Title X
Mandated Reporting, Minor Consent Refresher Course

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This presentation is for informational purposes only. The interpretations presented are my own, and do not represent the official position of MDHHS.

The presentation does not establish an attorney-client relationship. The information presented is not intended to serve as legal advice.
I WANT YOU!

- To ask questions throughout
- To share your experiences throughout
Title X Funding

- US Department of Health and Human Services
- MDHHS
- Planned Parenthood
- Local Health Departments
- Other recipients
Title X Funding

$\S$ 59.11 (confidentiality)

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Title X Funding

§ 59.11 (confidentiality)

US Department of Health and Human Services

MDHHS

Planned Parenthood

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§ 59.11 (confidentiality)
Child Protection Law (mandatory reporting)
Title X Funding

§ 59.11 (confidentiality)

US Department of Health and Human Services

Child Protection Law (mandatory reporting)

MDHHS

Planned Parenthood

Local Health Departments

Other recipients
Title X Background

- Family planning and related preventive health services
- Cannot “provide abortion as a method of family planning”
- The only federal program dedicated solely to family planning
Title X Services

• Must offer a “broad range of acceptable and effective . . . contraceptive methods and related services on a voluntary and confidential basis.” – HHS 2014 Program Requirements
Title X Services

• Related preventive health services
  • Patient education and counseling;
  • Cervical and breast cancer screening;
  • Sexually transmitted disease (STD) and human immunodeficiency virus (HIV) prevention education, testing, and referral;
• and pregnancy diagnosis and counseling.
Focus on Youth

“[O]ne of the primary purposes of Title X— [is] to make family planning services readily available to teenagers . . . .”
- Planned Parenthood v. Heckler, 712 F.2d 650, 660 (D.C. Cir. 1983)
Focus on Youth

• Title X use by age – 2018

National Network
• ~264,000 persons under 18 (7%)
• ~54,000 persons under 15 (1%)
  - HHS Title X Annual Report 2018 National Summary

Michigan Network
• ~5,000 persons under 18 (8%)
• ~560 persons under 15 (1%)
  - MDHHS Family Planning Annual Report 2018
Congressional Declaration of Purpose

• (1) [M]aking comprehensive voluntary family planning services readily available to all persons . . . .

• (5) [T]o develop and make readily available information (including educational materials) on family planning and population growth to all persons . . . .

-Title X Congressional Declaration of Purpose
Sources of Duty for Title X Providers

- Statute – 42 U.S.C. § 300a-300a-7
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• Rule – 42 C.F.R. Part 59, § 59.1-59.19
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• State mandatory reporting statutes, case law
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You need an attorney.
Obtaining Legal Advice

• Does your organization have access to an attorney?
  • Local Health Departments – County/corporate Counsel
  • Planned Parenthood – Office of the General Counsel
Obtaining Legal Advice

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• Do you know your attorney’s name?
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• Do you know your attorney’s name?

• Do you have their phone number handy?
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• Do you know your attorney’s name?

• Do you have their phone number handy?

• Have you seen pictures of their baby?
Attorney-Client Privilege

• Protected by the Child Protection Law
  • “Any legally recognized privileged communication except that between attorney and client . . . is abrogated and shall not constitute grounds for excusing a report otherwise required to be made . . .” MCL 722.631
Title X – 2019 Changes

New & Improved
Title X – 2019 Changes

New & Improved?
Title X – Who’s eligible?

• “Family” can be an individual – 42 C.F.R. §59.2
Title X - Who’s eligible?

• “Low income family” can include “unemancipated minors who wish to receive services on a confidential basis,” IF
Title X - Who’s eligible?

• “Low income family” can include “unemancipated minors who wish to receive services on a confidential basis,” IF
  • You document the actions taken to encourage family involvement,
Title X - Who’s eligible?

• “Low income family” can include “unemancipated minors who wish to receive services on a confidential basis,” IF
  • You document the actions taken to encourage family involvement, UNLESS
  • You document suspicion of child abuse/incest, AND
Title X - Who’s eligible?

