consent.[31]
- ***Controlled substance abuse treatment***
  "Any minor who is under the influence of, or suspected of being under the influence of, a controlled substance: 1. May give express consent; or 2. If unable to give express consent, shall be deemed to consent, to the furnishing of hospital, medical, surgical or other care for the treatment of abuse of drugs or related illnesses by any public or private hospital, medical facility, facility for the dependent, other than a halfway house for alcohol and drug abusers, or any licensed physician, and the consent of the minor is not subject to disaffirmance because of minority."[32]
- ***Family planning including pregnancy testing and contraception***
  To the extent that family planning is provided as a Title X service, funded in full or in part with Title X monies, the rule listed under "Title X" above applies. Title X regulations updated in 2021 explicitly provide that parental consent may not be required.[33]

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[29] Nev. Rev. Stat. § 129.030.
[30] Nev. Rev. Stat. § 129.030.
[31] *Glick v. McKay*, 937 F.2d 434 (9th Cir. 1991).
[32] Nev. Rev. Stat. § 129.050.
[33] 42 C.F.R. § 59.10 ("Title X projects may not require consent of parents or guardians for the provision of services to minors[.])"

Regarding family planning services that are not funded in full or in part by Title X, see above sections on when a minor may consent who is a *Parent/Married/Living Apart from Parents/In Danger of a Serious Health Hazard*.

- ***Examination or treatment for sexually transmitted diseases and infections***
  To the extent that STD/STI services are provided as a Title X service, funded in full or in part with Title X monies, the rule listed under "Title X" applies.

  In other situations, Nevada state law applies, which says: "Notwithstanding any other provision of law, the consent of the parent, parents or legal guardian of a minor is not necessary in order to authorize a local or state health officer, licensed physician or clinic to examine or treat, or both, any minor who is suspected of being infected or is found to be infected with any sexually transmitted disease."[34]

What laws protect the confidentiality of health information in Nevada?

Several federal and state laws protect the confidentiality of health information and records. In particular, the federal regulations issued under the Health Insurance Portability and Accountability Act of 1996—the HIPAA Privacy Rule[35]--protect the privacy of "protected health information"[36] held by "covered entities,"[37] including health care providers.[38] In addition, Nevada has statutes that protect the confidentiality and control release of certain records, such as electronic health records, and establish disclosure exceptions.[39]

"Covered" health care providers must follow both the federal HIPAA Privacy Rule and state law. In general, if the federal and state laws conflict, and the state law provides greater confidentiality protection than HIPAA, providers must follow state law. When HIPAA provides greater protection, providers must follow HIPAA.[40]

Other federal laws and regulations, such as Title X and federal substance use disorder confidentiality rules, also may apply in certain circumstances, depending on, for example, the type of service provided or the funding source for the service. Several Nevada laws also apply.

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[34] Nev. Rev. Stat. § 129.060.
[35] 45 C.F.R. Parts 160 and 164.
[36] 45 C.F.R. § 160.103 (defining "protected health information," "health information," and "individually identifiable health information"). This includes oral communications as well as written or electronically transmitted information, created or received by a health care provider; that relate to the past, present or future physical or mental health or condition of an individual; and either identify the individual or can be used to identify the individual patient.
[37] 45 C.F.R. § 160.103 (defining "covered entities" that must follow the HIPAA Privacy Rule as all health care providers who transmit health information in electronic form, health plans, and health care clearinghouses).
[38] 45 C.F.R. § 160.103 (defining "health care providers" to include individual providers such as physicians, clinical social workers and other medical and mental health practitioners, as well as hospitals, clinics and other organizations that provide, bill for, or are paid for health care. These providers are called "covered" providers.
[39] See, e.g., Nev. Rev. Stat. §§ 439.589, 439.590, 629.061.
[40] 45 C.F.R. § 160.203.

What is the confidentiality rule under HIPAA?

Under HIPAA, "covered" health care providers generally must keep "protected health information"—confidential but can disclose information if the provider either has a signed authorization allowing for the disclosure, or a specific exception in federal or state law allows or requires the disclosure.[41] "Protected health information" includes "individually identifiable health information" in all forms.[42]

Who may authorize disclosure of a teen's protected health information?

