

ARKANSAS

# Minor Consent and Confidentiality

## A Compendium of State and Federal Laws

National Center  
for Youth Law

[teenhealthlaw.org/compendium](https://teenhealthlaw.org/compendium)

## Authors

Abigail English, JD, Consultant, National Center for Youth Law

Rebecca Gudeman, JD, MPA, Senior Director, Health, National Center for Youth Law

## National Center for Youth Law

The National Center for Youth Law (NCYL) is a national, non-profit advocacy organization that has fought to protect the rights of children and youth for more than fifty years. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance.

### What this compendium is:

This is a compendium of laws that may be relevant when minors wish to access certain types of sensitive health care and/or wish to access care on their own consent. Each state compendium begins with a chart entitled “quick guide.” The topics listed in the quick guide represent the categories of laws most frequently identified across all states. A circle next to a particular category signifies that a relevant state or federal law was found. Where a law was found, those laws are described in the “summary” section. Each state’s compendium ends with a list of resources, including links to a series of Appendices that delve deeper into key topics.

### What this compendium is not:

This is not a comprehensive guide to all consent, confidentiality, and disclosure laws in any state. For example, the compendium does not include all laws that allow or require parents or persons acting *in loco parentis* to consent to care. Nor does it summarize disclosure laws that may allow or require disclosure of health information for mandated child abuse or public health reporting.

### Recommended Citation

For the entire compendium of state laws,

*English A, Gudeman R. Minor Consent and Confidentiality: A Compendium of State and Federal Laws. National Center for Youth Law (August 2024).*

For a particular state,

*English A, Gudeman R. Minor Consent and Confidentiality: A Compendium of State and Federal Laws (State name). National Center for Youth Law (August 2024).*

### Disclaimer

Minor Consent and Confidentiality: A Compendium of State and Federal Laws is made available for informational purposes only and does not constitute legal advice or representation. Laws can be interpreted in different ways. For legal advice, a practicing attorney who has comprehensive knowledge of all relevant laws – federal state, and local – and who has been informed of all relevant details of the situation should be consulted. The authors have attempted to assure that the information presented is accurate as of May 2024. However, laws change frequently, new regulations are promulgated, and cases decided. The National Center for Youth Law and the authors specifically disclaim any liability for loss or risk incurred as a consequence of the use and the application, either directly or indirectly, of any material in this publication.

### Acknowledgements

This work was made possible through the generous support of the Collaborative for Gender and Reproductive Equity, a sponsored project of Rockefeller Philanthropy Advisors. The authors sincerely thank National Center for Youth Law attorneys Pallavi Bugga, Nina Monfredo, and Rachel Smith for their contributions to this work. The authors also gratefully acknowledge the extensive resources of the many organizations and individuals whose work provided essential information for this publication.

### Copyright ©2024 National Center for Youth Law

This document may be reproduced and distributed for non-commercial purposes with acknowledgment of its source. All other rights reserved.

**Help Us Keep This Up to Date!** If you see anything that needs correcting or updating, please contact the National Center for Youth Law at [info@teenhealthlaw.org](mailto:info@teenhealthlaw.org).

# ARKANSAS

## Table of Contents

Quick Guide	1
General	2
Consent to Health Care	2
Confidentiality & Disclosure	4
Other	5
Resources	6
Appendices	7

Quick Guide

See glossary for explanation of categories and definitions of terms.