• “Low income family” can include “unemancipated minors who wish to receive services on a confidential basis,” IF
  • You document the actions taken to encourage family involvement, UNLESS
  • You document suspicion of child abuse/incest, AND
• “Consistent with, and if permitted or required by, applicable State or local law, [you] report[] the situation to the relevant authorities.” – 42 C.F.R. §59.2
Title X Requirements - Consent

- Title X projects **may not require written consent of parents or guardians** for the provision of services to minors. - OPA 2014-01
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- Title X projects **may not require written consent of parents or guardians** for the provision of services to minors. - OPA 2014-01
- “Family planning . . . Include[s] a broad range of acceptable and effective family planning methods and services” 42 C.F.R. § 59.2
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• “Family planning . . . Include[s] a broad range of acceptable and effective family planning methods and services” 42 C.F.R. § 59.2

• “Family planning methods and services are never to be coercive and must always be strictly voluntary.” 42 C.F.R. § 59.2
What is Consent?

• Required for **all** medical treatment
• Required by Title X, but not defined in Title X
What is Consent?

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Common law consent
1. Voluntary
What is Consent?

• Required for all medical treatment
• Required by Title X, but not defined in Title X

Common law consent
1. Voluntary
2. Informed
What is Consent?

- Required for all medical treatment
- Required by Title X, but not defined in Title X

Common law consent
1. Voluntary
2. Informed
3. Understanding
What is Consent?

• Required for **all** medical treatment
• Required by Title X, but not defined in Title X

**Common law consent**
1. Voluntary
2. Informed
3. Understanding
4. Competent
1. Voluntary

Provide services “without . . . coercion . . . Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility.” 42 CFR 59.5
2. Informed

“Provide a broad range of acceptable and effective medically approved family planning methods” 42 CFR 59.5
3. Understanding

- Presenting information in a way that the recipient can comprehend

“Because you’re an FWD, your PCP will handle the IUD as your means of LARC. Make sure to follow up with your OB. Is that clear?”
4. Competent

Does the recipient have the capacity to consent?

• Mental disabilities

• Disease

• Age – minors
When Minors Can Consent

• State law authorizing consent
• Emergencies
• Emancipation
• Title X services

“[T]he consent to the provision of medical or surgical care, treatment, or services . . . that is executed by a minor who is or professes to be infected with a sexually transmitted infection or HIV is valid and binding” MCL 333.5127
Conflict of Law

V.

[State Flag]

[United States Flag]
Federal Law Reigns Supreme
Title X Regulations - Confidentiality

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. - 42 CFR 59.11
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. - 42 CFR 59.11
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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; concern with respect to the confidentiality of information, however, may not be used as a rationale for noncompliance with laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, human trafficking, or similar reporting laws. - 42 CFR 59.11
Why is Confidentiality Important?

• Teens prefer Title X clinics
• Better access = better outcomes

“This preference is due partially to the greater degree of teenage confidence in the confidentiality which can be assured by a family planning clinic and in the proficiency of the family planning services provided in a clinic specializing in those and related services.” - S.Rep. No. 102, 95th Cong., 1st Sess. 26 (1977)
Title X Confidentiality and the Law

• *Planned Parenthood v. Heckler* (1982) – Parental notification rule violates Title X

• Contrary to Congress’s intent – confidentiality as a means of stemming teenage pregnancies
Title X - Maintaining Confidentiality

• Explanations of benefits sent to policy holders can breach confidentiality

• Solutions
  • Alternative means of communication - required by HIPAA
  • Communication by phone - request a callback
“All recordkeeping, except that which must be submitted as a result of mandatory reporting, is subject to the same confidentiality requirements as other medical services rendered by the clinic.” - HHS Fed. Reg. Vol. 84, No. 42 page 7772.
Breaching confidentiality “as required by law”

(a) Title X projects shall comply with all State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence or human trafficking (collectively, “State notification laws”). - 42 USC § 59.17
Breaching confidentiality “as required by law”

• “The proposed rule does not add any substantive reporting requirement that State and local jurisdictions do not already impose . . .”
  
