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Conflict of Interest

- I have no relevant financial relationship with the manufacture(s) of any commercial products or services discussed in this continuing education activity.
- I will not discuss unapproved/investigative use of commercial product(s)/device(s) in my presentation.



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Disclosure

The information contained in this presentation is not legal advice or a substitute for legal counsel. Any specific legal questions concerning the issue of minor consent and the application of law to specific cases should be addressed with the legal consultants for your organization.

The purpose of today's presentation is to better understand the health care rights of adolescents to assist them in making informed decisions related to their health care needs.

The Iowa Primary Care Association strongly encourages open and honest communication between adolescents and their parents/guardians or trusted adult around sensitive topics such as substance/alcohol use, mental health issues, emergency situations and sexual health.



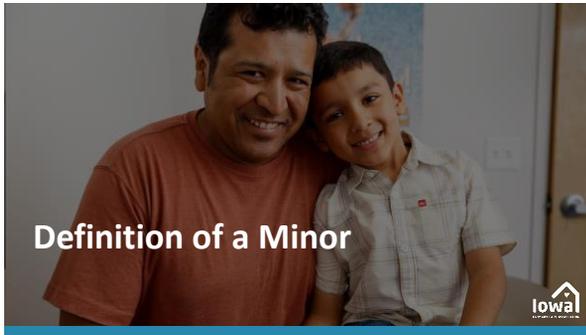
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Objectives

- Define of a Minor and Emancipated Minor
- Explore Iowa Law related to minor confidentiality and consent
- Review confidential services available to minors
- Discuss Areas for Special Consideration
- Release of Minor’s medical records



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Definition of a Minor

Iowa law generally provides that any person under the age of eighteen is a minor

[Iowa Code 599.1](#)



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Emancipated Minor



- Grants minors adult rights:
 - Entering binding contracts
 - Consent for health care services ([Iowa Code 232C.4](#))
- Relieves parents of legal liability for support
- Differs by State



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Emancipation Criteria in Iowa

- Age 18 ([Iowa Code 599.1](#))
- Minor marries or has ever been married (Iowa Code 599.1)
- Minor is tried, convicted, and sentenced as an adult and is in custody can make decisions and give consent to medical care, related services, and treatment during the period of incarceration (Iowa Code 599.1)
- Absent from minor's parents, with the consent of parents, self-supporting, has assumed a new relationship inconsistent with being part of the family of the parents ([Iowa Code 252.16](#))



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Emancipation in Iowa

- Minor may petition juvenile court IF:
 - 16+ years and resident of Iowa
 - Not in care, custody or control of the State
 - Demonstrate financial self-sufficiency, including proof of employment or other means of support (not including assistance or subsidies from a federal, state, or local governmental agency)
 - Ability to manage personal affairs
 - Ability and commitment to obtain, maintain education, vocational training or employment
 - Living on own > 3 consecutive months; statement why home of parents not healthy or safe; or notarized statement containing written consent by minor's parents/legal guardian
 - Before hearing, will refer family to mediation ([Iowa Code 232C.1](#))



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NOT Emancipation Criteria in Iowa Law

- Pregnancy and/or becoming a parent
- Runaway status
- Living away from home
- Living at home but “essentially independent”
- Education (graduated from high school)
- Member of armed services (can enlist at age 17 with parental consent)
- Physician’s certification



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Mature Minor Doctrine

- Legal principle which allows a minor to make decisions about his or her health and welfare if they can show that they are mature enough to make a decision on their own (understands the risks and benefits of treatment and can therefore give informed consent)
- Allows for care when parental consent is identified as a significant barrier
- Not all states recognize mature minor doctrine (only about a fifth of states) – IA, NE, MN, MO, SD do not recognize; IL and KS recognize in different capacities
- Has consistently been applied in cases where the minor is 16 years or older, understands the medical procedure in question, and the procedure is not serious.



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CASE SCENARIO: SHAY, 15 Y/O GIRL

Purpose of Visit

- Contraceptive Management

Issue that Emerges from Clinical Interview:

- Flu-like symptoms and "heard rumors" one of her previous partners has HIV

Parent Information:

- Shay says she is worried if she has HIV her mom will kick her out of the house because she is sexually active and "dirty"



How does the right to confidentiality help or hurt Shay?



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Consent ≠ Confidentiality

Consent

- Permission to act
- In general, Parent/Guardian must give consent before their minor child can receive services

Confidentiality

- How providers and staff keep certain information confidential



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Under general common law, a health care provider must obtain consent of a minor's parent or guardian in order to render medical care, treatment or services to a minor



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Exceptions to Parental Consent

- Courts have recognized limited exceptions
- Iowa legislature has enacted several statutory provisions authorizing minors to consent on their behalf
- Federal law provisions in place for minors to consent to certain types of services
- Purpose is to encourage minors to receive medical care they may not otherwise receive if parental consent was required



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Health Services Which Minors Can Provide Consent For

- Contraceptive Services
- STD prevention, diagnosis, treatment
- HIV/AIDS care*
- Emergency care
- Substance Abuse Treatment