**General**

- S** Age of Majority
- S** Emancipation
- S** Minor Marriage

**Minor Consent to Health Care—Services**

- S** Abortion<sup>3</sup>
- S** Emergency Care
- S** **F** Family Planning/Contraceptives
- S** Outpatient Mental Health Care
- S** **F** Pregnancy Related Care
- Reportable, Communicable, Infectious Disease Care
- Sexual Assault Care
- S** **F** Sexually Transmitted Infection/Disease/HIV Care
- Substance Use Care

**Confidentiality and Disclosure**

- S** **F** Confidentiality/Access to Records
- S** **F** Disclosure to Parents/Guardians
- F** Insurance Claims/Billing

**Minor Consent to Health Care—Minor’s Status**

- S** Emancipated Minor
- High School Graduate
- S** Married Minor
- S** Minor, Age or Maturity
- Minor in Armed Forces
- Minor Living Apart from Parent/Guardian
- Minor Parent
- S** Minor in State Custody
- Pregnant Minor

**Other**

- S** Care in Certain Settings, Parent Consent
- S** Emergency
- S** Gender Affirming Care, Restriction
- S** Minor Parent, Consent for Child

**Key**

- S** State law found<sup>4</sup>
- F** Federal/other law may apply

<sup>1</sup> The information in this chapter represents the state of the law as of May 2024 after a diligent search of statutes, regulations, case law, and guidance.

<sup>2</sup> This chapter does not address all the consent and confidentiality rules that may apply when minors are in special care situations such as living with a relative, in federal or state custody, or under court jurisdiction (including dependency, delinquency, or immigration custody).

<sup>3</sup> This category includes parental involvement laws.

<sup>4</sup> Symbol indicates law found that either allows providers to offer services without parental consent or explicitly gives minors authority to consent.

## General

**Age of Majority**

*Ark. Code Ann. § 9-25-101* provides that the age of majority is 18.

**Emancipation**

*Ark. Code Ann. §§ 9-26-104 and 9-27-362* provide when a court may emancipate a minor and the effects of emancipation.

**Minor Marriage**

*Ark. Code Ann. § 9-11-102* provides that minors age 17 years may marry with parent consent, though a court may void parent consent under some circumstances. *Ark. Code Ann. § 9-11-103* provides that if one or both parties is age 16 years or older and the female is pregnant, a court may authorize marriage in some cases. *Ark. Code Ann. § 9-11-103* provides that the state recognizes marriages contracted in other states or countries as legal if they were legal under the laws of that other state or country.

## Consent to Health Care

Consent for healthcare refers to granting permission for a healthcare service. A healthcare provider generally must obtain consent before providing care. Adults typically consent to their own healthcare, except in cases of legal incapacity. State and federal laws and court decisions help establish who has the legal authority to provide consent on behalf of minors. Typically, federal and state law require parent or guardian consent for a minor's care. However, the laws in every state include exceptions that allow or require others to consent, in addition to or instead of a parent or guardian. These exceptions include exceptions that allow minors to consent to some or all health care based on the minor's "status" (situation in life) and exceptions that allow minors to consent to certain types of care based on the services sought. Sometimes, these laws are written in a way that allows providers to offer services without parental consent; sometimes, they are written in a way that explicitly gives minors the authority to consent. Federal law also allows minors to consent to specific care in some cases. See **Appendix B** for more on consent including the important role of parents and other adults in minors' healthcare.

The following sections summarize the minor consent laws in the state:

**Minor Consent—Minor's Status****Emancipated Minor**

*Ark. Code Ann. § 20-9-602* provides that any emancipated minor may consent for surgical or medical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician.

**Married Minor**

*Ark. Code Ann. § 20-9-602* provides that a married minor may consent for medical and surgical care or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician.

**Minor, Age or Maturity**

*Ark. Code Ann. § 20-9-602* provides that "any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures" may consent for surgical or medical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician.

**Minor in State Custody**

*Ark. Code Ann. § 20-9-602(12)* provides that any minor who is incarcerated by the Department of Correction or the Department of Community Correction may give consent for medical or surgical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician.

See **Appendix I** for information about the Title X Family Planning Program and minor consent for family planning, including STI/STD/HIV services.

**Minor Consent—Services****Abortion**

Abortion is banned in Arkansas with a limited exception "to save the life of a pregnant woman in a medical emergency." See *Ark. Code Ann. §6 5-61-301 – 5-61-304*. For up to date information on the status of abortion protections and restrictions in Arkansas, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State](#).

