

# **Consent, Confidentiality, & Mandatory Reporting Laws: An Update for Title X Family Planning Providers in Nevada**

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# Disclosure

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Abigail English has no financial conflicts of interest to disclose.

# Objectives

*By the end of this session, participants should be able to ...*

- Explain the consent requirements for minors to receive health care under Title X family planning regulations and Nevada minor consent laws
- Explain the federal and state confidentiality laws that protect the health care information of minors and control disclosure of confidential information
- Explain the mandatory child abuse reporting requirements in Nevada laws

# Disclaimer

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This presentation does not constitute legal advice. For a legal opinion or legal advice, it is important to consult an attorney with expertise in all applicable federal, state, and local laws.

# Overview

- Minor consent for health care
  - ▣ Title X family planning regulations
  - ▣ Nevada minor consent laws
- Confidentiality of minors' health information
  - ▣ HIPAA Privacy Rule
  - ▣ Nevada confidentiality laws
- Mandatory reporting of child abuse
  - ▣ Mandated reporters
  - ▣ Reportable abuse
  - ▣ Reporting procedures

# Minor Consent for Health Care

# General “Age of Consent” in Nevada

- Age of majority in Nevada = 18
- Age of consent for sexual activity
  - ▣ No specific age in Nevada law
  - ▣ Some criminal laws specify penalties for minors of certain ages
- Age of consent for medical care
  - ▣ Adolescents  $\geq$  are adults – consent for own car
  - ▣ Adolescents  $<$  18 are legally minors
    - Parent consent usually required
    - Exceptions allow minors to consent

# Poll Question #1

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**Are you familiar with the 2021 Title X regulation on parent consent?**



# Consent for Title X Family Planning Services

- Title X services must be available for adolescents
- Historically, confidentiality requirements → minor consent
  - Title X confidentiality regulation
  - Litigation re federal regulation and state laws
- 2021 Title X regulations
  - “Adolescent-friendly health services” 42 C.F.R. § 59.5
    - “accessible, acceptable, equitable, appropriate and effective”
  - Explicit prohibition of requiring parent consent 42 C.F.R. § 59.10(b)

# Title X Regulation re Parent Consent

- 2021 Title X regulations added new language re parent consent
  - ▣ “To the extent practical, Title X projects shall encourage family participation. However, *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.*”  
42 C.F.R. § 59.10(b)

# Nevada Laws re Consent for Minors' Care

- General rule requires parental consent for minors' care
- Numerous exceptions allow minors to consent
  - ▣ Characteristics of minor
  - ▣ Service minor is seeking
- Some laws authorize a third party to consent
  - ▣ Health authority for care re STD/STI
  - ▣ Person *in loco parentis* in emergency
  - ▣ Investigators of suspected abuse

# Groups of Minors Who May Consent

- Emancipated minors
- Minors who are parents or have borne a child
- Minors who are or have been married
- Minors who are living apart from parents
- Minors in danger of suffering serious health hazard

# Minor Consent for Specific Services

- Abortion – Nevada parent notification law enjoined
- Controlled substance abuse treatment – minor may consent
- Family planning—pregnancy testing & contraception
  - Title X regulation for Title X funded sites
  - Nevada laws
    - Parent / Married / Living Apart / In Danger of Severe Health Hazard
- Examination or treatment for STD/STI

# Confidentiality of Minors' Health Information

# Confidentiality for Minors in Nevada

- Federal laws
  - ▣ Title X confidentiality regulations
  - ▣ HIPAA Privacy Rule
  - ▣ Part 2 – SUD confidentiality regulations
  - ▣ Other laws – Medicaid, HIV, FQHC
- Nevada laws
  - ▣ Information from electronic health record or health information exchange
  - ▣ Information for minors in specific groups
  - ▣ Information about specific services

# Confidentiality Protections in Title X

- Title X confidentiality rule = “gold standard”
- 2021 regulation: “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.” 42 C.F.R. § 59.10(a)



# Disclosure Rules for Title X Information

- Documented authorization of patient required
  - ▣ Includes minor patients
- Disclosures related to insurance and payment
- Disclosures required by law
  - ▣ Mandated child abuse reporting
  - ▣ Reporting of communicable diseases
  - ▣ Reporting of violent acts and injuries

# Disclosures Related to Insurance & Payment

- Numerous federal & state laws apply
- 2021 Title X regulation: “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.” 42 C.F.R. § 59.10(a).