It depends. Under HIPAA, a parent or guardian is usually considered the minor's personal representative and must sign an authorization to release a minor's protected health information.[43] However, if the minor consented for the underlying care, the minor is considered the "individual" with rights under HIPAA and must sign the authorization to disclose the related health information and records.[44] The minor also must sign the authorization in a few other situations, such as if a court authorized the minor's medical care pursuant to state law.[45] When a minor has a right to sign authorizations under HIPAA, the parent's right to access or inspect the underlying health information is determined by state and other law.[46]

Nevada law states that a minor's consent is required to disclose to a parent or guardian any individually identifiable health information obtained from an electronic health record or health information exchange, if the health information concerns services received by a minor based on the consent of the minor or a third party, such as a judge or person standing *in loco parentis*, or in any other way received without consent of the parent or guardian.[47] The Nevada Administrative Code describes what such authorizations must contain.[48]

Other laws and regulations contain different rules regarding who must sign an authorization to release records, and these rules may apply depending on the type of service provided or the funding source for the service, among other factors. For example, as discussed in section III, Title X regulations require that the minor sign any authorization

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[41] See, e.g., 45 C.F.R. § 164.502 (establishing general rules for uses and disclosures of protected health information).
[42] 45 C.F.R. § 160.103 (defining "individually identifiable health information" to include oral communications as well as written or electronically transmitted information, created or received by a health care provider; that relate to the past, present or future physical or mental health or condition of an individual; and either identify the individual or can be used to identify the individual patient).
[43] 45 C.F.R. §§ 164.502(a)(1)(i); (a)(2)(i); (g)(1); (g)(3).
[44] 45 C.F.R. §§ 164.502(a)(1)(i)&(iv); (a)(2)(i);(g)(1); (g)(3)(i).
[45] 45 C.F.R. §§ 164.502(a)(1)(i)&(iv); (a)(2)(i);(g)(1); (g)(3)(i). For example, section (g)(3)(i)(B) of 45 C.F.R. 164.502 says that the minor must sign with respect to health information when "[t]he minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service."
[46] 45 C.F.R.§ 164.502(g)(3)(ii).
[47] Nev. Rev. Stat. § 439.590(2).
[48] Nev. Admin. Code § 439.592.

to release information related to Title X funded services.[49]

What disclosures are permitted without an authorization?

Generally, information protected by HIPAA and state law can only be disclosed by a health care provider if the provider has a signed authorization to release records. However, a number of exceptions in HIPAA and state law allow or require a provider to release information without an authorization in certain situations. For example, under HIPAA, health care providers may share health information with other health care providers for treatment and referral purposes without need of a signed release.[50]

Other HIPAA exceptions allow health care providers to release information to comply with mandatory state reporting laws, in emergencies, and for billing, payment, and research purposes without need of an authorization.[51] Nevada law also allows and requires disclosures in some cases. For example, health providers must disclose records to the Attorney General and certain licensing boards related to specific types of investigations, among other mandated disclosures.[52] There are additional exceptions as well.

Several Nevada laws compel disclosure of protected health information in order to protect the public health. Important examples are laws that require certain individuals to report communicable disease, elder adult abuse, child abuse, and certain violence.[53] In section V, this document provides more detail about mandated child abuse reporting.

Do parents generally have the right to access minors' health information?

Parents generally have a right to access their minor child's health information and records, with exceptions that are determined by a combination of federal and state laws. The HIPAA Privacy Rule contains requirements that apply to health records generally and specific federal regulations also affect parents' access to substance use disorder information. Nevada state law contains additional requirements that apply when minors have consented to their own care based on their specific characteristics or the services they have received.

- ***Health Records, Generally***
  Under the HIPAA Privacy Rule, when a parent, guardian, or other person has authority to consent for a minor's care, the parent, guardian, or other person generally has a right to access the protected health information or obtain records of the minor's treatment as the

[49] 42 C.F.R. § 59.10.
[50] 45 C.F.R. § 164.506.
[51] 45 C.F.R. § 164.512.
[52] Nev. Rev. Stat. § 629.061.
[53] See, e.g., Nev. Rev. Stat. § 441A.150, which provides: "A provider of health care who knows of, or provides services to, a person who has or is suspected of having a communicable disease shall report that fact to the health authority in the manner prescribed by the regulations of the board."

"personal representative" of the minor.[54] However, there are exceptions to this rule.

Under HIPAA, a parent or guardian is usually considered the minor's personal representative. However, if the minor consented for their own care, the minor is considered the "individual" with rights under HIPAA and the parent may not be the personal representative.[55] When a minor is considered the individual, *the parent's right to access information or medical records about the care is determined by state and other law*.[56]

Also under HIPAA, even when parents otherwise would have a right of access, health care providers may refuse to provide parents access to a minor's protected health information and medical records in situations involving a danger to the minor. Specifically, health care providers may deny access to a parent or other personal representative if they have a "reasonable belief" that the minor has been or may be subjected to domestic violence, abuse or neglect by the parent, guardian or other giving consent; *or* they reasonably believe that providing access could endanger the minor.[57] To deny access in these situations, the provider must exercise of professional judgment in deciding that granting access is not in the best interest of the minor.[58]

Health care providers should consult with their legal counsel for further information about application of this law.