To the extent abortion is legally permitted, minors may obtain an abortion. However, *Ark. Code Ann. §§ 20-16-801 - 20-16-810* provide that written parent or guardian consent is required before an abortion may be performed upon an unemancipated minor under age 18 years. The law contains a judicial bypass and exceptions for medical emergencies, incest, and sexual abuse. *For more information on judicial bypass, find the “Under Age \_\_\_” section on your state’s link in [If When How’s Abortion Laws by State](#).*

*For up to date information on the status of abortion protections and restrictions in all 50 states and DC, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State](#). See also **Appendix C**. These laws are changing rapidly, so consultation with counsel is also essential.*

### **Family Planning/ Contraceptives**

*Ark. Code Ann. § 20-16-304* provides that “all medically acceptable contraceptive procedures, supplies, and information” shall be available through legally recognized channels to each person who desires them regardless of sex, race, age, income, number of children, marital status, citizenship, or motive, except permanent sterilization is normally not available to persons under age 18.

*See **Appendix I** for information about the Title X Family Planning Program and minor consent for family planning, including contraception services. See **Appendix C** for discussion of contraception and the U.S. Constitution.*

### **Outpatient Mental Health Care**

No statute expressly authorizes minors to consent for outpatient mental health services generally. However, *Ark. Code Ann. § 6-17-107* provides that “[t]eachers, school counselors, school healthcare providers, and other school personnel shall be immune from any civil liability for providing counseling, referral, emergency medical care, or other assistance offered in good faith to suicidal students or other suicidal youth.” For this purpose, “[s]uicidal” refers to a person who poses a substantial risk of physical harm to himself or herself as manifested by evidence of, threats of, or attempts at suicide or self-inflicted bodily harm or by evidence of other behavior or thoughts that create a grave and imminent risk to [their] physical condition.”

### **Pregnancy-Related Care**

*Ark. Code Ann. § 20-9-602* provides that “any female, regardless of age or marital status,” may consent for medical or surgical care or procedure not prohibited by law that is suggested, recommended or directed by a licensed physician in connection with pregnancy or childbirth, except for “the unnatural interruption of pregnancy.”

*See **Appendix I** for information about the Title X Family Planning Program and minor consent for family planning services, including certain pregnancy-related care.*

### **Sexually Transmitted Infection/Disease (STI/STD)**

*Ark. Code Ann. § 20-16-508* provides that minors who believe they have a sexually transmitted disease may give consent for medical or surgical care or services by a hospital or public clinic or physician and the consent of a parent or guardian is not necessary.

*See **Appendix I** for information about the Title X Family Planning Program and minor consent for family planning services, including certain pregnancy-related care.*

## Confidentiality & Disclosure

Federal and state laws determine the privacy and confidentiality of medical and health information. Different laws may apply depending on the health services provided, the source of funding, the location of care, the type of provider, and the characteristics of the patient.

One law with overarching importance is the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, a federal regulation that protects the privacy of patient health information held by health care providers who transmit certain information electronically and other “covered entities.” As a general rule, HIPAA prohibits healthcare providers from disclosing protected health information without a signed authorization. HIPAA specifies who must sign an authorization to release information. When minors have consented for their own care, HIPAA says the minors usually must sign the release. HIPAA includes exceptions that allow or require a provider to disclose protected information without an authorization in some circumstances, such as to meet state child abuse reporting requirements. HIPAA also addresses when parents and guardians may access a minor’s health information: It explains how this HIPAA rule intersects with state law and other federal laws regarding parent access, and includes rules for what to do about parent access when state law is silent, and for authorized limitations on access in some situations.

See **Appendix H** for a detailed discussion of HIPAA. Other appendices address other important federal health privacy laws that may apply in addition to, or instead of, HIPAA. See **Appendix I** (Title X, family planning), **Appendix J** (Part 2, substance use), **Appendix K** (FERPA, education records), **Appendix L** (insurance and billing), and **Appendix M** (21st Century Cures Act Information Blocking, EHI).

