

DELAWARE

Minor Consent and Confidentiality

A Compendium of State and Federal Laws

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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.

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DELAWARE

Table of Contents

Quick Guide	1
General	2
Consent to Health Care	2
Confidentiality & Disclosure	4
Other	6
Resources	7
Appendices	8

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** Abortion³
- S** Emergency Care
- S** **F** Family Planning/Contraceptives
- S** Outpatient Mental Health Care
- S** **F** Pregnancy-Related Care
- S** Reportable, Communicable, Infectious Disease Care
- Sexual Assault Care
- S** **F** Sexually Transmitted Infection/Disease/HIV Care
- S** Substance Use Care

Confidentiality and Disclosure

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

Minor Consent to Health Care—Minor's Status

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

Other

- S** Conversion Therapy,⁴ Ban
- S** Financial Responsibility
- Gender Affirming Care
- S** Minor Parent, Consent for Child's Care
- S** Shield Laws

Key

State law found⁵

Federal/other law may apply

¹ 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.

² 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).

³ This category includes parental involvement laws.

⁴ This category includes statutes or case law that ban conversion therapy or prohibit banning of conversion therapy.

⁵ 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

Del. Code Ann. tit. 1, § 701 provides that the age of majority is 18. However other statutes specify different ages. For example, *Del. Code Ann. tit. 24, § 1782* defines a minor as “a female person” under age 16 years.

Emancipation

No statute expressly defines emancipated minor in general or specifies a legal process by which a minor may become emancipated; however, some statutes and court decisions acknowledge emancipation for specific purposes. In *In the Matter of S.L., A Minor Child v. A. and Sh. L.*, 735 A. 2d 433 (1999), the court noted that Delaware statutes do not provide a procedure for emancipation of minors. However, for purposes of seeking an abortion, *Del. Code Ann. tit. 23, § 1782* provides that female minors who are or have been married or who have by court order or otherwise been freed from the care, custody and control of their parents are

deemed emancipated. In *Christenson v. Tanner*, 980 A.2d 1059 (2009), the court noted that Delaware follows the common law, wherein the marriage of a minor is sufficient to emancipate the minor from the care, custody, and control of his or her parents. The court also relied on the definition found in the Parental Notification for Abortion Act in *Del. Code Ann. tit. 24, § 1782*.

Minor Marriage

Del. Code Ann. tit. 13, § 123 prohibits individuals under age 18 years from obtaining a marriage license in Delaware. *Del. Code Ann. tit. 13, § 104* provides that if Delaware is the legal residence of a person and that person contracts a marriage outside the state that would be prohibited in the state, then that person shall be punished as if the marriage were entered in Delaware.

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**

No statute expressly defines emancipated minor in general or specifies a legal process by which a minor may become emancipated; however, some statutes and court decisions acknowledge emancipation for specific purposes. However, state law authorizes emancipated minors to consent for their own care in specific situations. For example, *Del. Code Ann. tit. 24, §§ 1780 et seq.* provide that the Parental Notice of Abortion Act does not apply to emancipated minors, and emancipated minors may consent for and obtain abortion confidentially. In *Christenson v. Tanner*, 980 A.2d 1059 (2009), the court stated that Delaware follows the common law unless specifically changed by statute. Thus, common law principles regarding emancipated minors and consent may apply.

Married Minor

Del. Code Ann. tit. 13, § 707 provides that a married minor may consent for medical care or hospitalization for themselves that is provided by any licensed medical, surgical, dental, psychological or osteopathic practitioner or any nurse practitioner/clinical nurse specialist or any hospital or public clinic or their agents or employee. This includes mental health and dental treatment among other things.

Minor Consent—Services**Abortion**

Abortion is legal and protected in Delaware. As a general matter, *Del. Code Ann. tit. 24, § 1790* specifically authorizes certain licensed health providers including certified nurse

midwives and nurse practitioners to provide abortions until viability, and after viability when necessary to protect life or health of the pregnant person or in the event of certain fetal anomalies. Physician assistants and advanced practice registered nurses may prescribe abortion medication. *For up to date information on the status of abortion protections and restrictions in Delaware, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State](#).*

To the extent abortion is legally permitted, minors may obtain an abortion, but *Del. Code Ann. tit. 24, § 1780 – 1789b* provide that an abortion may not be performed on an unmarried minor under age 16 unless prior actual notice has been given to one or both parents, a grandparent, a licensed mental health professional, or the legal guardian of the pregnant minor. If the person notified is not a parent or guardian of the minor, that person must provide options counseling to the minor and make an assessment according to specified criteria. The law contains a judicial bypass and exceptions for emergencies. *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.

Emergency Care

Del. Code Ann. tit. 13, § 707 provides that a minor may consent for the examination and treatment of any laceration, fracture or other traumatic injury; or any symptom, disease, or pathology which may, in the judgment of the attending medical personnel, if untreated be reasonably expected to threaten the health or life of the minor. Reasonable efforts must have been made to obtain the consent of the parent or guardian first.

