

ASH QIF Webinar: Minor Consent and Confidentiality

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National Center for Youth Law



OVERVIEW

Law frames service delivery in three areas:

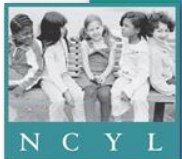
❖ Consent

❖ Confidentiality

❖ Mandated Reporting

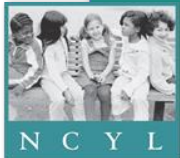
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Creating Safe Spaces for Care

- ◆ Adolescents report willingness to talk to providers about sensitive topics, including relationships and violence
- ◆ Trust and confidentiality are critical to care-seeking, particularly for adolescents
- ◆ Independence? Privacy? Autonomy? **It's all a part of normal adolescent development!**



Privacy Issues- *Significant* Barrier to Care

Concerns about privacy prevent many teens from seeking care.



- ◆ Family planning clinic survey (Reddy et al. *JAMA*, 2002).
- ◆ If parents were notified: 50% of sexually active girls under age 18 would stop using the clinic. But, only 1% would stop having sex.

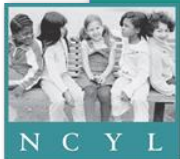
Privacy Issues- *Significant Barrier to Care*



Privacy concerns also affect the quality of care received.

- ◆ Teens who are concerned about privacy are less likely to communicate openly. (Thrall, 2000)
- ◆ Less likely to report experiences of violence

Many choose to involve parent/caretaker - but want to be asked!



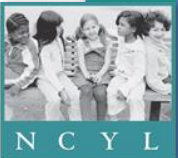
MEDICAL CONSENT

Who Consents for a Minor's Care?



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CONSENT for MINOR'S CARE

General Rule

- Minors need parent or guardian to consent for care



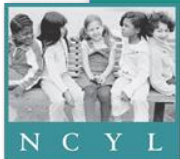
Exceptions:

- Caregiver
- Special rules for court-involved youth
- Special rules for Emergencies
- Minor Consent

CASE EXAMPLE: Emma

Seventeen year old Emma, comes in to your clinic with her one year old child. She is requesting a flu shot for both of them and would like to discuss contraception options.

Who may consent for Emma's care?



CONSENT: Minor Consent Exceptions

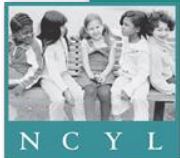
◆ Status

◆ Service



CONSENT: Status Exceptions

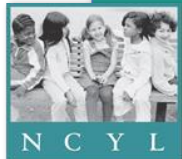
Generally minors meeting status exception may consent for medical care as would an adult.



CONSENT: Status Exceptions

Illinois:

- ❖ Married
- ❖ Parent
- ❖ Pregnant minor
- ❖ 14 or older, Living separate and apart from parents and managing own personal affairs, seeking primary care services and understands benefits and risks of this care
- ❖ Emancipated
- ❖ Mature minor? (case law)



CONSENT: Status Exceptions

Maryland:

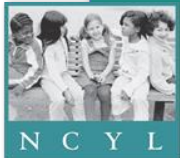
- ❖ Married
- ❖ Parent
- ❖ Living separate and apart from parents and self-supporting



CONSENT: Status Exception

Colorado:

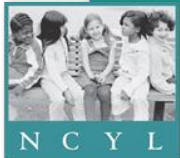
- ❖ 15 or older, living separate from parents, and managing own financial affairs
- ❖ Married
- ❖ Minor parent consent for minor's child
- ❖ Emancipated



CONSENT: Status Exceptions

Texas:

- ❖ Confined in Detention Facility
- ❖ Active Duty with the Armed Forces
- ❖ Married/Divorced
- ❖ Emancipated
- ❖ Parent with custody may consent for child
- ❖ 16 or older, Living Apart from Parents, and Managing Own Financial Affairs



Poll:

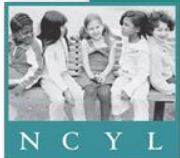
Seventeen year old Emma, comes in to your clinic with her one year old child. She is requesting a flu shot for both of them and would like to discuss contraception options.

Given the “status” exceptions in your state, would Emma be able to consent to her flu shot and contraceptives?