- ***Abortion***
  Under HIPAA regulations, when a minor may lawfully obtain a health care service, such as an abortion, without the consent of a parent, guardian, or other person acting *in loco parentis*, and the minor, a court, or another person authorized by law consents to such health care service, the minor generally controls access to the medical information about the service. In Nevada, minors may access abortions based on their own consent.[59]

  However, also under HIPAA, when a minor has consented to a service, a parent's access to the information is determined by state or other law. If there is no applicable provision under state or other law, including case law, specifying whether or not a parent may have access to the information, a provider may provide or deny access to a parent, guardian or other *in loco parentis*, if consistent with state or local law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.[60]

  Nevada law states that a minor's consent is required to disclose to a parent or guardian any individually identifiable health information obtained from an electronic health record or health information exchange, if the health information concerns

[54] 45 C.F.R. §§ 164.502(a)(1)(i), (a)(2)(i), (g)(1), (g)(3).
[55] 45 C.F.R. §§ 164.502(g)(3).
[56] 45 C.F.R.§ 164.502(g)(3)(ii).
[57] 45 C.F.R. § 164.502(g)(5).
[58] 45 C.F. R. § 164.502(g)(5).
[59] *Glick v. McKay*, 937 F.2d 434 (9th Cir. 1991).
[60] 45 C.F.R. §§ 164.502(g)(3)(i)(B), (g)(3)(ii)(C).

services received by a minor based on the consent of the minor or a third party, such as a judge or person standing *in loco parentis*, or in any other way received without consent of the parent or guardian.[61] The Nevada Administrative Code describes what such authorizations must contain.[62]

- ***Controlled Substance Abuse Treatment***
  Federal regulations establish special protections for substance use disorder treatment records.[63] Providers that meet certain criteria must follow the federal rule.

  Providers that don't meet these criteria follow state law.

  Federal substance use disorder confidentiality regulations apply to any individual, program, or facility that meets the following two criteria: (1) the individual, program, or facility is federally assisted;[64] *and* (2) the individual or program (a) holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; *or* (b) is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; *or* (3) is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral.[65]

  For individuals or programs meeting these criteria, federal law prohibits disclosing any information to parents without a minor's written consent if the minor acting alone under applicable state law has the legal capacity to apply for and obtain alcohol or drug abuse treatment. If state law requires parental consent for treatment, an individual or program may share with parents the fact of the minor's application for treatment if the individual or program director determines the following three conditions are met: (1) that the minor's situation poses a substantial threat to the life or physical well-being of the minor or another; (2) that this threat may be reduced by communicating relevant facts to the minor's parents; and (3) that the minor lacks the capacity because of extreme youth or a mental or physical condition to make a rational decision on whether to disclose to her parents.[66]

  For programs that do not meet the criteria for "federally assisted programs," state law applies. State law mandates that any physician who treats a minor based on the minor's consent shall make every reasonable effort to report the fact of treatment to the parent, parents or legal guardian within a reasonable time after treatment.[67]

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[61] Nev. Rev. Stat. § 439.590(2).
[62] Nev. Admin. Code § 439.592.
[63] 42 C.F.R. Part 2.
[64] 42 C.F.R. § 2.12. Federally assisted means authorized, certified, licensed or funded in whole or in part by any department of the federal government. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare. Id.
[65] 42 C.F.R. § 2.11; 42 C.F.R. § 2.12.
[66] 42 C.F.R. § 2.14.
[67] Nev. Rev. Stat. § 129.050.

Communication with parents does not authorize the parent to access the records, however. Nevada law states that any individually identifiable health information obtained from an electronic health record or health information exchange cannot be disclosed to a parent or guardian without first obtaining the consent of the minor patient, if the health information concerns services received by a minor based on minor consent.[68] The Nevada Administrative Code describes what such authorizations must contain.[69]

- ***Minor who is emancipated***
  Under both HIPAA and Nevada law, emancipated minors have a right to control their medical information.[70]
- ***Minor who is a parent or has borne a child***
  "A person who treats a minor [under the rule allowing minor parents to consent for care] shall, before initiating treatment, make prudent and reasonable efforts to obtain the consent of the minor to communicate with his or her parent, parents or legal guardian, and shall make a note of such efforts in the record of the minor's care. If the person believes that such efforts would jeopardize treatment necessary to the minor's life or necessary to avoid a serious and immediate threat to the minor's health, the person may omit such efforts and note the reasons for the omission in the record."[71]

