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going the distance

MINOR CONFIDENTIALITY W/ PARENTS AND GUARDIANS

Mental Health vs. Substance Use Disorder Treatment

October 2025

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DISCLOSURE

The presenter has no financial, professional, or personal disclosures relevant to the content of this presentation.

Each agency has their own policies and procedures related to minor consent and confidentiality. Please connect with your agency leadership or legal department for agency specific guidance on minor consent.

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DEFINITIONS: CONSENT, CONFIDENTIALITY, AND CAPACITY

Consent: The legal authority for an individual under to agree to or refuse a specific treatment.

Confidentiality: The right to prevent the disclosure of Protected Health Information (PHI) to third parties.

Capacity: a person's ability to understand information, make decisions, and communicate those decisions in a way that is meaningful and informed.

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CAN A MINOR CONSENT FOR TREATMENT IN MAINE?

In Maine, a healthcare practitioner may accept minor consent if the minor meets either of two separate analyses:

STATUS	TYPE OF CARE OR TREATMENT
• Married • Military • Emancipated • Living separately and financial independent from parents	• Mental Health Treatment • Substance Use Disorder Treatment • Family Planning • STI • Abortion

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CAPACITY

A minor must have capacity to be able to consent

Can the minor:

- Understand the basic facts of the situation?
- Weigh the risks and benefits?
- Clearly communicate a choice?

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WHO CONTROLS THE CLIENT RECORD?

STANDALONE BEHAVIORAL HEALTH TREATMENT (HIPAA)	SUD OR CO-OCCURRING TREATMENT (42 CFR PART 2*)
A. The person who consents for service controls the record/PHI	A. If state law allows the minor to consent for SUD treatment, only the minor can authorize disclosure.
--and--	--or--
Disclosure of treatment, payment, and healthcare operations information (TPO) is allowed in certain situations absent a release.	B. If state law requires guardian consent for treatment, then both the minor and guardian must consent to disclosure
	--and--
	A release is required to disclose any TPO.

*42 CFR Part 2 applies to "federally assisted" programs.

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LIMITS TO CONFIDENTIALITY

Mandated Reporting: Providers have a duty to report if they know or have reasonable cause to suspect a child has been or is likely to be abused or neglected.

Duty to Warn: Providers have a duty to warn or to take reasonable precautions to provide protection from a client's violent behavior if they have a reasonable belief based on communications with the client that the client is likely to engage in physical violence that poses a serious risk of harm to self or others.

Valid Court Order: Providers must comply with a legally executed Court Order (not just a subpoena) that compels the release of the records.

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THERAPEUTIC CONFLICT: LEGAL VERSUS ETHICAL PRACTICE

We often face a tension between what is legally permissible and what is therapeutically beneficial.

A consenting guardian may have full access to the client record even when it is therapeutically contraindicated. Conversely, a consenting minor may restrict parental access even when communication could be beneficial.

Good clinical practice requires balancing minors' need for privacy, autonomy, and trust, with the importance and value of appropriate family/guardian involvement.

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SOLUTION: INFORMED CONSENT

Informed consent is the ethical and legal process of making sure a client fully understands their proposed treatment, services, or program—including the risks, benefits, and alternatives—before they voluntarily agree to participate.

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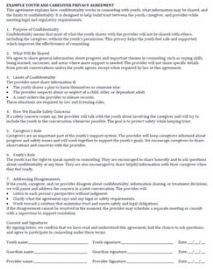
INFORMED CONSENT CONT.

As part of the consent process, create a shared agreement about what, when, and how information will be shared. This includes discussing:

- The purpose of confidentiality
- What will be shared
- Limits of confidentiality
- How safety concerns will be handled
- Caregiver's role
- Youth's role
- How disagreements will be addressed



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EXAMPLE: PURPOSE OF CONFIDENTIALITY

"Confidentiality means that most of what Danny shares with me will not be shared with others, including you, without Danny's permission.

This privacy helps Danny feel safe and supported, which improves the effectiveness of counseling."

**Danny (minor), Gina (mother) & Bruce (father)*

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EXAMPLE: WHAT WILL BE SHARED

"I have a no secrets, no details rule.

No Secrets (about safety): I won't keep secrets about safety (abuse, neglect, danger to self/others). This protects Danny and satisfies my mandatory reporting requirements.

No Details (about sessions): Unless Danny agrees, I promise to keep the details of what he shares confidential. This allows Danny to be honest and develop trust."

