KANSAS

Minor Consent and Confidentiality

A Compendium of State and Federal Laws

National Center for Youth Law

teenhealthlaw.org/compendium

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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.

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).

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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.

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.

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[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] 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

Kan. Stat. Ann. § 38-101 provides that the age of majority is 18 years except that every person age16 years or older who is or has been married shall be considered of the age of majority in all matters relating to contracts, property rights, liabilities and the capacity to sue and be sued.

Emancipation

Kan. Stat. Ann. § 38-108 provides that the district courts have the authority to confer majority status on minors in relation to specific rights including those related to contracts and real and personal property, the right to sue and be sued, and in all respects to exercise and enjoy all rights of property and of contracts in the same manner and to the same extent as persons at the age of majority. *Kan. Stat. Ann. § 38-109* explains the petition process.

Minor Marriage

Kan. Stat. Ann. § 23-2505 provides that no marriage license may be issued to any person who is age 16 or 17 years without the express consent of such person's parent or legal guardian and the consent of the judge unless consent of both parents and any legal guardian or all then living parents and any legal guardian is given in which case the consent of the judge shall not be required. Where the applicants or either of them are age 16 or 17 years and their parents are dead and there is no legal guardian, then a judge of the district court may after due investigation give consent and issue the license authorizing the marriage. A judge of the district court may, after due investigation, give consent and issue the license authorizing the marriage of a person age 15 when the marriage is in the best interest of the person age 15 years.

Kan. Stat. Ann. § 38-101 provides that every person age 16 years or older who is or has been married shall be considered of the age of majority in all matters relating to contracts, property rights, liabilities and the capacity to sue and be sued.

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 authorizes emancipated minors to consent for health care generally; however, *Kan. Stat. Ann. § 38-109* empowers the district court to order and decree that a minor petitioning for emancipation be empowered to exercise any of the rights mentioned in *§ 38-108* or supplemental rights, and certain health consent statutes acknowledge emancipated minors having different rights. Also, in *Younts v. St. Francis Hospital and School of Nursing, 205 Kan. 292 (1970)*, the Kansas Supreme Court recognized emancipated minor status as one of the exceptions to the requirement of parent consent for a minor's health care.

Minor, Age or Maturity

In *Younts v. St. Francis Hospital and School of Nursing, 205 Kan. 292, 300-301 (1970)*, the Kansas Supreme Court adopted as the "proper rules of law" that "generally the consent of a parent to a surgical operation on a child is necessary. Certain exceptions are recognized … (1) when an emergency exists, (2) when the child has been emancipated, (3) when the parents are so remote as to make it impracticable to obtain consent in time to accomplish proper results and (4) when the child is close to maturity and knowingly gives an informed consent." In *Younts at 299*, the court explained that informed consent means "the patient must have reasonable knowledge of the nature of the surgery and some understanding of the risks involved and the possible results to be anticipated."

In *03 Op. Att'y Gen. 35 (Kan. 2003),* the Kansas Attorney General opined that given the decision in *Younts*, "a *mature* minor has the legal capacity to consent to outpatient mental health services." The Attorney General quoted *Younts*: "In such cases the sufficiency of a minor's consent depends upon his ability to understand and comprehend the nature of the procedure, the risks involved and the probability of attaining the desired results in the light of the circumstances which attend."

In *92 Op. Att'y Gen. 26 (Kan. 1992),* the Kansas Attorney General opined (at page 7 of the opinion) "that medical or surgical care to a minor is authorized when either a mature minor or the legal guardian of an immature minor gives an informed consent to the service."

In *91 Op. Att'y Gen. 43 (Kan. 1991)*, the Kansas Attorney General, after discussing the reasoning of the court in *Younts v. St. Francis Hospital and School of Nursing*, *205 Kan. 292 (1970)*, opined that "[a] medical care provider would risk liability by providing medical or surgical treatment to an *unemancipated, immature minor* without parental or guardian consent for even the most minor affliction. The patient must have reasonable knowledge of the nature of the procedure and some understanding of the risks involved and the possible results to be anticipated. An *unemancipated, immature minor* is not considered legally capable of understanding the nature and consequences of any medical or surgical treatment or procedures and therefore is not legally capable of providing an informed consent for any medical or surgical services." (*emphasis added*)

Consultation with counsel is essential to determine the scope of application for the common law rule described in this case and these opinions, and how the rule intersects with statutory law.

Minor Consent–Services

Abortion

Abortion is legal in Kansas. In *Hodes & Nauser v. Schmidt*, *309 Kan. 610 (2019)*, the Kansas Supreme Court ruled that *Kans. Const. Bill of Rights § 1* "protects all Kansans' natural right of personal autonomy, which includes the right to control one's own body, to assert bodily integrity, and to exercise self-determination. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy" and temporarily enjoined enforcement of *Kansas Stat. §§ 65-6741 – 65-6749* which prohibited performance of certain types of abortion. However, many restrictions on abortion remain in place in Kansas. *For up to date information on the status of abortion restrictions in Kansas, see* Center for Reproductive Rights, After Roe Fell: Abortion Laws by State.