**The following sections summarize selected state laws related to confidentiality, access to records, and disclosure to parents/guardians:**

### Confidentiality/Access to Records

#### Health Information Exchange

*Ark. Code Ann. § 25-43-812* provides that “[p]atient-specific protected health information shall be disclosed only in accordance with the patient’s authorization or in compliance with state confidentiality laws and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as it existed on January 1, 2011, and regulations under the act.”

#### Health Maintenance Organization Records

*Ark. Code Ann. § 23-76-129* provides that “[a]ny data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from the person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter, upon the express consent of the enrollee or applicant, pursuant to statute or court order [in connection with litigation].”

#### School-based Health Center Records

*Ark. Code Ann., § 6-18-703* provides that: “(i) All school-based clinics shall maintain accurate records of the distributing and prescribing of contraceptives and condoms. (ii) The number of pregnancies and sexually transmitted diseases among students in the schools with school-based clinics shall be transmitted annually to the school district board of directors. (iii) Records maintained under this section are part of the confidential medical

record of the student. (iv) Numerical or statistical data required to be maintained under this subsection may not be released in a manner that reveals the identity of or any other information contained in the file of the student.”

See **Appendix H** for information about minors’ access to and control of their medical information under HIPAA when they have consented to their own care.

#### Federal laws that may apply in addition to or in lieu of HIPAA and state laws

See **Appendix K** for information about federal confidentiality protection for education records.

See **Appendix J** for information about federal confidentiality protections for certain substance use treatment records.

See **Appendix I** for information about federal confidentiality protection for information about services delivered using Title X Family Planning Program funding.

See **Appendix M** for information about disclosure of information to parents under the 21st Century Cures Act Information Blocking Rule.

## Disclosure of Health Information to Parents/Guardians

### Mental Health

In 2001, the Arkansas Attorney General was asked whether a mental health provider in the state ever has a right or obligation to withhold “information (safety-related)” from the legal guardian of a minor. The Attorney General opined, in *Ark. Op. Atty. Gen. No. 2001-354*, that “[s]everal sources of state law [including rules adopted by licensing boards]... indicate that it is not only permissible, but usually required, for a mental health provider to withhold information from the legal guardian of a minor.”

### Sexually Transmitted Disease

*Ark. Code Ann. § 20-16-508* provides that with respect to medical or surgical care for sexually transmitted disease, a physician or member of the medical staff may, but is not obligated to, inform the spouse, parent, or guardian of any minor as to the treatment given or needed. This information may be given or withheld without the consent and over the express objection of the minor.

### Substance Abuse

*Ark Code Ann 6-17-107* provides that “[t]eachers and other school personnel in this state shall be immune from liability and suit for damages for communicating information in good faith concerning drug abuse by any pupil to that pupil’s parents, to law enforcement officers, or to healthcare providers.”

## HIPAA rules relevant to disclosure to parents/guardians

See **Appendix H** for information about minors’ access to and control of their medical information under HIPAA when they have consented to their own care, the HIPAA rule when state law is silent as to parent access, and the HIPAA rule authorizing providers to limit access to records in certain circumstances.

## Federal laws that may apply in addition to or in lieu of HIPAA and state laws

See **Appendix K** for information about federal confidentiality protection for education records.

See **Appendix J** for information about federal confidentiality protections for certain substance use treatment records.

See **Appendix I** for information about federal confidentiality protection for information about services delivered using Title X Family Planning Program funding.

See **Appendix M** for information about disclosure of information to parents under the 21st Century Cures Act Information Blocking Rule.

## Insurance Claims/ Billing

See **Appendix L** for information about confidentiality protection in the billing and insurance claims process under the HIPAA Privacy Rule.

## Other

This section summarizes a range of laws that may not explicitly address minor consent or disclosure of information but that health care providers often have questions about when minors seek care, especially when they seek care on their own.