# Title X Regulation re Parent Notification

- History of federal regulatory developments and litigation
- 2021 Title X regulations added new language re parent notification
  - “To the extent practical, Title X projects shall encourage family participation. However, *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.*”  
42 C.F.R. § 59.10(b)

# HIPAA Privacy Rule

- Rights of individuals
  - ▣ Control disclosure
  - ▣ Access records
  - ▣ Request special confidentiality protections
    - Restrictions on disclosure
    - Confidential communications
- “Floor” of protection
- Minors as individuals
  - ▣ Consent for own care
  - ▣ Parent accedes to confidentiality
- Parents’ access to information
  - ▣ Parent as authorized representative
  - ▣ Deference to state or other law including applicable case law

# 42 C.F.R. Part 2 – Federal SUD Confidentiality Rules

- “Federally assisted” programs
- Floor of federal protection for rights of adult & minor patients
- Disclosure of patient identifying information requires written patient consent
  - ▣ Protection for Information of minors authorized to consent under state law
- Disclosure permitted without patient consent (examples)
  - ▣ Child abuse reports
  - ▣ To medical personnel in bona fide medical emergency
  - ▣ Crimes on program premises or against program personnel

# Poll Question #2

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**Are you familiar with the Nevada law that determines confidentiality when minors are allowed to consent for their own care?**

# Nevada Confidentiality Laws

- Information about services for which minors are allowed to consent
  - ▣ Reasonable effort to communicate with parents
  - ▣ Disclosure of information from electronic health record or health information exchange
- Confidentiality of STD information reported to or investigated by the health authority
- Information in investigations of child abuse

# Reasonable Effort to Communication with Parents

- “A person who treats a minor [under the rules allowing minors 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.”

Nev. Rev. Stat. § 439.590(2).



# Information from EHR or HIE

- “Individually identifiable health information obtained from an electronic health record or a health information exchange concerning health care services received by a child without the consent of a parent or guardian of the child must not be disclosed to the parent or guardian of the child without the consent of the child . . . .”

Nev. Rev. Stat. § 439.590(2).

# 21<sup>st</sup> Century Cures Act – ONC Rule

- 21<sup>st</sup> Century Cures Act
- ONC Rule – “21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program”
- Information blocking provisions
  - Require giving patients access to their EHI
  - Parents may have access via web portal
  - 8 exceptions to information blocking
    - Preventing harm
    - Privacy
    - Infeasibility

# Mandatory Reporting of Child Abuse

# Mandated Child Abuse Reporters in Nevada

- Mandated reporters
  - ▣ Long list of professions and occupations who interact with children
  - ▣ Most health care professionals are mandated reporters
- Required report
  - ▣ Knowledge or “reasonable cause to believe” that a child has been abused or neglected
  - ▣ ”professional or occupational capacity”
  - ▣ Confirmation not required
  - ▣ Potential liability for failure to report

# Reportable Child Abuse in Nevada

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- Non-accidental physical injury
- Non-accidental mental injury
- Sexual abuse or sexual exploitation
- Negligent treatment or maltreatment

# Poll Question #3

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Are you familiar with when Nevada law requires reporting sexual activity with minors based on age?

# Reportable Sexual Abuse in Nevada

- Long list of sexual offenses with children
  - ▣ Incest, lewdness with a child, sado-masochistic abuse, sexual assault, statutory sexual seduction, open or gross lewdness, mutilation of the genitalia
- Consensual vs non-consensual sexual activity
- Reporting of sexual activity based on age – specific age differences
  - ▣ Lewdness with a child
  - ▣ Sexual assault
  - ▣ Statutory sexual seduction

# Reportable Sexual Exploitation in Nevada

## □ Definition of sexual exploitation

### ■ Forcing, allowing, or encouraging a child

- To solicit for or engage in prostitution – engaging in sexual conduct in return for fee, monetary consideration, or other thing of value
- To view a pornographic film or literature
- To engage in
  - Filming, photographing, or recording on videotape; or
  - Posing, modeling, depiction or a live performance involving exhibition of a child's genitals or any sexual conduct with a child



# Child Abuse Reporting Procedures in Nevada

- Reports made to child welfare services or law enforcement
- By telephone or other means of oral, written, or electronic communication
- Within 24 hours
- Specific information to be included
  - May include medical information the child welfare services agency considers necessary
- State & federal confidentiality laws determine information to parents
- Parents not informed of reporter's identity

# Resources

R. Gudeman, A. English. *Minor Consent, Confidentiality, and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Nevada*, 4<sup>th</sup> Edition (National Center for Youth Law, forthcoming 2021).

<https://www.nvpca.org/>.

A. English, C.A.Ford. The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges. *Perspect Sex Reprod Health*. 2004;36(2):80-86. <https://www.guttmacher.org/journals/psrh/2004/hipaa-privacy-rule-and-adolescents-legal-questions-and-clinical-challenges>.

J. Maccini, A. English. 21st Century Cures Act Information Blocking Rule: Implementation and Implications for Family Planning Programs: Webinar. Reproductive Health National Training Center, August 3, 2021.

<https://rhntc.org/resources/21st-century-cures-act-information-blocking-rule-implementation-and-implications-family>.

# Thank you!

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