

MARYLAND

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.

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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
- Reportable, Communicable, Infectious Disease Care
- S** Sexual Assault Care
- S** **F** Sexually Transmitted Infection/Disease/HIV Care
- S** Substance Use Care

Confidentiality and Disclosure

- S** **F** Confidentiality/Access to Records
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Minor Consent to Health Care—Minor's Status

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

Other

- S** Care to Prevent Adverse Health Effects, Minor Consent
- S** "Conversion Therapy," Ban⁴
- S** Emergency Care
- S** Financial Responsibility
- Gender Affirming Care
- S** Good Faith Reliance/Immunity from Liability
- S** Shield Laws

Key

- S** State law found⁵
- F** 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

Md. Code Ann. Gen. Provis. § 1-401 provides that the age of majority is 18 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. For example, for purposes of the anatomical gift act, *Md. Code Ann., Est. & Trst § 4-501* defines emancipated minor as: “a person under the age of 18 years who is: (1) Married; (2) A parent; (3) Serving in the military; (4) Emancipated by court order; (5) Living separately from the parents of the person and is self-supporting; or (6) Emancipated for another purpose recognized by law.” *Md. Code Ann., R Cts J and Attys Rules 16-307* gives the Family Division of the Circuit Courts

authority to hear cases related to emancipation of minors. For discussion of the criteria for determining on a case-by-case basis whether a minor is emancipated, see *Holly v. Maryland Auto Insurance Fund*, 349 A.2d 670 (Md. Ct. App., 1975). *Md. Code Ann., Fam. Law § 5-2A-05* provides that a married minor shall be deemed emancipated for the limited purpose of obtaining a divorce.

Minor Marriage

Md. Code Ann., Fam. Law § 2-301 specifies that only minors 17 or older may marry and specifies the requirements for a minor age 17 to marry, which include parent or guardian consent, court authorization, and certification by a health care provider that the minor is pregnant or has born a child. *Md. Code Ann., Fam. Law §§ 5-2A-01 – 5-2A-06* specify the criteria and procedures for a minor age 17 to obtain court authorization to marry.

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**Married Minor**

Md. Code Ann., Health-Gen. § 20-102 provides that a married minor has the same capacity as an adult to consent for medical or dental treatment.

Minor Living Apart from Parent/Guardian

Md. Code Ann., Health-Gen. § 20-102 provides that a minor who is living separate and apart from the minor’s parent, parents, or guardian, whether with or without consent of the minor’s parent, parents, or guardian and is self-supporting, regardless of the source of the minor’s income, has the same capacity as an adult to consent to medical or dental treatment.

Minor Parent

Md. Code Ann., Health-Gen. § 20-102 provides that a minor

parent has the same capacity as an adult to consent for medical or dental treatment.

State Custody

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for initial medical screening and physical examination on and after admission of the minor into a detention center.

Minor Consent—Services**Abortion**

Abortion is legal and protected in Maryland. *Md. Code Ann., Health-Gen. § 20-209* defines viability and provides that, except as otherwise provided in this subtitle, “the State may not interfere with the decision of a woman to terminate a pregnancy: (1) Before the fetus is viable; or (2) At any time during the woman’s pregnancy, if: (i) The termination

procedure is necessary to protect the life or health of the woman; or (ii) The fetus is affected by genetic defect or serious deformity or abnormality.”

Minors may consent to abortion in Maryland, but *Md. Code Ann., Health-Gen. § 20-103* provides that a “qualified provider” must notify one parent prior to performing an abortion on a minor, subject to specific exceptions. An abortion may be performed without notice if the minor does not live with a parent or guardian; and a reasonable effort to give notice is unsuccessful. Notice is not required if, in the professional judgment of the physician, notice to the parent or guardian may lead to physical or emotional abuse of the minor; the minor is mature and capable of giving informed consent for an abortion; or notification would not be in the best interest of the minor. *Md. Code Ann., Health-Gen. § 20-207* defines a “qualified provider” for this purpose. For up to date information on parent involvement and judicial bypass in Maryland, find the “under age...” section on your state’s link in [If When How’s Abortion Laws by State](#).

For a court decision holding that a parent may not compel a minor daughter over the daughter’s opposition to submit to an abortion, see *In re Smith*, 295 A.2d 238 (1972).

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

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

Md. Code Ann., Health-Gen. § 5-607 provides that a health care provider may treat a patient who is incapable of making an informed decision, without consent, if the treatment is of an emergency nature; the person who is authorized to give consent is not available immediately; and the attending physician determines that there is a substantial risk of death or immediate and serious harm to the patient and that the life or health of the patient would be affected adversely by delaying treatment to obtain consent.

Family Planning/Contraceptives

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for treatment for or advice about contraception other than sterilization.

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

Md. Code Ann., Health-Gen. § 20-104 provides that a minor who is 12 years old or older who is determined by a licensed health care provider to be mature and capable of giving informed consent has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a health care provider or a clinic. The capacity to consent for these services does not include the capacity to: refuse consultation, diagnosis, or treatment for a mental or emotional disorder for which a parent, guardian, or custodian of the minor has given consent; also, except as otherwise provided, if the minor is under the age of 16 years, the capacity does not include consent to the use of prescription medications to treat a mental or emotional disorder. The statute defines “health care provider” for this purpose.

Pregnancy-Related Care

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for treatment for or advice about pregnancy other than sterilization.