Family Planning/Contraceptives

Del. Code Ann. tit. 13, § 710 provides that a minor age 12 or older who professes to be pregnant, or who professes to be exposed to the chance of becoming pregnant, may give written consent for any diagnostic, preventive, lawful therapeutic procedures, medical care and treatment, except to an abortion, by any licensed physician, hospital, or public clinic.

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

Del. Code Ann. tit. 16, § 5003 provides that a minor between the ages of 14 and 18 years may consent to voluntary

outpatient mental health treatment from a licensed facility or community provider. The consent of the minor’s parent or legal guardian is not required. For a minor of any age under 18 years, the minor may not abrogate consent provided by a parent or legal guardian on the minor’s behalf, and the parent or guardian may not abrogate the consent of a minor age 14 or older. This does not authorize minors to consent to psychotropic medication. *See also Del. Code Ann. tit. 16, § 5025.*

Del. Code Ann. tit. 24, § 1788 provides that any minor who is pregnant and who is considering filing or has an application filed for waiver of the parental notification requirements for abortions (required in *Del. Code Ann. tit. 24, § 1783*) may request counseling and other related support services from the Division of Prevention and Behavioral Health Services in the Dept. of Services for Children, Youth and Their Families. The minor’s consent to receipt of such services is sufficient.

Pregnancy-Related Care

Del. Code Ann. tit. 13, § 710 provides that a minor age 12 or older who professes to be pregnant or exposed to the chance of becoming pregnant may give written consent for any diagnostic, preventive, lawful therapeutic procedures, medical or surgical care and treatment, including X-rays, but not including abortion, by any licensed physician, hospital, or public clinic.

Del. Code Ann. tit. 24, § 1788 provides that any minor who is pregnant and who is considering filing or has an application filed for waiver of the parental notification requirements for abortions (required in *Del. Code Ann. tit. 24, § 1783*) may request counseling and other related support services from the Division of Prevention and Behavioral Health Services in the Dept. of Services for Children, Youth and Their Families. Notification of the minor’s request for such services shall not be provided to any person. Further, the minor’s consent to receipt of such services is sufficient.

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

Reportable, Infectious, Communicable Disease Care

Del. Code Ann. tit. 13, § 710 provides that a minor age 12 or older who professes to be afflicted with a contagious, infectious, or communicable disease may give written consent for any licensed diagnostic, preventive, lawful therapeutic procedures, medical or surgical care or treatment, by any licensed physician, hospital, or public clinic. Contagious disease for this purpose is defined in chapters 5 and 7 of Title 16. *Del. Code Ann. tit. 16, § 504* provides that the Division of Public Health may declare any disease to be a notifiable disease. *See 16 Del. Admin. Code 4202-Appendix I* for list of reportable diseases.

Sexually Transmitted Infection/Disease/HIV Care

Del. Code Ann. tit. 13, § 710 provides that a minor age

12 years or older who professes to be afflicted with a contagious, infectious, or communicable disease may give written consent for any licensed diagnostic, preventive, lawful therapeutic procedures, medical or surgical care or treatment. This includes “sexually transmitted diseases” designated by the Department of Health and Social Services as reportable through rules and regulations published by the Department of Health and Social Services. See 16 Del. Admin. Code 4202-Appendix I for list of reportable STDs.

Del. Code Ann. tit. 16, § 710 provides that a health facility or health professional may examine and provide treatment for any minor for a sexually transmitted disease; consent is governed by *Del. Code Ann. tit. 13, §§ 707 and 708*.

Del. Code Ann. tit. 16, § 715 provides that a minor age 12 years or older may consent or refuse consent for HIV testing and counseling relevant to the test. The consent or refusal of a minor for HIV testing shall be valid and binding. HIV testing performed in a clinical setting may be provided on an opt-out basis encompassed by general consent for

medical services; HIV testing in a non-clinical setting may only be performed with written informed consent.

Del. Code Ann. tit. 16 § 716 provides that a pregnant person has the right to refuse to consent to both HIV testing as well as any recommended treatment.

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

Substance Use Care

Del. Code Ann. tit. 16, § 2210 provides that if a minor is age 14 years or older, then the minor may give written consent to a treatment facility for voluntary nonresidential treatment for substance abuse. The consent of the minor is valid and effective regardless of whether such minor’s substance abuse is subsequently medically confirmed. *Del. Code Ann. tit. 16, § 2203* includes definitions of “substance abuse” and “treatment.”

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

Personal/Patient Health Information

Del. Code Ann. tit. 16, § 10307 provides that the Delaware Health Information Network shall issue regulations and rules to ensure that patient specific information is only disclosed with the patient’s consent or in the best interest of those having need to know as outlined in the statute. The

section contains other provisions governing access to and disclosure of a patient’s health information.

Del. Code Ann. tit. 16, §§ 1210-1213 provide for the confidentiality of personal health information, specify when personal health information may be disclosed with and without the informed consent of the individual who is the subject of the information, and authorize the Department

of Health and Social Services to issue implementing regulations.