  Communication with parents does not authorize the parent to access the records, however. Nevada law states that any individually identifiable health information obtained from an electronic health record or health information exchange cannot be disclosed to a parent or guardian without first obtaining the consent of the minor patient, if the health information concerns services received by a minor based on minor consent.[72] The Nevada Administrative Code describes what such authorizations must contain.[73]
- ***Minor who is married or has been married***
  "A person who treats a minor [under the rule allowing minors who are or have been married to consent for care] shall, before initiating treatment, make prudent and reasonable efforts to obtain the consent of the minor to communicate with his or her parent, parents or legal guardian, and shall make a note of such efforts in the record of the minor's care. If the person believes that such efforts would jeopardize treatment necessary to the minor's life or necessary to avoid a serious and immediate threat to the minor's health, the person may omit such efforts and note the reasons for the omission in the record."[74]

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[68] Nev. Rev. Stat. § 439.590(2).
[69] Nev. Admin. Code § 439.592.
[70] See 45 C.F.R. § 502(g); Nev. Rev. Stat. § 129.010.
[71] Nev. Rev. Stat. 129.030.
[72] Nev. Rev. Stat. § 439.590(2).
[73] Nev. Admin. Code § 439.592.
[74] Nev. Rev. Stat. § 129.030.

Communication with parents does not authorize the parent to access the records, however. Nevada law states that any individually identifiable health information obtained from an electronic health record or health information exchange cannot be disclosed to a parent or guardian without first obtaining the consent of the minor patient, if the health information concerns services received by a minor based on minor consent.[75] The Nevada Administrative Code describes what such authorizations must contain.[76]

- ***Minor who is living apart from parents***
  "A person who treats a minor [under the rule allowing minors to are living apart from parents to consent for care] shall, before initiating treatment, make prudent and reasonable efforts to obtain the consent of the minor to communicate with his or her parent, parents or legal guardian, and shall make a note of such efforts in the record of the minor's care. If the person believes that such efforts would jeopardize treatment necessary to the minor's life or necessary to avoid a serious and immediate threat to the minor's health, the person may omit such efforts and note the reasons for the omission in the record."[77]

  Communication with parents does not authorize the parent to access the records, however. Nevada law states that any individually identifiable health information obtained from an electronic health record or health information exchange cannot be disclosed to a parent or guardian without first obtaining the consent of the minor patient, if the health information concerns services received by a minor based on minor consent.[78] The Nevada Administrative Code describes what such authorizations must contain.[79]

- ***Minor in danger of a serious health hazard***
  "A person who treats a minor [under the rule allowing minors who are in danger of suffering a serious health hazard to consent for care] shall, before initiating treatment, make prudent and reasonable efforts to obtain the consent of the minor to communicate with his or her parent, parents or legal guardian, and shall make a note of such efforts in the record of the minor's care. If the person believes that such efforts would jeopardize treatment necessary to the minor's life or necessary to avoid a serious and immediate threat to the minor's health, the person may omit such efforts and note the reasons for the omission in the record."[80]

  Communication with parents does not authorize the parent to access the records, however. Nevada law states that any individually identifiable health information obtained from an electronic health record or health information exchange cannot be disclosed to a parent or guardian without first obtaining the consent of the minor patient, if the health information concerns services received by a minor based on minor

[75] Nev. Rev. Stat. § 439.590(2).
[76] Nev. Admin. Code § 439.592.
[77] Nev. Rev. Stat. § 129.030.
[78] Nev. Rev. Stat. § 439.590(2).
[79] Nev. Admin. Code § 439.592.
[80] Nev. Rev. Stat. § 129.030.

consent.[81] The Nevada Administrative Code describes what such authorizations must contain.[82]

- ***Sexually transmitted disease and infection***
  To the extent that STD/STI services are provided as a Title X service, funded in full or in part with Title X monies, the rule listed under "Title X" applies.

  In other cases, Nevada law applies, which says: "All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, . . . or by any person who has a communicable disease, . . . or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except: . . .[in reporting the actual or suspected abuse or neglect of a child or elderly person] . . .."[83]

- ***Investigations of Suspected Abuse***
  If a designee of an agency investigating a report of abuse has photographs, X-rays or medical tests performed, "the person responsible for the child's welfare must be notified immediately, if reasonably possible, unless the designee determines that the notification would endanger the child."