- (a) Yes
- (b) No
- (c) Not enough info/don't know

CONSENT: Service Exceptions

In every state, minors may consent for specified services on their own behalf.

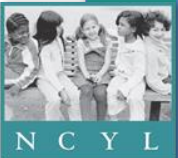


CONSENT: Service Exception

Federal:

Minors *of any age* may consent to Title X funded services on their own behalf. 42 C.F.R. 59.5(a)(4).

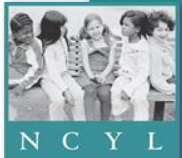
This supersedes any state law to the contrary.



CONSENT: Service Exceptions

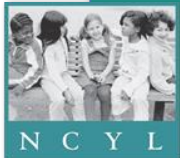
What to watch out for in state rules:

- ◆ Age restrictions
- ◆ Scope of services in statute
- ◆ Right to Refuse



CASE EXAMPLE: Elena

Elena, 15, shows up at a family planning clinic. She explains that she thinks she may be pregnant. After discussions with Elena, the nurse practitioner wants to do a pregnancy test, some STI testing, and prescribe birth control.



Poll

Given the service exceptions that apply in your state, may Elena consent for her own care?

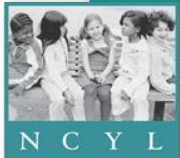
- (A) Yes
- (B) No
- (C) Only certain services



CONSENT: Service Exceptions

Some Colorado examples:

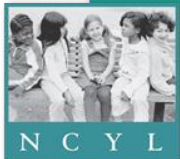
- ◆ Prenatal, delivery and post-delivery care for intended live birth
- ◆ Birth control procedures, supplies, and information may be furnished by physicians ...to any minor who:
 - ◆ Is pregnant,
 - ◆ Is a parent,
 - ◆ Is married,
 - ◆ Has the consent of his parent or legal guardian,
 - ◆ Has been referred for such services by another physician, a clergyman, a family planning clinic, a school or institution of higher education, or any agency or instrumentality of this state or any subdivision thereof,
 - ◆ Requests and is in need of birth control procedures, supplies, or information.



CONSENT: Service Exceptions

Some Colorado examples:

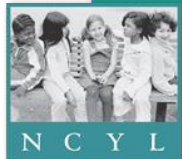
- ◆ A health care provider or facility, if consulted by a patient who is a minor, shall perform, at the minor's request, a diagnostic examination for a sexually transmitted infection. The health care provider or facility shall treat the minor for a sexually transmitted infection, if necessary; discuss prevention measures, where applicable; and include appropriate therapies and prescriptions.



CONSENT: Service Exceptions

Some N.D. examples:

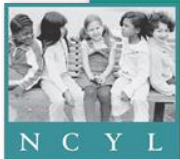
- ◆ Examination, care or treatment for sexually transmitted disease at 14 or older
- ◆ Examination, care or treatment for substance use disorder at 14 or older
- ◆ Pregnancy testing, prenatal care in first trimester, single prenatal visit in second or third trimester, and pain management for pregnancy
- ◆ May provide additional prenatal care if after good faith effort, provider is unable to contact parent



CONSENT: Service Exceptions

Some Texas examples:

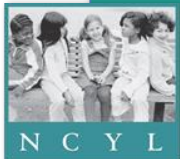
- ◆ Pregnant minor consenting to treatment related to pregnancy (except abortion)
- ◆ Examination and treatment for drug addiction or any condition directly related to drug use
- ◆ Diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health
- ◆ Counseling for suicide prevention, drug addiction, abuse



CONSENT: Service Exceptions

Some Maryland examples:

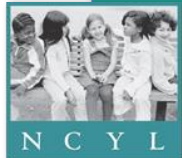
- “Treatment for or advice about venereal disease”
- Treatment for or advice about pregnancy
- Treatment for or advice about contraception



CONSENT: Service Exceptions

Some Illinois examples:

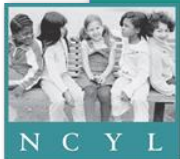
- ◆ Health care and counseling related to diagnosis or treatment of sexually transmitted disease if minor 12 or older and may have come into contact with STD



CONSENT: Service Exceptions

Some Illinois examples:

- ◆ Birth control services and information may be furnished by physicians ...to any minor who:
 - ◆ Is pregnant,
 - ◆ Is a parent,
 - ◆ Is married,
 - ◆ Has the consent of his parent or legal guardian,
 - ◆ Has been referred for such services by another physician, a clergyman, or a planned parenthood agency, or
 - ◆ As to whom the failure to provide such services would create a serious health hazard.