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Contraceptive Services

- In Iowa, minors are explicitly authorized to consent to receive contraceptive services ([Iowa Code 141A.7](#))
- A health care provider is *not* required to obtain consent from a parent or guardian in order to provide contraceptive services to a minor
- Minors can receive the HPV vaccine without parental consent – minor needs to be informed of implications of IRIS program
- All services *must be* voluntarily



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Title X Contraceptive Services

- Title X services must be made available to all adolescents, regardless of age [42 C.F.R. § 59.5\(a\)\(4\)](#)
- Minors of any age can consent to services for themselves when those services are funded in whole or part by Title X and the provision of services under Title X cannot be contingent upon parental consent or notification. [County of St. Charles v. Missouri Family Health Council, 107 F.3d 682 \(8th Cir. 1997\)](#)
[The Federal Title X Family Planning Program](#)
- Services **must** be voluntary and non-coercive
- [Final Rule Changes](#) require Title X providers to encourage family involvement and document it.



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Sexually Transmitted Infections

- Iowa law authorizes a minor to provide consent for medical services related to the **prevention** (such as Hepatitis B and HPV vaccines), diagnosis, or **treatment** of a sexually transmitted disease or infection including chlamydia, gonorrhea, Hepatitis B and C, HPV, and Syphilis ([Iowa Code 139A.35](#))
- A minor may apply for voluntary treatment, contraceptive services, or screening and treatment for HIV infection and other STDs directly...the minor shall give written consent to these procedures and to receive the services, screening, or treatment. ([Iowa Code 141A.7](#))
- A health care provider is not required to obtain consent from a parent or guardian prior to providing these services to a minor.



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Expedited Partner Treatment (EPT)

- A physician, PA, or ARNP who diagnoses a sexually transmitted chlamydia or gonorrhea infection may prescribe, dispense, furnish prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner/s, including minor partners ([Iowa Code 139A.41](#))



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Iowa HIV Testing and Parental Notification



- Iowa law authorizes a minor to give consent to receive services, screening, testing, and treatment for HIV ([Iowa Code 141A.73](#))
- Iowa law requires a minor must be **informed prior to testing** that if the test result is **positive** the minor's legal guardian shall be informed **by the testing facility**
- Clinics must make assistance available to minors, emphasizing need for family support in dealing with test results ([Iowa Code 141A.73](#))



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Title X Program Exemption

- A testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is **exempt** from the notification requirement. ([Iowa Code 141A.73](#))
- Title X **precludes** notice to parents of positive HIV test results in those agencies receiving Title X funding. [County of St. Charles V. Missouri Family Health Council, 107 F.3d 682 \(8th Cir. 1997\).](#)



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Parent Information:

- Shay says she is worried if she has HIV her mom will kick her out of the house because she is sexually active and "dirty"

Does Shay's mom have to be notified of HIV+ test results?
Can Shay access HIV treatment without her mom's consent?



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Sexual Abuse or Assault

- A minor who has been subject to unlawful sexual conduct or forcible felony may be provided immediate and short term medical or mental health services without prior written consent of parents or guardian ([Iowa Code 915.35](#))
- Professionals defined as mandatory reporters ([Iowa Code 232.69](#)) shall notify victim of requirement to report abuse as defined under in Iowa Codes [709](#), [726.2](#) and [728.12](#)



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Termination of Pregnancy*

- Parental Notification is required at least 48 hours prior to the procedure ([Iowa Code 135L.3](#))
- The licensed physician that will be performing the procedure must notify the legal guardian either in person or by restricted certified mail to the legal guardian at the guardian's current place of residency
- If pregnant minor objects, minor may petition the court to authorize a waiver of parental notification
- Notification not required if:
 - Authorized in writing by parent requiring notification
 - Grandparent notified in lieu of parent
 - Medical emergency exists
 - Victim of child abuse and abuse has been reported or parent is named in report of founded child abuse



*None of the funds appropriated under Title X shall be used in programs where abortion is a method of family planning. Title X providers are prohibited from providing referrals for abortion as a method of family planning.

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Substance Use

- Iowa law authorizes a minor to give legal consent for voluntary treatment of drug and alcohol abuse, and shall not be reported or disclosed to legal guardian without the minor's consent ([Iowa Code 125.33](#))
- A substance abuse facility or a medical provider providing substance abuse treatment or rehabilitative services is not required to obtain consent from a parent or guardian prior to providing these services to a minor
- Only the patient may consent to the disclosure of substance abuse information, regardless of the patient's age or condition



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Mental Health

- Iowa law to a public or private hospital for observation, diagnosis and treatment for mental illness ([Iowa Code 229.2](#))
- Iowa law does not state anything specific regarding minors and outpatient mental health treatment and whether parental consent is needed for minors to access services



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Medical Emergencies

- Health care providers (including physicians, physician designees, ARNPs, PAs, RNs, LPNs and emergency medical care providers) are not required to obtain parental consent prior to rendering “emergency medical, surgical, hospital, or health services” to a minor, if the legal guardian is not “reasonably available” ([Iowa Code § 147A.10\(2\)](#))
- Professionals defined as mandatory reporters ([Iowa Code 232.69](#)) shall notify victim of requirement to report abuse as defined under in Iowa Codes [709](#), [726.2](#) and [728.12](#)



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Non-Medical Services

- Certain public health services provided to minors may not require parental consent if the service does not constitute medical care or treatment. For example, providing educational services to minors under the WIC program does not constitute medical care or treatment and therefore, does not require consent from a legal guardian



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CASE SCENARIO: ALEX, 17 Y/O BOY

Purpose of Visit

- Swollen Testicle

Issue that Emerges from Clinical Interview:

- Feels like his life is spinning out of control – denies any thoughts of harming himself or others
- Wants to check himself into local MH facility to “get it together”

Parent Information:

- Doesn’t want to disappoint his parents and they think people are weak that can’t “deal with life”

Can Alex admit himself for inpatient MH services without parental consent?