Minors may obtain an abortion, but *Kansas Stat. § 65-6704* requires that before the performance of an abortion upon a minor, a counselor must provide certain information to the minor. Also a parent or guardian, or a person age 21 years or older who is not associated with the abortion provider and who has a personal interest in the minor's well-being, shall accompany the minor and be involved in the minor's decision-making process regarding whether to have an abortion. *Kansas Stat. § 65-6704* also provides that an unemancipated minor may not obtain an abortion without notarized written consent of the minor and both parents or the legal guardian. The law includes a judicial bypass, a sexual abuse exception, and an emergency exception. *For up to date information on parent involvement laws for abortion in all 50 states, see the "Under Age__" tab on your state's page on* 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

No specific legal provision expressly authorizes minors to consent for family planning services or contraceptive sevices. However, in *87 Op. Att'y Gen. 66 (Kan. 1987),* the Kansas Attorney General opined that "because minors are protected by the United States Constitution and possess constitutional rights, absolute prohibitions on family planning (contraceptive) services for minors are unconstitutional" and that "[m]andatory parental consent requirements for all contraceptive services to minors are unconstitutional."

In *92 Op. Att'y Gen. 26 (Kan. 1992),* the Kansas Attorney General citing this opinion and *Younts v. St. Francis Hospital and School of Nursing*, 205 Kan. 292 (1970), opined (at page 7 of the opinion) "that medical or surgical care to a minor is authorized when either a mature minor or the legal guardian of an immature minor gives an informed consent to the service."

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 specific legal provision expressly authorizes minors to consent for outpatient mental health services. However, in *03 Op. Att'y Gen. 35* (Kan. 2003), the Kansas Attorney General opined that "a *mature* minor has the legal capacity to consent to outpatient mental health services." The Attorney General opined that "in such cases the sufficiency of a minor's consent depends upon his ability to understand and comprehend the nature of the procedure, the risks involved and the probability of attaining the desired results in the light of the circumstances which attend."

Pregnancy-Related Care

Kan. Stat. Ann. § 38-123 provides that an unmarried pregnant minor, where no parent or guardian is available, may give consent to the furnishing of hospital, medical and surgical care related to her pregnancy, and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of an unmarried pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to her pregnancy, where no parent or guardian is available.

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

Sexual Assault Care

Kan. Stat. Ann. § 65-448 provides that a minor may consent to an examination for sexual assault that is performed by any physician, licensed physician assistant, or registered professional nurse who has been specially trained in performing sexual assault evidence collection and who is on call or on duty at a specified medical or licensed facility or child advocacy center. The written consent of the victim is required and consent of a parent or guardian of the minor is not required for such examination. The minor's consent is not subject to disaffirmance because of minority.

If an examination takes place solely upon the request of the victim, the medical care facility, child advocacy center or other facility where the examination takes place shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law.

The statute defines "sexual assault" for this purpose.

Sexually Transmitted Infection/Disease/HIV Care

Kan. Stat. Ann. § 65-2892 provides that any physician may make a diagnostic examination for "venereal disease" upon the consent of a minor under age 18 years and prescribe for and treat such person for "venereal disease" including prophylactic treatment for exposure to "venereal disease" whenever the minor is suspected of having a "venereal disease" or contact with anyone having a "venereal disease." All such examinations and treatment may be performed without the consent of, or notification to, the parent, parents, guardian or any other person having custody of such person.

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

Kan. Stat. Ann. § 65-2892a provides that "any physician licensed to practice the healing arts in Kansas, upon consultation with any minor as a patient, may examine and treat such minor for drug abuse, misuse or addiction if such physician has secured the prior consent of such minor to the examination and treatment. All such examinations and treatment may be performed without the consent of any parent, guardian or other person having custody of such minor, and all minors are hereby granted the right to give consent to such examination 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

HMOs

Kansas Stat. § 40-3226 provides for the confidentiality of information pertaining to the diagnosis, treatment, or health of an enrollee in a health maintenance organization and specifies when the information may be disclosed either with or without the express consent of the enrollee.

Mental Health

Kansas Stat. §§ 65-5601 – 65=5606 contain provisions governing confidential communications and information related to a "mental, alcoholic, drug dependency, or emotional condition" by treatment personnel at a treatment facility, including at a community mental health center.

Kansas Stat. § 65-5602 provides that the patient of a treatment facility has a privilege to prevent disclosure of the confidential communications and information that may be claimed by the patient or the patient's guardian or conservator. Treatment personnel "shall claim the privilege on behalf of the patient unless the patient has made a written waiver of the privilege and provided the treatment personnel with a copy of such waiver or unless one of the exceptions provided by *Kansas Stat. Ann. 65-5603* is applicable."

Protected Health Information/Access, Use, and Disclosure

Kansas Stat. §§ 65-6821 – 6835 contain the provisions of the Kansas Health Information Technology Act.

Kansas Stat. § 65-6823 provides that the purpose of the Kansas Health Information Technology Act is to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically. For purposes of the Act, *Kansas Stat. § 65-6825* provides that no "covered entity" shall use or disclose protected health information except as consistent with HIPAA privacy rule provisions.