  "Any photographs or X-rays taken or records of any medical tests performed, . . .or any medical records relating to the examination or treatment of a child . . ., or copies thereof, must be sent to the agency which provides child welfare services, the law enforcement agency participating in the investigation of the report and the prosecuting attorney's office."[84]

Do parents have access to a minor's electronic health information?

In 2021 the Office of the National Coordinator for Health Information Technology (ONC) in the federal Department of Health and Human Services issued regulations under the 21st Century Cures Act.[85] These regulations contain provisions prohibiting "information blocking" that require giving patients access to their electronic health information (EHI) and making it accessible to other providers.

EHI includes a wide array of potentially sensitive and confidential information including clinical notes, laboratory and other test results, and prescriptions. Parents sometimes have access to a minor's EHI via a web portal, as a proxy for the patient or through other means.

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[81] Nev. Rev. Stat. § 439.590(2).
[82] Nev. Admin. Code § 439.592.
[83] Nev. Rev. Stat. § 441A.220.
[84] Nev. Rev. Stat. § 432B.270.
[85] 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program. 85 Fed. Reg. 25642, May 1, 2020. https://www.govinfo.gov/content/pkg/FR-2020-05-01/pdf/2020-07419.pdf. Codified at 45 C.F.R. Parts 170 and 171.

Exceptions to the information blocking requirements exist and include exceptions for privacy, preventing harm, and infeasibility, among others.[86] Interpretation of the scope of these exceptions and methods for segregating shareable from confidential information are evolving. Health care providers should consult with legal counsel regarding implementation of the ONC regulations under the 21st Century Cures Act.

Can individuals be held liable for revealing or accessing confidential information outside the exceptions listed in federal or state law?

If no exception applies that would allow a provider to share information, providers who reveal confidential information may be held liable. The HIPAA regulations give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach these rules.[87] Similarly, Nevada state law includes penalties. For example, state law authorizes criminal and financial penalties for unauthorized access to individual health information in a health exchange.[88]

IV. CHILD ABUSE REPORTING REQUIREMENTS

The Title X regulations require that health care providers comply with any applicable state mandated abuse reporting law.[89] Title X regulations do not include their own child abuse reporting requirements or alter state reporting obligations in any way.

This section provides an overview of Nevada child abuse reporting requirements. Other reporting requirements may apply in addition to the child abuse reporting mandate. Providers should work with their legal counsel to ensure that they are following all appropriate reporting requirements in Nevada.

A. Who Must Report Child Abuse under Nevada Law?

Who is a mandated reporter?

Nevada state law makes the following persons mandated reporters:[90]

- A person providing services licensed under chapters 450B, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640B, 640C, 640D, 640E, 641, 641A, 641B

[86] ONC. What are the information blocking exceptions? https://www.healthit.gov/curesrule/final-rule-policy/information-blocking.
[87] See 45 C.F.R. Part 160.
[88] See, e.g., Nev. Rev. Stat. § 439.590.
[89] *See* 42 C.F.R. § 59.10; *see also e.g.* Consolidated Appropriations Act 2010, Pub. L. No 111-117, 123 Stat. 3034, 3256-3257 (2009)("Notwithstanding any other provision of law, no provider of services under title X of the Public Health Services Act shall be exempt from any state law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.").
[90] Nev. Rev. Stat. § 432B.220.

or 641C, or 653 of Nevada Revised Statutes. This includes, but is not limited to, emergency medical services, physicians and physician assistants, audiologists, dentists, dental hygienists, chiropractic physicians, osteopathic providers, optometrists, podiatric physicians, homeopathic physicians, physical therapists, pharmacists, professional or practical nurses, psychiatrist, psychologist, marriage and family therapist, alcohol or drug abuse counselor, athletic trainer, advanced emergency medical technician or other person providing medical services licensed or certified in this state;

- Any personnel of a medical facility licensed pursuant to chapter 449 who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility;
- A coroner;
- A member of the clergy, practitioner of Christian Science or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession;
- A person employed by a public school or private school and any person who serves as a volunteer at such a school;
- Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child;
- Any person licensed to conduct a foster home;
- Any officer or employee of a law enforcement agency or an adult or juvenile probation officer;
- An attorney, unless the attorney has acquired the knowledge of the abuse or neglect from a client who is or may be accused of the abuse or neglect;
- Any person who maintains, is employed by, or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met;
- Any person who is employed by or serves as a volunteer for an approved youth shelter. As used in this paragraph, approved youth shelter has the meaning ascribed to it in Nev. Rev. Stat. 244.427; and
- Any adult person who is employed by an entity that provides organized activities for children, including a person who is employed by a school district or public school.