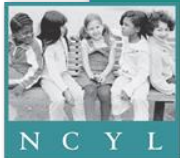


POLL:

What if in the previous case, Elena were 11 years old- would that change your answer?

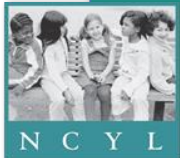
(A) Yes

(B) No



CASE EXAMPLE: Elena

Do the consent rules change at all when services are provided at a school based clinic?



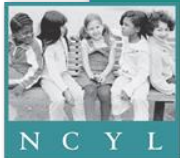
POLL:

Seventeen year old Frankie is sexually active. After discussions with him, you want to recommend PREP to reduce his risk of infection with HIV.

May Frankie consent to PREP on his own in your state?

(A) Yes

(B) No

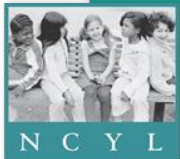


10 MINUTE BREAK



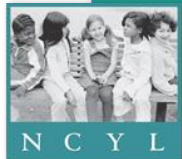
PART TWO:

- ◆ Medical Confidentiality
- ◆ Mandated Reporting



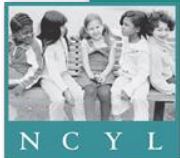
Layers of law

- ◆ **Federal**: HIPAA protects the confidentiality of health information held by covered providers.
- ◆ **State**: State statutes also protect the confidentiality of medical information held by providers.
- ◆ **Federal**: Other laws and regulations may apply in addition to or in lieu of HIPAA and state medical confidentiality law based on funding, type of service, service location



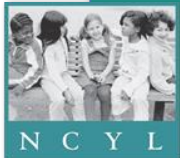
CONFIDENTIALITY: Federal Rules – Title X

- ◆ For services funded in full or in part by Title X funds, records cannot be disclosed to parent or guardian without minor's signed authorization.
- ◆ Supersedes any state law to the contrary



HIPAA General Rule

- ◆ “Covered entities” must protect the confidentiality of “personal health information.”
- ◆ Must have a signed “authorization” in order to share protected health information.
- ◆ Authorization must include certain element to be valid.
- ◆ Some exceptions allow or require disclosure of records absent signed release.



HIPAA: Authorizations

Who signs the authorization?

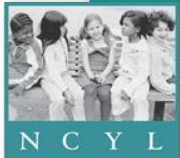
Generally, a parent, guardian or other person with authority under the law to make health decisions for an unemancipated minor, but minor signs in some circumstances.



HIPAA: Authorizations

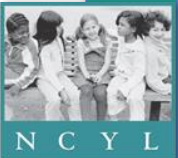
When does a minor sign?

1. the minor consented to the underlying health care,
2. the minor lawfully may obtain care without the consent of a parent or person acting in loco parentis, and the minor, a court, or another person authorized by law consented for the care, or
3. a parent, guardian or person acting in loco parentis assents to an agreement of confidentiality.



CONFIDENTIALITY: HIPAA and parent access

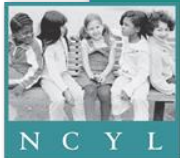
What are parent access rules?



CONFIDENTIALITY: Parent Access When Minor Consents - State laws

When minor consents for own care, state laws re parent access usually fall into one of four categories:

- ❖ State law grants minor exclusive right to control parent access to records
- ❖ State law gives provider discretion to determine whether to share with parents or not
- ❖ State law requires provider share with parents based on a standard in law
- ❖ State law is silent

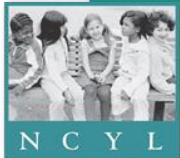


CONFIDENTIALITY: Minor Controls

California

CA generally grants minor exclusive right to control parent access when minor consents for his or her own care.