  HHS Fed. Reg. Vol. 84 No. 42 page 7771

• Michigan – no mandatory reporting for rape, incest, sexual abuse, human trafficking, domestic abuse.
Discovering reportable facts - 2019

• 42 USC § 59.17 funding is conditional on:
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  • Plan for reporting;
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  • Teach minors coercion resistance;
  • Screen minors who have STDs/ are pregnant
Discovering reportable facts - 2019

• 42 USC § 59.17 funding is conditional on:
  • Plan for reporting;
  • Summary of obligations;
  • Annual training on reporting;
  • Teach minors coercion resistance;
  • Screen minors who have STDs/ are pregnant
  • And . . . .
Discovering reportable facts - 2019

• Must also maintain records on:
  • Age of minor clients
Discovering reportable facts - 2019

• Must also maintain records on:
  • Age of minor clients;
  • Age of minor’s sexual partners;
Discovering reportable facts - 2019

• Must also maintain records on:
  • Age of minor clients;
  • Age of minor’s sexual partners;
  • Any mandatory reports made;
Discovering reportable facts - 2019

• Must also maintain records on:
  • Age of minor clients;
  • Age of minor’s sexual partners;
  • Any mandatory reports made;
  • But wait, there’s more!
Discovering reportable facts - 2019

“The Secretary may review records maintained by a grantee or subrecipient for the purpose of ensuring compliance with the requirements of this section, the requirement to encourage family participation in family planning decisions, or any other section of this rule.”

- 42 C.F.R. 59.17
What you must report

What you want to report
What you must report

What you want to report
What you must report

What you want to report
If you can’t get consent, you only may report if you must report.
Title X Regulations – Confidentiality

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 . . . . - 42 CFR 59.11
Title X Regulations – Confidentiality Refresher

42 CFR 59.11 DOES NOT say:

- Report all crimes
Title X Regulations – Confidentiality Refresher

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• Report all crimes
• Report all immoral acts
Title X Regulations – Confidentiality Refresher

42 CFR 59.11 DOES NOT say:

• Report all crimes
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• Report when you feel nervous
Title X Regulations – Confidentiality Refresher

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• Report anything you find gross
Michigan’s Child Protection Law - Purpose

“This act is designed to protect children when the persons who normally do the reporting are actually the persons responsible for the abuse, and thus unlikely to report it.” - *People v. Beardsley*, 263 Mich. App. 408 (2004)
Michigan’s Child Protection Law - Purpose

“[T]he statutory definitions specifically limit the reporting requirements of MCL 722.623 . . . of suspected child abuse to Children's Protective Services by the enumerated professional disciplines only if the perpetrator of the abuse has a very specific relationship with the minor child.” - *Doe v. Doe (On Rem)*, 289 Mich. App. 211, 216, 809 N.W.2d 163, 166 (2010)
Mandatory Reporting Under the Child Protection Law

• Applies to certain professionals
• Must report if “reasonable cause to suspect” “abuse” or “neglect”
• Perpetrated by certain persons
• Against persons under 18
What is “Reasonable Cause”?

• “Reasonable cause” = “reasonable suspicion”
  • Particularized
  • Objective
  • Takes into account the whole picture
What is “Reasonable Cause”? 

• Statutory examples – ALWAYS trigger a report  
  • Pregnancy in a child under 12 years old  
  • STDs in child between 1 month and 12 years old  
    - MCL 722.623(8)  

• Everything else will require consideration of how the facts fit together. Seek help from your lawyer/colleagues
Penalties for failure to report

• Misdemeanor criminal charges (93 days in jail, fine of $500)
• Civilly liable for all “damages proximately cause by the failure” to report
• Professional sanctions
How to Report

• IMMEDIATE report by phone - 855-444-3911
• PLUS Written report to CPS within 72 hours
OR
• Report online - https://newmibridges.michigan.gov/
The Challenge

• “The reporter is not expected to investigate the matter, know the legal definitions of child abuse and neglect, or even know the name of the perpetrator.” – MDHHS Mandatory Reporters Resource Guide

• Due to the confidentiality protections of Title X, you may only report if you obtain consent, must share to provide care, or are required by law to report
Mandatory Reporting Factors

Minor victim (Under 18)
+ child neglect/abuse
+ identity of perpetrator
+ identity of the person being told
= Duty to report
Who Must Report

• “A physician, . . . physician's assistant, . . . medical examiner, nurse . . . .”

• “Any employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order.” MCL 722.623(1)(c)
Mandatory Reporting Definitions

Child: “[A] person under 18 years of age”
Mandatory Reporting Definitions

Child abuse: “[H]arm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.”

- MCL 722.622(g)
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Mandatory Reporting Definitions

Person Responsible for the child’s health or welfare: 
“[A] parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or . . . nonparent adult; or an owner, operator, volunteer, or employee of . . . [a child care org, adult foster care home, court-operated juvenile residential facility].”