B. When Must a Mandated Reporter Submit an Abuse Report?

When must a mandated reporter report abuse?

A mandated reporter must report when the reporter, in their "professional or occupational capacity, knows or has reasonable cause to believe that a child has been

abused or neglected."[91]

A mandated reporter must "make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected."[92]

What if the reporter is not sure that abuse has occurred?

Confirmation of abuse is not required. Reporters must report whenever they have a "reasonable cause to believe" that abuse has occurred. State law defines "reasonable cause to believe" to mean that if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.[93]

What if the abuse happened long ago?

A provider may encounter an adult patient who discloses that they were the victim of child abuse in years prior. In 2016, the Nevada Attorney General was asked whether Nevada law requires a psychologist to make a child abuse report when an adult client reports previous child abuse. The Attorney General opined that a report is only necessary when reporting abuse of children who are still minors at the time of the disclosure. The Attorney General said: "Reading [Nevada Revised Statute] 432B.220 in its entirety and reviewing the plain language of all of its parts, the best interpretation is that mandatory reporting of child abuse or neglect is required only when psychologists and other persons described in [Nevada Revised Statute] 432B.220(4) know or have reasonable cause to believe that a child meeting the definition contained in NRS 432B.040 at the time of the report has been abused or neglected. If a psychologist learns that an adult client was abused or neglected as a child, part of the therapeutic goal of the client's therapy may involve the adult client reporting his or her abuse or neglect, but the psychologist is not required to report such abuse or neglect . . .."[94]

C. What Type of Activity Must be Reported?

What constitutes reportable abuse or neglect?

Nevada law defines "abuse or neglect of a child" to include:

- "Physical or mental injury of a nonaccidental nature;"
- "Sexual abuse or sexual exploitation;" or
- "Negligent treatment or maltreatment of a child" caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the

[91] Nev. Rev. Stat. § 432B.220.
[92] Nev. Rev. Stat. § 432B.220.
[93] Nev. Rev. Stat. § 432B.121.
[94] Nev. Op. Atty. Gen. No. 2016- 08 (Oct. 12, 2016).

child's health or welfare is harmed or threatened with harm. For this purpose, "allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.[95]

A child is not considered abused or neglected, nor is the health or welfare of the child harmed or threatened for the sole reason that:

- The parent of the child delivers the child to a provider of emergency services pursuant to Nevada Revised Statutes 432B.630, if the parent complies with certain requirements of that section; or
- The parent or guardian of the child, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of Nevada in lieu of medical treatment. This does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to Nevada Revised Statutes 62E.280.[96]

These terms are further defined as described below.

What is a physical injury for reporting purposes?

Nevada law defines reportable "physical injury" to include, without limitation:

- A sprain or dislocation;
- Damage to cartilage;
- A fracture of a bone or the skull;
- An intracranial hemorrhage or injury to another internal organ;
- A burn or scalding;
- A cut, laceration, puncture or bite;
- Permanent or temporary disfigurement; or
- Permanent or temporary loss or impairment of a part or organ of the body.[97]

What is a mental injury for reporting purposes?

Nevada law defines "mental injury" for reporting purposes to mean an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.[98]

What is negligent treatment for reporting purposes?

Nevada law states that "negligent treatment or maltreatment of a child" occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision

[95] Nev. Rev. Stat. §§ 432B.020(1); 432B.140.
[96] Nev. Rev. Stat. § 432B.020(2).
[97] Nev. Rev. Stat. § 432B.090.
[98] Nev. Rev. Stat. § 432B.070.

or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.[99]

D. What Is Reportable Sexual Abuse?

How is sexual abuse defined for reporting purposes?

Nevada law requires reporting "sexual abuse," and defines "sexual abuse" to include acts upon a child constituting:

- Incest under Nevada Revised Statutes (NRS) 201.180;
- Lewdness with a child under NRS 201.230;
- Sado-masochistic abuse under NRS 201.262;
- Sexual assault under NRS 200.366;
- Statutory sexual seduction under NRS 200.368;
- Open or gross lewdness under NRS 201.210; and
- Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child under NRS 200.5083.[100]

In other words, any acts that would be a violation of the above statutes are reportable as child abuse.

What is "incest under NRS 201.180" for reporting purposes?

Incest means "Persons being within the degree of consanguinity within which marriages are declared by law to be incestuous and void who intermarry with each other or who commit fornication or adultery with each other . . .."[101]

What is "lewdness with a child under NRS 201.230" for reporting purposes?