Other examples: Massachusetts



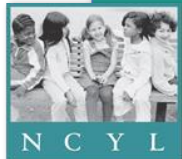
CONFIDENTIALITY: Provider Discretion

Louisiana:

In most cases in which minor consented for care, physician “may, but shall not be obligated to, inform the spouse, parent or guardian of any such minor as to the treatment given or needed, and such information may be given to, or withheld from the spouse, parent or guardian without the consent and over the express objection of the minor.”

La.Rev. Stat. 40:1095(C).

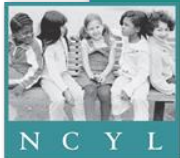
Other Examples: OK., MI.



POLL

What does state law in your state say about parent access to STD test results?

1. State law grants minor exclusive right to control parent access to records
2. State law gives provider discretion to determine whether to share with parents or not
3. State law requires provider share with parents based on a standard in law
4. I don't know



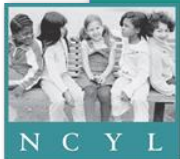
CONFIDENTIALITY: Provider Discretion

Texas:

“A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child” under STI minor consent law.

Tx. Fam. Code 32.003(d).

Other Examples: OK., IL., MI.

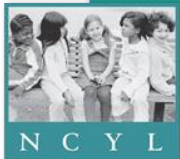


CONFIDENTIALITY: Provider Discretion

Colorado:

For the purposes of minor consent STI services, information cannot be divulged to a parent except “If the minor is thirteen years of age or younger, the health care provider may involve the minor's parent or legal guardian. A health care provider shall counsel the minor on the importance of bringing his or her parent or legal guardian into the minor's confidence regarding the consultation, exam, or treatment.”

Col. Rev. Stat. 25-4-409.

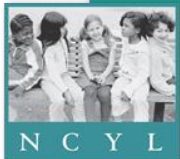


CONFIDENTIALITY: Provider Discretion

Maryland:

“Without the consent of or over the express objection of a minor, a licensed health care practitioner may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor under this section, except information about an abortion.”

Md. Health Gen. Code. 20-102.

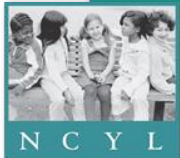


CONFIDENTIALITY: Provider Discretion based on Standard

Illinois:

Anyone involved in furnishing of STD services to a minor shall, upon minor's consent, make reasonable efforts to involve the family in treatment, if the person furnishing treatment believes that the involvement of the family will not be detrimental to the progress and care of the minor.

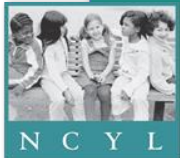
410 ILCS 210-4.



Case Example: Angry Mom

Provider Patty hears commotion at the front desk and walks up. The clinic manager grabs her. “Patty, we need your help. There is a woman at the front desk saying that she is going to call a lawyer if we don’t give her a copy of her daughter’s health records right now.”

Patty goes up front to speak to the woman. The woman says she found some paperwork in her daughter’s drawer with the clinic’s name on it.



Case: ANGRY MOM

She wants to know whether her daughter has ever been to this clinic and if so, what she said. She has the phone in her hand and says she is going to have her lawyer shut the clinic down if they don't tell her what she wants to know ASAP.

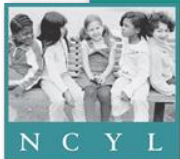


What can the clinic tell mom?

Balancing Act: Engaging Youth, Supporting Parents

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- ★ Diffuse an angry situation before it escalates
- ★ Do not become a participant in an argument
- ★ Conflict management is important
- ★ Know your patients rights. Know your rights
- ★ See sample tools in Understanding Minor Consent and Confidentiality in California Toolkit from AHWG

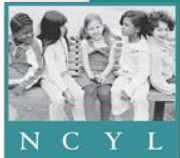


HIPAA: Exceptions that allow disclosure absent signed authorization

Exceptions to confidentiality allow or require providers to release medical information even in absence of signed release.