Does the provider have to file a mandatory report?



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Special Considerations



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Telehealth Visits

- Same rules for minor confidentiality and consent apply to telehealth visits.
- In-person follow-up care may pose a problem
- Telehealth services should be promoted to minors as way to access care for confidential services
- Ensure environment is supportive of confidential visit at start of telehealth visit – stop the visit if confidentiality cannot be confirmed
- Mandatory reporting requirements apply for telehealth the same as in-person care



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School-Based Health Center (SBHC) Services

- Legal framework for consent generally stays the same
- HIPAA must be understood in relation to the [Family Educational Rights and Privacy Act \(FERPA\)](#)
- HIPAA specifically *excludes* health records as part of an “education record” as defined by FERPA
- Providers in a SBHC employed by a health entity covered by HIPAA, not FERPA



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Tips to Navigate Minor’s Confidentiality

- Not absolute
- Important to establish policy with parents before need arises – context of both parties working together to decrease risks associated with adolescent’s behaviors
- Provide a safe place for adolescents to discuss their concerns/issues
- Parental involvement is (almost) always preferred
- Many adolescents want parents involved, but don’t know how to discuss with them – fears of being kicked out; disappointing parents; etc.
- Encourage adolescents to discuss openly now than during a more critical time – conversation rather than argument
- Some situations need parental involvement – continuing pregnancy; ongoing outpatient substance or mental health treatment



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Breaking Confidentiality

- When “duty to warn” exists
 - Required by state law – mandatory reporting
 - Serious threat to self
 - Serious threat to others
- Tell adolescent when need to break confidentiality and why
- Allow adolescent to help define how and to who disclosure will occur
- Anticipate and explore likely parental reactions and how to deal with them



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Disclosure of Medical Information



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Disclosure of a Minor’s PHI to 3rd Parties under HIPAA

- In general, legal guardians are considered personal representatives for their minor children under HIPAA and have control over their minor child’s PHI.
- As such, legal guardians can generally authorize disclosures of a minor’s PHI to third parties
- Minors shall be granted access to their own records upon request ([Iowa Code 441-9.15 \(17A,22\)](#))



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Exceptions to General Rule

- When the minor is the one who consents to care, the consent of the parent is not required under State or other applicable law
- When the minor obtains care at the direction of a court or a person appointed by the court; and
- When, and to the extent, the parent agrees that the minor and the health care provider may have a confidential relationship
- Iowa specifically allows minors to consent for certain services which records are protected under HIPAA
HIPAA guidelines from DHHS, [45 CFR § 164.502\(g\)](#)



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Parent Access Under Title X

- Providers **cannot** disclose information to legal guardians about Title X services provided to a minor without the minor's written authorization [42 CFR § 59.11](#)
- [Final Rule Changes](#) require Title X providers to encourage family involvement and document it.
- *Additionally, Substance abuse – no disclosure to parent without permission*



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Non-Title X Services Minor's PHI Access

- No guarantee that records will not be revealed to parents of minor inadvertently (encouraging open discussion)
- Even if the legal guardian cannot authorize disclosure of PHI to third party, the legal guardian may have the right under certain circumstances to access the minor's PHI without their consent
- Whether the legal guardian can access depends on state law: providers are often allowed discretion to permit or prohibit parental/guardian access
Exception: Substance abuse – no disclosure to parent without permission



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Divorced Parents' Access to Minor's PHI

- In cases of divorce: Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the minor, including but not limited to medical, educational, and law enforcement records ([Iowa Code § 598.41\(1\)\(e\)](#))
- However, parents do not have the absolute right to records and the best interests of the minor always prevails. [Harder v. Anderson, 764 N.W.2d 534 \(Iowa 2009\)](#)



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Payment and Minors

- If covered under parent's insurance
 - EOBs routinely sent to policyholder
 - Increasing transparency to patient/policyholder
 - Reduce insurance fraud and medical ID theft
 - Includes description of care, provider, services covered and not covered
- Policyholder liable for co-pays and services not covered by insurance
- In Iowa, explanation of denial is required
- Legally, if minor consents to services, minor is liable for costs, except for emergency care
- Essential for health centers to have a **written and approved** billing process in place regarding confidential minor services
- Options
 - Arrange reduced payments with adolescents
 - Enroll in SFPP if eligible and seeking FP services
 - Refer to adolescent-serving agencies to assist with linkage to care



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Thank You!

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