"A person is guilty of lewdness with a child if he or she:

(a) Is 18 years of age or older and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child; or

(b) Is under the age of 18 years and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent

[99] Nev. Rev. Stat. § 432B.140.
[100] Nev. Rev. Stat. § 432B.100.
[101] Nev. Rev. Stat. § 201.180.

of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child."[102]

What is "sado-masochistic abuse under 201.262" for reporting purposes?

" 'Sado-masochistic abuse' means:
1. Flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or
2. The condition of being fettered, bound or otherwise physically restrained."[103]

What is "sexual assault under 200.366" for reporting purposes?

"A person is guilty of sexual assault if the person:
(a) Subjects another person to sexual penetration, or forces another person to make a sexual penetration on themselves or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct; or
(b) Commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on themselves or another, or on a beast."[104]

" 'Sexual penetration' means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. The term does not include any such conduct for medical purposes."[105]

What is "statutory sexual seduction under 200.368" for reporting purposes?

" 'Statutory sexual seduction' means ordinary sexual intercourse, anal intercourse or sexual penetration committed by a person 18 years of age or older with a person who is 14 or 15 years of age and who is at least 4 years younger than the perpetrator."[106]

Is a report of sexual activity with a minor ever required based on age alone?

There are a few circumstances in which sexual activity with a minor is deemed sexual abuse and must be reported based on age of parties alone. These circumstances, described in more detail above, include, for example:

- Lewdness with a child—by a person age 18 or older with a child under the age of 16; or by a person younger than age 18 with a child under the age of 14.[107]

[102] Nev. Rev. Stat. § 201230.
[103] Nev. Rev. Stat. § 201.262.
[104] Nev. Rev. Stat. § 200.366.
[105] Nev. Rev. Stat. § 200.364.
[106] Nev. Rev. Stat. § 200.364.
[107] Nev. Rev. Stat. §§ 201.230; 432B.100.

- Sexual assault—sexual penetration upon a child under age 14; or causing a child under age 14 to make a sexual penetration on themselves or another.[108]
- Statutory sexual seduction—by a person age 18 or older with a person age 14 or 15 who is at least 4 years younger. [109]

For this purpose, "sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning.[110]

The Nevada statutes defining reportable sexual acts involving children are complex. Health care providers who are uncertain of their reporting obligations are urged to consult with legal counsel.

What "non-consensual" sexual activity must be reported?

Mandated reporters must report child abuse anytime they have a reasonable suspicion that one person subjected another person to sexual penetration or forced another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of his or her conduct.

In addition, reporters must report any reasonable suspicion of activity that falls into the categories of:

- Incest;
- Lewdness with a child;
- Sado-masochistic abuse;
- Sexual assault;
- Open or gross lewdness; or
- Mutilation of the genitalia of a female child.

What sexual activity with a minor does not require reporting?

Mandated reports are *not* required for:

- Sexual activity between minors who are 14, 15, 16, or 17 years of age and there is no reasonable suspicion that one person subjected or forced the other person to engage in that activity and there is no reasonable suspicion that one person was mentally or physically incapable of resisting or understanding the nature of the conduct.
- Sexual activity between a minor who is age 16 or older and a partner age 16 or

[108] Nev. Rev. Stat. §§ 200.366; 432B.100.
[109] Nev. Rev. Stat. §§ 200.364; 432B.100.
[110] Nev. Rev. Stat. § 200.364.

older and there is no reasonable suspicion that one person subjected or forced the other person and no reasonable suspicion that one person was mentally or physically incapable of resisting or understanding the nature of the conduct.
- Sexual activity that does not fall into one of the categories specifically identified in the previous discussion as reportable.

For the purposes of child abuse reporting, does a mandated reporter have a duty to try to ascertain the age of a minor patient's partner?

No statute or case obligates health care providers to ask their minor patients about the age of the minors' sexual partners.

Does pregnancy or a sexually transmitted infection automatically require an abuse report?

Nevada law does not require child abuse reporting when a minor patient is pregnant or infected with a sexually transmitted infection. However, this information, when combined with other information, may lead a mandated reporter to reasonably suspect child abuse, as defined by state law.

E. What is Reportable Sexual Exploitation?

What is sexual exploitation for reporting purposes?

Nevada law defines "sexual exploitation" to include "forcing, allowing or encouraging a child:
1. To solicit for or engage in prostitution;
2. To view a pornographic film or literature; and
3. To engage in:
   (a) Filming, photographing or recording on videotape; or
   (b) Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child's genitals or any sexual conduct with a child, as defined in NRS 200.700."[111]

Does a mandated reporter need to report child prostitution as child abuse?