Examples:

- ◆ for treatment purposes
- ◆ to avert a serious and imminent threat
- ◆ for research
- ◆ for payment purposes
- ◆ for health care operations
- ◆ to public health authorities as required by law
- ◆ to report child abuse as required by law
- ◆ when requested by the individual
- ◆ Other

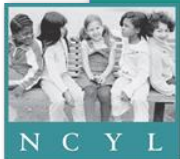


CASE EXAMPLE: LIN



Lin visits Nancy Nurse to discuss the migraine headaches she has been having more and more frequently. Lin mentions that she just started taking some birth control prescribed by Patty Provider at nearby family planning clinic, but can't remember which one. While in the exam room, Nancy calls Patty to ask for the name of the oral contraceptive.

What, if anything, may Patty tell Nancy Nurse on the phone?



POLL:

The health center provided Camille with an STD screen and prescription for contraception. Several weeks later, her parents receive an EOB (Explanation of Benefits) from their insurer that flags the services she received.

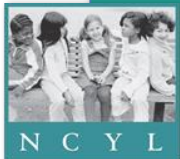
Did this EOB violate HIPAA?

(a) Yes

(b) No

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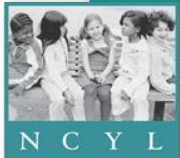
Using the law to help children in need



HIPAA AND CONFIDENTIAL INSURANCE COMMUNICATIONS

A health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

45 CFR 164.522.

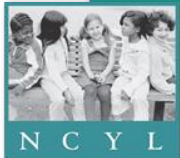


HIPAA: Mandated Reporting Exception

Must disclose information when specifically required to do so by law.

Examples of reporting statutes:

- Mandated child abuse reporting
- Reporting when providing medical care for certain physical injuries
- Reporting to public health authorities



Thought Questions:

- How many have written mandated child abuse reporting policies?
- Has your mandated reporting policy been reviewed and updated in the last year?
- How many have been able to work with legal counsel to develop reporting policies?



Mandated Reporting

Where do the legal rules come from?

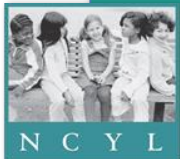
Gathering the information:

- Where do I find resources?

What to look for in the law

Typically four components to a mandated reporting law:

1. Who must report
2. What to report
3. When to report
4. How to report



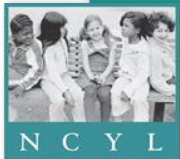
Who must report:

What to look for:

- Law and interpretative guidance defining who must make reports when reporting duty is triggered

Where state law may vary:

- “Everyone” is a reporter
- Defined by professions
- Who is NOT a mandated reporters (special exemptions)



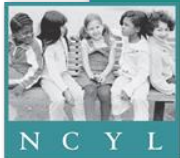
What is reportable abuse:

What to look for:

- Law and interpretative guidance defining what must be reported

Where state laws may vary:

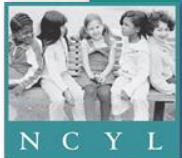
- Does your state law differentiate between abuse at hands of caregivers and abuse at the hands of others?



Case Example:

Fifteen year old reports that older boyfriend forced her to have sex when she didn't want to.

Is this reportable as child abuse in your state?



What is reportable:

Two fundamentally different reporting structures:

- ❖ Definition of abuse is limited to acts by specific persons
- ❖ Abuse defined to include abusive acts by any individual on a minor

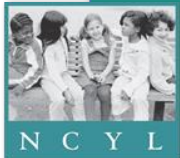
Each structure creates distinct issues for mandated reporters

What is reportable:

Definition of abuse is limited to acts by specific persons

Oklahoma:

“Abuse means harm or threatened harm to a child’s health, safety or welfare *by a person responsible for the child’s health, safety or welfare.*” OK Stat. Tit. 10 section 7102.



What is reportable:

Oklahoma:

Obligation to report criminally injurious conduct:

Health care providers must report criminally injurious conduct. This is an act which results in personal injury or death and is criminally punishable. Ok. Stat. tit. 71 sect. 7104.

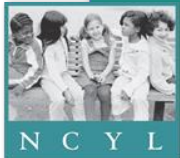
What is reportable:

Definition of abuse includes acts by all individuals

Colorado:

Abuse means an act or omission that threatens the health or welfare of a child, including non-accidental physical injury, neglect, emotional abuse, unlawful sexual behavior and drug related abuse or neglect. C.R.S. 19-1-103

A report is required if a reporter has “reasonable cause to know or suspect that a child has been subjected to unlawful sexual behavior...”