Kansas Stat. § 65-6824 requires covered entities generally to provide access to an individual's protected health information in compliance with the HIPAA privacy rule, *45 C.F.R. § 164.524*, except that a covered entity defined as a health care provider under *Kansas Stat. § 65-6836*, and amendments thereto, must furnish copies of health care records to a patient, a patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records in accordance with the provisions of *§ 65-6836*.

Kansas Stat. § 65-6836 specifies requirements related to time limits, costs, and other issues related to producing records; if records are not available, the patient or authorized representative must be notified of the reasons. *Kansas Stat. § 65-6836* also provides that a health care provider may withhold copies of health care records if the health care provider reasonably believes that providing

copies of the requested records will cause substantial harm to the patient or another person. "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

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 H** *for information about the HIPAA Privacy Rule and disclosure of information to parents and guardians.*

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

Contraceptives

In *87 Op. Att'y Gen. 66 (Kan. 1987),* the Kansas Attorney General opined that "because minors are protected by the United States Constitution and possess constitutional rights, absolute prohibitions on family planning (contraceptive) services for minors are unconstitutional" and that "[m]andatory parental consent requirements for all contraceptive services to minors are unconstitutional." However, the Attorney General said "since activities of minors may constitutionally be regulated more strictly than those of adults, reasonable parental consultation restrictions, such as notice, may be placed on a minor's decision of whether or not to use contraceptive devices."

Sexual Assault

Kansas Stat. § 65-448 provides that when a minor consents for a sexual assault examination, the medical care facility, child advocacy center or other facility shall give written notice to the parent or guardian of a minor that such an examination has taken place, except when: (A) The medical care facility, child advocacy center or other facility has information that a parent, guardian or family or household member is the subject of a related criminal investigation; or (B) the physician, licensed physician assistant or registered professional nurse, after consultation with law enforcement, reasonably believes that the child will be harmed if such notice is given.

Sexually Transmitted Disease/Infection

Kan. Stat. Ann. § 65-2892 provides that examinations and treatment for sexually transmitted infection may be performed without notification to the parent, parents, guardian or any other person having custody of such person. Any physician examining or treating a minor for sexually transmitted disease may, but shall not be obligated to, in accord with the opinion of the physician of what will be most beneficial for the minor, inform the spouse, parent, custodian, guardian or fiancé of such person as to the treatment given or needed without the consent of the minor.

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 H** *for information about the HIPAA Privacy Rule and disclosure of information to parents and guardians.*

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.

Constitution

Kans. Const. Bill of Rights § 1 states: "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

Emergency Care

Kan. Stat. Ann. § 65-2891 provides that: any healthcare provider may render in good faith emergency care or assistance at the scene of an emergency or accident including treatment of a minor or may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor, and shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

Any healthcare provider also may in good faith render emergency care or assistance during an emergency that occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care.

Gender Affirming Care

There are no restrictions on provision of gender-affirming care to minors in Kansas at this time.

For up to date information on the status of restrictions and protections 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**.

Good Faith Reliance/Immunity from Liability

Kan. Stat. Ann. § 65-2892 provides that when a physician provides diagnostic examination or treatment for "venereal disease," with the minor's consent and, without the consent of the minor, informs the minor's spouse, parent, custodian, guardian, or fiancé of the treatment given or needed, such informing shall not constitute libel or slander or a violation of the right of privacy or privilege or otherwise subject the physician to any liability. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered, provided reasonable care has been taken to elicit from the minor under age 18 years any history of sensitivity or previous adverse reaction to the medication.

Kan. Stat. Ann. § 65-2892a provides that when a physician provides diagnostic examination or treatment for substance use the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered, if reasonable care has been taken.

Kan. Stat. Ann. § 65-2891 provides that when emergency care is provided to a minor without prior parental consent, the healthcare provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by either gross negligence, negligence or willful and wanton acts or omissions depending on the emergent situation and location of service.

Minor Consent when Parent Unavailable

Kansas Stat. § 38-123b provides that any minor 16 years of age or over, where no parent or guardian is immediately available, may give consent to the performance and furnishing of hospital, medical or surgical treatment or procedures and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of such a minor shall not be necessary in order to authorize the proposed hospital, medical or surgical treatment or procedures.

Reproductive Freedom

In *Hodes & Nauser v. Schmidt*, *309 Kan. 610 (2019)*, the Kansas Supreme Court ruled that *Kans. Const. Bill of Rights § 1* "protects all Kansans' natural right of personal autonomy, which includes the right to control one's own body, to assert bodily integrity, and to exercise self-determination. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy" and temporarily enjoined enforcement of *Kansas Stat. §§ 65-6741— 65-6749* which prohibited performance of certain types of abortion. However, many restrictions on abortion remain in place.

Resources

Kansas Code https://www.kslegislature.org/li/b2023_24/statute/
Kansas Administrative Code https://sos.ks.gov/publications/pubs_kar.aspx

Appendices