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Nonparent Adult: “[A] person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:

(i) Has substantial and regular contact with the child.
(ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.
(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.”

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Mandatory Reporting Definitions

Child abuse/neglect

Person responsible for child’s health/welfare

Nonparent adult
Child Neglect: “[H]arm or threatened harm to a child’s health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

• **Negligent treatment** including the failure to provide adequate food, clothing, shelter, or medical care, **though financially able to do so**, or by the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

• Placing a child at an **unreasonable risk to the child's health or welfare by failure** of the parent, legal guardian, or other person responsible for the child's health or welfare to **intervene to eliminate that risk** when that person is able to do so and has, or should have, knowledge of the risk.”
Scenarios – You’re the lawyer
Scenario 1

• 14 year old being abused by adult teacher
• You properly reported this to CPS

Can you tell the parent?
NO

• 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 . . . . - 42 CFR 59.11
Scenario 2

• 13 year old says father fondled her breasts
• You speak to the father, who convincingly states that if any touching occurred, it was accidental

Must you report?

Did you get consent to speak to the father?
Scenario 3

• 15 year old reveals that he his aunt, who lives down the street, has sexually assaulted him

Is a mandatory report required?

NO – Not without more information
Scenario 3 – Abusive aunt

Minor victim (Under 18)
+ child neglect/abuse
+ identity of perpetrator
+ identity of the person being told
= Duty to report
Scenario 3 – Abusive aunt

Minor victim (Under 18) ✔
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Minor victim (Under 18) ✔
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+ identity of the person being told
= Duty to report

“[H]arm . . . to a child's health or welfare that occurs through . . . sexual abuse” MCL 722.622(g)
Scenario 3 – Abusive aunt

Minor victim (Under 18) ✔
+ child neglect/abuse ✔
+ identity of perpetrator →
+ identity of the person being told
= Duty to report

• Parent;
• Legal guardian;
• Person responsible for the child’s health/welfare;
Scenario 3 – Abusive aunt

- Parent;
- Legal guardian;
- Person responsible for the child’s health/welfare;

“[P]arent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or . . . nonparent adult;”

MCL 722.622(x)
Scenario 3 – Abusive aunt

"Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child: (i) Has substantial and regular contact with the child. (ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare. (iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree. MCL 722.622(v)
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Table of Consanguinity
Showing degrees of relationship

Person

Parents

Grandparents

Great Grandparents

Great-Great Grandparents

Children

Brothers/Sisters

Uncles/Aunts

First Cousins Once Removed

Great Grandparents

Great Grand Uncles/Aunts

First Cousins

Second Cousins

Third Cousins

Nephews/Nieces

First Cousins Twice Removed

Second Cousins Twice Removed

Third Cousins Twice Removed

Great-Grand Children

Great Grand Nephews/Nieces

First Cousins Thrice Removed

Second Cousins Thrice Removed

Third Cousins Thrice Removed
Scenario 3 – Abusive aunt

Minor victim (Under 18) ✔
+ child neglect/abuse ✔
+ identity of perpetrator
+ identity of the person being told ✔
= Duty to report
Scenario 3 – Abusive aunt

Minor victim (Under 18) ✔
+ child neglect/abuse ✔
+ identity of perpetrator ✗
+ identity of the person being told ✔

= Duty to report
Scenario 3 – Abusive aunt

Minor victim (Under 18) ✔
+ child neglect/abuse ✔
+ identity of perpetrator ✗
+ identity of the person being told ✔
= Duty to report ✗
Scenario 4

• 12 year old reports sexual relations with a with 13 year old schoolmate

Is a mandatory report required?

Scenario 5

• 17 year old reports sexual relations with 19 year old family friend

Is a mandatory report required?

YES – Meets definition of “nonparent adult”
Scenario 5

Nonparent Adult: “[A] person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:

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(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.”

-MCL 722.622(v)
Scenario 6

- 15 year old patient reveals he was sexually assaulted by an EMT, who is also a mandatory reporter.

Is a mandatory report required?
Scenario 7

- You, a mandatory reporter, perpetrated an act of abuse or neglect.

Are you required to submit a mandatory report about your own conduct?

Scenario 8

• 13 year old being sexually abused by adult stranger
• Patient says she doesn’t want you to tell parents

Can you speak to patient’s parents?
NO – Patient’s decision must be respected

Is a mandatory report required?
NO – Not a person covered by MCL 722.622
Scenario 9

• 17 year old is dating 18 year old teacher’s aide
• Relationship is voluntary, sexual.