### Care in Certain Settings, Parent Consent

*Ark. Code Ann. § 6-18-703* provides that minors shall not receive school-based health clinic services without parental consent. It further provides that “parental consent to contraceptive services and condom distribution shall be specific, in writing, and maintained in the student’s health records.”

### Emergency Care

*Ark. Code Ann. § 20-9-603* provides that consent for surgical or medical treatment or procedures will be implied where an emergency exists and:

- there is no one immediately available who is authorized to consent or
- there has been a protest or refusal of consent by an authorized person, no other person with authority to

consent is immediately available, and there has been a “material and morbid change in the condition of the affected person.” An emergency is a situation in which, in competent medical judgment, surgical or medical treatment is immediately or imminently necessary and any delay to obtain consent might reasonably be expected to jeopardize the life, health, or safety of the person affected or result in disfigurement or impaired faculties.

*Ark. Code Ann. § 20-9-604* provides that a court also may give consent for surgical or medical treatment where an emergency exists if specific criteria are met.

### Gender Affirming Care, Restriction

*Ark. Code Ann. §§ 20-9-1501 – 20-9-1504* prohibits healthcare professionals from providing specified



# ARKANSAS

gender affirming care services to minors. However, a federal district court found the law unconstitutional and permanently enjoined its enforcement in *Brandt v Rutledge*, 2023 WL 4073727. See also *Brandt v Rutledge*, 551 F.Supp. 882 (E.D. Ark. 2021), affirmed in *Brandt v Rutledge*, 47 F.4th 661 (8th Cir. 2022).

For up to date information on the status of protections and restrictions on gender affirming care for minors, see Movement Advancement Project's "[Equality Maps: Bans on Best Practice Medical Care for Transgender Youth](#)" These

*laws are changing rapidly so consultation with counsel is essential. See also Appendix G.*

## Minor Parent, Consent for Child

Ark. Code Ann. § 20-9-602(2) provides that any minor parent may consent for medical and surgical care for their biologic, adopted, step, or foster child, however, "the father of an illegitimate child" cannot consent for the child solely on the basis of parenthood.

## Resources

**Arkansas Code:** <https://www.arkleg.state.ar.us/ArkansasLaw>

**Arkansas Administrative Rules:** [https://www.ark.org/rules\\_and\\_regs/index.php/rules/search/new](https://www.ark.org/rules_and_regs/index.php/rules/search/new)

## Appendices

**Appendix A. *Glossary of Terms***

**Appendix B. *Overview of Consent and Confidentiality When Minors Seek Health Care***

**Appendix C. *Contraception, Abortion, and Pregnancy-Related Care for Minors: Consent and Confidentiality Considerations***

**Appendix D. *Sexually Transmitted Infections, Sexually Transmitted Diseases, and HIV Care for Minors: Consent and Confidentiality Considerations***

**Appendix E. *Mental Health Care for Minors: Consent and Confidentiality Considerations***

**Appendix F. *Substance Use Care for Minors: Consent and Confidentiality Considerations***

**Appendix G. *Gender Affirming Care for Minors: Consent and Confidentiality Considerations***

**Appendix H. *HIPAA Privacy Rule and Confidentiality Implications for Minors' Health Information***

**Appendix I. *Title X Family Planning Program and Family Planning Services for Minors***

**Appendix J. *42 CFR Part 2 and Confidentiality Implications for Substance Use Care for Minors***

**Appendix K. *FERPA and Confidentiality Implications for School-Based and School-Linked Health Care for Minors***

**Appendix L. *Confidentiality in Health Insurance Claims and Billing***

**Appendix M. *Electronic Health Information, the 21st Century Cures Act, and Confidentiality for Minor Patients***

**Appendix N. *State Law Table: Minor Consent/Access Based on Status***

**Appendix O. *State Law Table: Minor Consent/Access for Specific Services***