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EXAMPLE: LIMITS OF CONFIDENTIALITY

"I will break confidentiality if Danny shares a plan to hurt himself or someone else, I suspect abuse or neglect, or a court orders me to release his records. These situations are required by law and licensing rules."

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EXAMPLE: HOW I HANDLE SAFETY CONCERNS

"If a safety concern comes up, I will talk with Danny about involving you. I will try to include Danny in the conversation whenever possible. My goal is to protect safety while keeping his trust."

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EXAMPLE: CAREGIVER'S ROLE

"Gina, you are an important part of Danny's support system. I will work with Danny to keep you informed about progress and alert you to any safety concerns. I encourage you to share any observations or concerns you might have, even if I can't always respond."

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EXAMPLE: YOUTH'S ROLE

"Danny, you have the right to speak openly in counseling. I encourage you to share honestly and to ask questions about confidentiality at any time.

Gina, I will encourage Danny to share helpful information with you when he feels ready."

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EXAMPLE: ADDRESSING DISAGREEMENTS

"If we have a disagreement about confidentiality, information sharing, or treatment decisions, I will pause and address the concern in a joint conversation. I will make sure to listen to each person's perspective without judgment, clarify legal or safety requirements, and work toward a solution that maintains trust and meets safety and legal obligations. If we can't resolve the disagreement in the moment, I will schedule a separate meeting or consult with a supervisor to support resolution."

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VIGNETTE

Danny, 15, lives with his mother Gina and visits his father Bruce on weekends. Danny and Gina frequently argue and both describe themselves as hot-headed. Danny uses marijuana several times a week; Gina says she "likes to party" on weekends. Danny is enrolled in school but is struggling academically.

You're working with the family to reduce conflict, address substance use, and support school performance. On a Thursday, Gina leaves a frustrated voicemail for you saying Danny left for Bruce's after a fight. Danny then texts you: "Ima kill this b@*%&h 😾😾😾"

How do you respond?

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EXAMPLE YOUTH AND CAREGIVER PRIVACY AGREEMENT

This agreement explains how confidentiality works in counseling with youth, what information may be shared, and the limits to confidentiality. It is designed to help build trust between the youth, caregiver, and provider while meeting legal and regulatory requirements.

1. Purpose of Confidentiality

Confidentiality means that most of what the youth shares with the provider will not be shared with others, including the caregiver, without the youth's permission. This privacy helps the youth feel safe and supported, which improves the effectiveness of counseling.

2. What Will Be Shared

We agree to share general information about progress and important themes in counseling, such as coping skills being learned, successes, and areas where more support is needed. The provider will not share specific details from private conversations unless the youth agrees, except when required by law or this agreement.

3. Limits of Confidentiality

The provider must share information if:

- The youth shares a plan to harm themselves or someone else.
- The provider suspects abuse or neglect of a child, elder, or dependent adult.
- A court orders the provider to release records.

These situations are required by law and licensing rules.

4. How We Handle Safety Concerns

If a safety concern comes up, the provider will talk with the youth about involving the caregiver and will try to include the youth in the conversation whenever possible. The goal is to protect safety while keeping trust.

5. Caregiver's Role

Caregivers are an important part of the youth's support system. The provider will keep caregivers informed about progress and safety issues and will work together to support the youth's goals. We encourage caregivers to share observations and concerns with the provider.

6. Youth's Role

The youth has the right to speak openly in counseling. They are encouraged to share honestly and to ask questions about confidentiality at any time. They are also encouraged to share helpful information with their caregiver when they feel ready.

7. Addressing Disagreements

If the youth, caregiver, and/or provider disagree about confidentiality, information sharing, or treatment decisions, we will pause and address the concern in a joint conversation. The provider will:

- Listen to each person's perspective without judgment.
- Clarify what the agreement says and any legal or safety requirements.
- Work toward a solution that maintains trust and meets safety and legal obligations.

If the disagreement cannot be resolved in the moment, the provider may schedule a separate meeting or consult with a supervisor to support resolution.

Consent and Signatures

By signing below, we confirm that we have read and understood this agreement, had the chance to ask questions, and agree to participate in counseling under these terms.

Youth name:_____ Youth signature:_____ Date:___/___/___

Guardian name:_____ Guardian signature:_____ Date:___/___/___

Provider name:_____ Provider Signature:_____ Date:___/___/___