Is a mandatory report required?
YES – listed person in MCL 722.622

Duty to counsel on how to resist coercion?
YES – Always - 42 C.F.R. § 59.17
Scenario 10

• 11 year old requests contraceptives.

Is a mandatory report required?
Maybe. Ask your lawyer.

• 13 year old presents for pregnancy test.

Is a mandatory report required?
Not without more. But investigate – 42 U.S.C. §59.17
Scenario 11

• 11 year old requests contraceptives
• Mom brought daughter to clinic, but stays in waiting room
• Daughter will not consent to sharing treatment info with mom

Can you tell mom?

NO – Sharing with parents requires consent - § 59.11
Scenario 12

• Patient, newly 18, reveals sexual abuse by parent, occurred 6 months ago

**Duty to report?**

NO - AG Opinion # 6934 (1997) – CPL protects children, not adults. Is another child at risk?
Scenario 13

• 16 year old reveals physical abuse by parent
• You reported that same day
• On follow-up visit one month later, 16 year old reveals further information about abuse

Duty to report again?
YES - Mandated reporters’ resource guide – Page 11
Scenario 14

• 17 year old becomes emancipated. Can live alone, enter contracts, has adult rights
• Reveals sexual relationship with their adult teacher

**Duty to report?**

PROBABLY – No distinction made in CPL for emancipation
Scenario 15

• Upon examination, 14-year-old is pregnant and has HPV. She will not disclose the father’s identity.

Duty to screen for abuse?
Scenario 15

• Upon examination, 14-year-old is pregnant and has HPV. She will not disclose the father’s identity.

**Duty to screen for abuse?**

Yes, for all minors – 42 C.F.R. § 59.17
Scenario 15

• Upon examination, 14-year-old is pregnant and has HPV. She will not disclose the father’s identity.

Duty to screen for abuse?
Yes, for all minors – 42 C.F.R. § 59.17

Duty to Report?
Scenario 15

- Upon examination, 14-year-old is pregnant and has HPV. She will not disclose the father’s identity.

**Duty to screen for abuse?**
Yes, for all minors – 42 C.F.R. § 59.17

**Duty to Report?**
Scenario 16

• 14 year old reports abuse by priest;
• Asks that you not report, as it may put her at risk;
• Based on the facts, you conclude that she is correct

Duty to Report?
Scenario 16

• 14 year old reports abuse by priest;
• Asks that you not report, as it may put her at risk;
• Based on the facts, you conclude that she is correct

Duty to Report?
Yes – 42 C.F.R. § 59.11 – Confidentiality concerns don’t override duty to report
Scenario 17

• 16 year old reports abuse by aunt;
• Says he told parents, but they dismissed his concerns;

Duty to Report?
Yes – Because of parental neglect, rather than aunt’s abuse
Scenario 18

• Healthy, happy 17 year old seeks contraceptives. Reports no issues/abuse/neglect.

Duty to screen for abuse?
Scenario 18

• Healthy, happy 17 year old seeks contraceptives. Reports no issues/abuse/neglect.

**Duty to screen for abuse?**
Yes – for all minors – 42 C.F.R. § 59.17
Scenario 18

• Healthy, happy 17 year old seeks contraceptives. Reports no issues/abuse/neglect.

**Duty to screen for abuse?**

Yes – for all minors – 42 C.F.R. § 59.17

**Duty to counsel on how to resist coercion?**
Scenario 18

- Healthy, happy 17 year old seeks contraceptives. Reports no issues/abuse/neglect.

**Duty to screen for abuse?**
Yes – for all minors – 42 C.F.R. § 59.17

**Duty to counsel on how to resist coercion?**
Yes – for all minors - 42 C.F.R. § 59.17
Title X - Maintaining Confidentiality

• “The complexity of [reporting] laws is not an excuse for non-compliance, and the Department will not tolerate Title X grantees and subrecipients failing to comply with the reporting requirements that State and local governments have seen fit to enact as binding legal requirements.” – HHS response to comments to 2019 Final Rule Vol. 84, No. 42 page 7770
How to Handle Edge Cases

• Familiarize yourself with the CPL and mandatory reporter guides
• Talk to your attorney or colleagues
• Weigh the risks
• Choose a path