Del. Code Ann. tit. 18, § 6412 provides, for purposes of the Delaware Managed Care Organization Act, that data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or the enrollee's or applicant's physician, or pursuant to statute or court order in the context of litigation.

Sexually Transmitted Disease and HIV

Del. Code Ann. tit. 16, § 717 provides that no person may disclose or be compelled to disclose the identity of any person upon whom an HIV test is performed, or the results of such test in a manner which permits identification of the subject of the test, except to the subject of the test or their legal guardian, or to a person holding a legally effective release of such test results, or in certain other enumerated circumstances.

Del. Code Ann. tit. 16, § 1206A provides that a person who has knowledge of the identity of any person upon whom an HIV test is performed, or the results of such test, shall maintain the confidentiality of that information pursuant to *Del. Code Ann. tit. 16, § 717*.

Del. Code Ann. tit. 16, § 710 provides that when a minor has consented for their own care, the fact of consultation, examination, and treatment of a minor for any STD shall be strictly confidential and shall not be divulged by the facility or the health-care professional, including sending of a bill for such services to any persons other than the minor, except in limited circumstances.

Substance Use

Del. Code Ann. tit. 16, § 2220 provides that every minor who consents to their own voluntary nonresidential substance use treatment as authorized by *Del. Code Ann. tit. 16, § 2210* shall have the right to inspect all records pertaining to that patient's own self, upon oral or written request.

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

Pregnancy/Contagious, Infectious, Communicable, Reportable Disease

Del. Code Ann. tit. 13, § 710 provides that, when a minor age 12 years or older has consented for care for pregnancy, or for contagious, infectious, communicable or reportable disease, a physician or hospital may in their sole discretion, but having primary regard for the minor, provide or withhold from the parents or guardian information related to diagnosis, therapeutic procedures, care and treatment rendered or to be rendered to the minor.

Del. Code Ann. tit. 13, § 710 provides that a health care provider must give parents or guardians a notice of their intention to perform an operation related to care for which the minor has consented under this statute, for pregnancy or contagious, infectious, communicable, or reportable disease, unless delay would endanger the minor.

Sexually Transmitted Disease

Del. Code Ann. tit. 16, § 710 provides that consultation, examination, and treatment of a minor for sexually transmitted diseases, including the sending of a bill for such services, is strictly confidential, when the minor has consented as authorized by *Del. Code Ann. tit. 13, §§ 707 and 708*, except a parent or guardian may be informed if the care was provided as part of emergency services and the parent or guardian was informed of the emergency as required by *Del. Code Ann. tit. 13, § 707*.

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

Del. Code Ann. tit. 16, § 710 provides that the fact of consultation, examination, and treatment of a minor for any

STD shall be strictly confidential and shall not be divulged by the facility or the health-care professional, including sending of a bill for such services to any persons other than the minor when the minor has consented for the services.

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.

“Conversion Therapy,” Ban

For up to date information on the status of statutes or case law that ban conversion therapy for minors, or prohibit state entities from banning conversion therapy for minors in all 50 states and DC, see [Movement Advancement Project’s “Equality Maps: Conversion “Therapy” Laws.”](#) These laws are changing rapidly so consultation with counsel is essential.

Financial Responsibility

Del. Code Ann. tit. 13, § 710 provides that when a minor consents for care related to contagious, infectious, communicable or reportable diseases, or to pregnancy, as authorized by the statute, the parents or guardians of the minor are not liable for payment for the costs of the minor consent care or treatment.

Gender Affirming Care

There are no restrictions on access to gender affirming care in Delaware at this time.

For up to date information on the status of restrictions on gender affirming care for minors, see [Movement Advancement Project’s “Equality Maps: Bans on Best Practice Medical Care for Transgender Youth.”](#) See also **Appendix G** for further information about gender-affirming care.

Minor Parent, Consent for Child’s Care

Del. Code Ann. tit. 13, § 707 provides that a minor parent may consent for medical treatment or hospitalization

for their child provided by any licensed medical, surgical, dental, psychological, or osteopathic practitioner or any nurse practitioner/clinical nurse specialist or any hospital or public clinic or their agents or employees. “Medical treatment” is defined in the statute.

Shield Laws

Delaware has passed a series of laws to provide protections for health care providers against disciplinary actions, adverse licensing actions, and civil actions both in state and from out of state based solely on the provision, receipt, assistance, support for, or liability derived from reproductive health care services that are permitted under the laws of the state and were provided in accordance with the applicable standard of care. Examples of these laws are found at Del. Code Ann. tit. 10, § 3928; tit. 11, § 2506; tit. 18, § 2535; and tit. 24, §§ 1731, 1773, 1922.

For up to date information on the status of abortion protections including shield laws in all 50 states, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State.](#)

For up to date information on shield laws for gender affirming care, see [Movement Advancement Project’s “Equality Maps: Bans on Best Practice Medical Care for Transgender Youth.”](#)

Resources

Delaware Revised Statutes <https://delcode.delaware.gov/>

Delaware Code of Regulations <https://regulations.delaware.gov/AdminCode/>

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