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

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for physical examination and treatment of injuries from an “alleged rape or sexual offense” and a physical examination to obtain evidence of an alleged rape or sexual offense.

Sexually Transmitted Infection/Disease/HIV Care

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for treatment for or advice about “venereal disease.”

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for treatment for the prevention of human immunodeficiency virus (HIV).

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

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for medical treatment for or advice about “drug abuse” or “alcoholism.” The minor may also consent for psychological treatment if, in the judgment of the attending physician or psychologist, the life or health of the minor would be adversely affected by delaying treatment to obtain the consent of another individual. This does not include the capacity to refuse treatment for drug abuse or alcoholism in an inpatient or intensive outpatient treatment program for which a parent or guardian has given consent.

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

Medical Records

Md. Code Ann., Health-Gen. §§ 4-301 – 310 provide for the confidentiality of medical records. *Md. Code Ann., Health-Gen § 4-301* provides that a minor who has the right to consent and has consented is considered a “person in interest” who may exercise the rights set forth in the statutory requirements regarding confidentiality and disclosure of medical and mental health records contained in *Md. Code Ann., Health-Gen. §§4-301 through 4-309*. These rights include the right of access to the record and the right to authorize disclosure of records, if the medical record concerns treatment for which the minor has the right to consent and has consented under *Md. Code Ann., Health-Gen. §§ 20-101–20-106*.

Mental Health

Md. Code Ann., Health-Gen § 4-307 contains specific provisions related to the disclosure of mental health records.

Sensitive Services/Abortion

Md. Code Ann., Health-Gen. § 4-302.5 provides special protections for disclosures of information about abortion care and other sensitive services, including other reproductive health services, as determined by the Secretary of the Maryland Department of Health, including disclosures to recipients in and outside Maryland.

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

Minor Consent Services under § 20-102

Md. Code Ann., Health-Gen. § 20-102 provides that without the consent of or over the objection of a minor, a licensed health care practitioner is permitted but not required to give a parent, guardian, custodian, or spouse of the parent information about treatment needed by a minor or provided

to the minor for which the minor may consent under § 20-102, except information about abortion.

Mental Health

Md. Code Ann., Health-Gen. § 20-104 provides that without the consent of or over the objection of the minor, the health care provider or, on advice or direction of the health care provider, a member of the medical staff of a hospital or public clinic is permitted but not required to give a parent, guardian, custodian, or spouse of the parent information about treatment needed by a minor or provided to the minor for a mental or emotional disorder for which the minor may consent unless the health care provider believes that the disclosure will lead to harm to the minor or deter the minor from seeking care. If the health care provider is part of a treatment team headed by a physician, the physician should make the decision about whether the information should be given.

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

Md. Code Ann. Insurance § 15-141 required the Insurance Commissioner develop and make available a standardized form for an insurance "enrollee" to use to request confidential communications from a carrier (including a nonprofit health service plan; a health maintenance organization; a dental plan organization; or any other person that provides health benefit plans subject to regulation by the State) in accordance with 45 C.F.R. § 164.522(b).

Md. Code Ann. Insurance § 15-141 provides that a carrier that requires an enrollee to make a request for confidential communications in writing in accordance with 45 C.F.R. § 164.522(b) shall accept the standardized form developed by the Commissioner under this section for that purpose; and that § 15-141 may not be construed to limit acceptance by a carrier of any other form of written request from an enrollee for confidential communications from a carrier under 45 C.F.R. § 164.522(b). The statute defines "enrollee" as a person entitled to health care benefits from a carrier.

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 to Prevent a Health Hazard, Minor Consent

Md. Code Ann., Health-Gen. § 20-102 provides that a minor has the same capacity as an adult to consent for medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

"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.

Emergency Care

Md. Code Ann., Health-Gen. § 5-607 provides that a health care provider may treat a patient who is incapable of making an informed decision, without consent, if the treatment is of an emergency nature; the person who is authorized to give consent is not available immediately; and the attending physician determines that there is a substantial risk of death or immediate and serious harm to

the patient and that the life or health of the patient would be affected adversely by delaying treatment to obtain consent.

Financial Responsibility

Md. Code Ann., Health-Gen. § 20-104 provides that a parent, guardian, custodian, or spouse of the parent is not responsible for the costs of consultation, diagnosis, or treatment for a mental or emotional condition, for which a minor may consent, unless the parent, guardian, custodian, or spouse of a parent has consented to the care.

Gender Affirming Care

There are no restrictions on gender affirming care in Maryland at this time.

For up to date information on the status of protections for 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.

Good Faith Reliance/Immunity from Liability

Md. Code Ann., Health-Gen. § 20-102 provides that a licensed health care practitioner who treats a minor is

not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent under § 20-102.

Shield Laws

Maryland passed several laws in 2023, including SB 859, the "Reproductive Health Protection Act" and SB 786, designed to protect delivery of "legally protected health care" and shield Maryland health care providers from civil and criminal penalty when they legally provide reproductive health services in the state. These statutes include definitions for key terms. Read more about SB 859 and its provisions here. Read SB 786 here.

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

For up to date information on shield laws related to gender affirming care, see [Movement Advancement Project's "Transgender Health Care Shield Laws."](#)

Resources

Maryland Statutes <https://mgaleg.maryland.gov/mgawebsite/Laws/Statutes>

Maryland Code of Regulations https://elections.maryland.gov/laws_and_regs/regulations.html

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