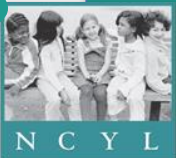
Thought Question:

17 year old Breanna asks her health clinician for an STI screen. Breanna states that she was at a party on Saturday night and got “wasted.” She thinks she had sex with another 17 year old and is concerned about pregnancy and STI.

Is this a reportable incident in your state? If yes, what must be reported?

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When to report:

What to look for:

- Law and guidance using terms like “know” or “reason to believe”

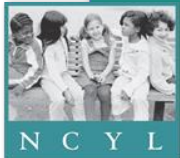
Where state laws may vary:

- *What is the standard for reporting?*
 - “reasonable cause to believe,” know or suspect”
- *Any limitations?*
 - Know or observe “in his or her professional capacity,” “in performance of duties”?

How to report:

What to look for:

- Law, including interpretative guidance, that tells you *How, What, When* and *To Whom*

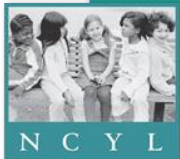


Poll:

If you are a mandated reporter, have you ever been afraid to ask a patient a question because it might trigger a child abuse report?

(a) Yes

(b) No



Developing Law into Policy and Training:

- Common procedural questions to consider including:
 - Which staff persons are mandated reporters?
 - Is a centralized reporting system appropriate?
 - How to document reports?
 - Has the duty been triggered scenarios

Gudeman and Monasterio, *"Mandated Child Abuse Reporting Laws: Developing and Implementing Policies and Training"*

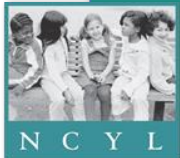
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Developing Law into Policy and Training:

- Issues and questions to consider regarding what is – and is not – reportable
- Difference between abuse at hands of caregivers and abuse at the hands of others
- Difference between criminal and abusive behavior
- Specific scenarios



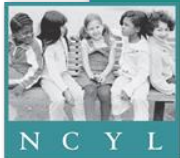
Developing Law into Policy and Training:

- *Consider addressing specific scenarios, as relevant and appropriate, such as:*
 - Trafficking and commercial sexual exploitation
 - Intimate partner violence
 - Voluntary sexual activity/statutory rape



Developing Law into Policy and Training:

- Other issues to consider addressing:
- *Intersection of CAR and confidentiality law*
 - How does abuse reporting fit within the confidentiality obligations imposed by HIPAA, Title X regulations and state law?
- *Intersection of CAR and other mandated reporting laws*
 - What are the other mandated reporting laws in your state? Do they intersect with CAR?



Explaining Conditional Confidentiality

“What you say here, stays here EXCEPT:...”



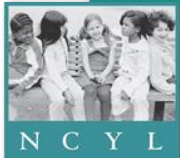
Trauma Informed Reporting

1. Always address care first
2. Inform youth of need to report by framing in the context of getting help
3. Acknowledge that it can be a frightening process and provide messages of support
4. Empower the youth
5. Respect what they want to disclose
6. Invite youth to participate in process
7. Educate about rights
8. Assess for safety first

Gudeman, Monasterio, *“Mandated Child Abuse Reporting Laws: Developing and Implementing Policies and Training”*

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Online Resources for Laws

General:

- Cardea services, *“Mandated Child Abuse Reporting Laws: Developing and Implementing Policies and Training”*
- Sexetc.org -state specific minor consent information
- Guttmacher Institute

Colorado – CASHC, Colorado Health Foundation

Illinois - Illinois Coalition for Adolescent Health, ACLU of Illinois, CICO

Maryland - AAP Maryland Chapter

North Dakota – Sexetc.

Texas - Department of State Health Services

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Speaker Information

Rebecca Gudeman

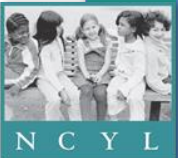
National Center for Youth Law

Oakland, CA

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Wrap-Up/Next Steps

- Attend Webinar 7 on Resistance and Crucial Conversations: **12/5 @ 3pm EST**
 - *Pre-work will be sent out shortly*
- Continue recruiting possible Clinical Partners - ***try to finalize by January 2018***



How Did It Go?



[Evaluate Webinar 6 Here!](#)