Reporters must report any reasonable suspicion that a minor is being or was forced, allowed, or encouraged to solicit for or engage in prostitution. "Prostitution" is defined as engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.[112] Sexual conduct for this purpose means engaging in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.[113]

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[111] Nev. Rev. Stat. § 432B.110.
[112] Nev. Rev. Stat. § 201.295.
[113] Nev. Rev. Stat. § 201.295.

F. How Does Reporting Work?

To whom should reports be made?

Mandated reporters should "report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency." [114]

The report goes to law enforcement if the suspected abuse involves acts by a person working for a public or private home, institution of facility where the child is receiving child care outside the home for a portion of the day. [115]

If the alleged abuse is at the hands of someone who works for a child welfare or law enforcement agency, the report must go to any agency other than the one alleged.[116]

How must a reporter make a report?

"A person may make a report …by telephone or, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, by any other means of oral, written or electronic communication that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the report. If the report is made orally, the person who receives the report must reduce it to writing as soon as reasonably practicable."[117]

How quickly must a mandated reporter make a report?

Mandated reporters must make a report "as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected."[118]

What information must the reporter include in the report?

"The report must contain the following information, *if obtainable*:

(a) The name, address, age and sex of the child;

(b) The name and address of the child's parents or other person responsible for the care of the child;

(c) The nature and extent of the abuse or neglect of the child, the effect of a fetal alcohol spectrum disorder or prenatal substance abuse on the newborn infant or the nature of the withdrawal symptoms resulting from prenatal drug exposure of the newborn infant;

[114] Nev. Rev. Stat. § 432B.220.
[115] Nev. Rev. Stat. § 432B.220.
[116] Nev. Rev. Stat. § 432B.220.
[117] Nev. Rev. Stat. § 432B.230.
[118] Nev. Rev. Stat. § 432B.220.

(d) Any evidence of previously known or suspected:
(1) Abuse or neglect of the child or the child's siblings; or
(2) Effects of a fetal alcohol spectrum disorder or prenatal substance abuse on or evidence of withdrawal symptoms resulting from prenatal drug exposure of the newborn infant;
(e) The name, address and relationship, if known, of the person who is alleged to have abused or neglected the child; and
(f) Any other information known to the person making the report that the agency which provides child welfare services considers necessary."[119]

If the reporter does not have all the necessary information, is a report required?

Yes, it is required. A report should be made any time a mandated reporter has a reasonable suspicion of abuse, even if the reporter does not have all the information requested.

May confidential information from the medical chart and provider notes be included in a report?

A child abuse report must contain any "information known to the person making the report that the agency which provides child welfare services considers necessary."[120] There is no exemption for information contained in medical records.

May a health provider inform parents that they made a child abuse report?

Mandated reporting is an exception to confidentiality law and allows disclosures to child welfare and/or law enforcement. This reporting exception does not authorize disclosures to others. Thus, whether a health provider may inform parents of an abuse report made will depend on the applicable confidentiality law and whether parents are authorized to receive confidential health information. For example, if the minor was receiving Title X services when the abuse disclosure occurred, Title X confidentiality rules apply, which give the minor the right to determine whether or not their parents can be informed.

G. What Happens after an Abuse Report is Made?

What will the police or welfare agency do after receiving a report?

It depends on the type of abuse, age of the child, and the level of risk. In all cases, the welfare agency is required to evaluate reports no later than three days after their receipt to see if investigation is warranted. In some cases, the agency will immediately initiate an investigation – for example if the report indicates that there is a high risk of serious harm to the child. Child welfare and law enforcement shall cooperate in any investigation of child abuse or neglect.[121]

[119] Nev. Rev. Stat. § 432B.230.
[120] Nev. Rev. Stat. § 432B.230.
[121] Nev. Rev. Stat. § 432B.260.

Will parents be informed of the reporter's name or organization?

No. Even if the parent is the alleged abuser. "If an agency which provides child welfare services investigates a report of alleged abuse or neglect of a child pursuant to NRS 432B.010 to 432B.400, inclusive, the agency shall inform the person responsible for the child's welfare who is named in the report as allegedly causing the abuse or neglect of the child of any allegation which is made against the person at the initial time of contact with the person by the agency. **The agency shall not identify the person responsible for reporting the alleged abuse or neglect**."[122]

Can individuals be held liable for not making reports?

Any person who *knowingly and willfully* violates the mandated reporting requirements is guilty of a misdemeanor for the first violation and a gross misdemeanor for following violations.[123]

[122] Nev. Rev. Stat. § 432B.260 (emphasis added).
[123] Nev. Rev. Stat. § 432B.240.