

MASSACHUSETTS

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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MASSACHUSETTS

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Quick Guide

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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

Mass. Gen. Laws ch. 4, § 7 and ch. 231, § 85P provide that the age of majority is 18.

Emancipation

No statute expressly defines emancipated minor in general or specifies a legal process by which a minor may become emancipated; however, some statutes acknowledge emancipation for specific purposes. For example, *Mass. Gen. Laws ch. 113A, § 4* authorizes an emancipated minor to donate organs, and *Mass. Gen. Laws ch. 90, § 32G1/2* authorizes emancipated minors to participate in certain advanced driver training without need of parent consent.

For additional information, see Massachusetts Law Reform Institute, *Emancipation and Your Legal Rights as a Minor* (2023), available at <https://www.masslegalhelp.org/children-families-divorce/youth-rights>

Minor Marriage

Mass. Gen. Laws ch. 207 §§ 7 & 24, effective July 1, 2022, provide that a minor is not eligible to marry in Massachusetts.

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**

In *In re Rena*, 46 *Mass. App. Ct.* 335, 705 *N.E.2d* 1155 (1999), the Court acknowledged that "[a]n emancipated minor may consent to his or her own medical treatment, excluding an abortion or sterilization, and a minor who is married, divorced, or widowed may likewise consent to his or her medical treatment, including an abortion or sterilization." 46 *Mass. App. at* 337 *ft. 3*, citing *Mass. Gen. L. c. 112, § 12F*.

Married Minor

Mass. Gen. Laws ch. 112, § 12F provides that minors may give consent for their medical or dental care if they are married, widowed, or divorced.

Minor, Age or Maturity

In *Baird v. Attorney General*, 360 *N.E.2d* 288 (1977) the Supreme Judicial Court explained that "the mature minor rule calls for an analysis of the nature of the operation, its likely benefit, and the capacity of the particular minor to

understand fully what the medical procedure involves" (360 *N.E.2d at* 295) and concluded that "apart from statutory limitations which are constitutional, where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth." 360 *N.E.2d at* 295. *Consultation with counsel is essential to determine the scope of application for this common law rule and how it intersects with statutory law.*

Minor in Armed Forces

Mass. Ann. Laws ch. 112, § 12F provides that minors may give consent for their medical or dental care if they are a member of any of the armed forces. This section does not authorize a minor to consent for abortion or sterilization.

Minor Living Apart from Parent/Guardian

Mass. Gen. Laws ch. 112, § 12F provides that minors may give consent for their medical or dental care if they are living separate and apart from their parent or guardian and

managing their own financial affairs. This section does not authorize a minor to consent for abortion or sterilization.

Minor Parent

Mass. Gen. Laws ch.112, § 12F provides that minors may give consent for their medical or dental care if they are a parent. This section does not authorize a minor to consent for abortion or sterilization.

Pregnant Minor

Mass. Gen. Laws ch.112, § 12F provides that minors may give consent for their medical or dental care if they are pregnant or believe themselves to be pregnant. This section does not authorize a minor to consent for abortion or sterilization.

Minor Consent—Services

Abortion

Abortion is legal and protected in Massachusetts. The Massachusetts Supreme Judicial Court held, in *Moe v. Sec’y of Admin. & Fin.*, 382 Mass. 629, 645-648, 417 N.E.2d 387, 397-99 (Mass. 1981), that abortion is protected under the Massachusetts Constitution.

Mass. Gen. Laws ch. 112, § 12L, enacted in 2020, provides: “The commonwealth, or a subdivision thereof, shall not interfere with a person’s personal decision and ability to prevent, commence, terminate or continue their own pregnancy consistent with this chapter, or restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided.”

Minors may consent to abortion, but *Mass. Gen. Laws ch. 112, §§ 12R and 12P* provide that no physician may perform an abortion upon an unmarried minor under the age of 16 without her written informed consent and the consent of one parent or guardian. The law includes a judicial bypass and an emergency exception. *For up to date information on parent involvement and 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

Mass. Gen. Laws ch. 112, § 12L, enacted in 2020, provides: “The commonwealth, or a subdivision thereof, shall not interfere with a person’s personal decision and ability to prevent, commence, terminate or continue their own pregnancy consistent with this chapter, or restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided.”

Mass. Gen. Laws ch. 111, § 24E provides that the Department of Public Health shall establish a program for comprehensive family planning services, including medical, educational, and social services that assists individuals of childbearing age, including sexually active minors, and that services will be offered without regard to age. This provision relates to agencies operating under Title X of the Public Health Services Act, 42 U.S.C. §§ 300 et seq. or comprehensive family planning agencies as defined by the Department of Public Welfare. No general provision expressly authorizes minors to consent for contraceptive care or family planning services.

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

Mass. Gen. Laws ch. 123, § 10 provides that the “superintendent” or other head of a public or private facility may provide voluntary outpatient treatment to any person age 16 or older who is in need of care and treatment based upon the individual’s own application. A parent or guardian may apply on behalf of any minor. The superintendent may, in the best interest of the patient, discontinue treatment at any time.

Pregnancy-Related Care

Mass. Gen. Laws. Ch.112, § 12F provides that minors may give consent for their medical or dental care if they are pregnant or believe themselves to be pregnant.

Mass. Gen. Laws ch.112, § 12F also provides that minors may give consent for sterilization if they are married, widowed, or divorced. For minors who are authorized to consent for their own health care because they are a parent, a member of the armed forces, pregnant or believe themselves to be pregnant, are living separate from parents or legal guardian, or reasonably believes themselves to be suffering from a dangerous disease, the authority to consent does not include 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.

Reportable, Communicable, Infectious Disease Care

Mass. Gen. Laws ch.112, § 12F provides that minors may give consent to their medical or dental care at the time such care is sought if they reasonably believe themselves to be at risk of exposure due to sexual activity or to be suffering from or to have come in contact with any disease defined as dangerous to the public health pursuant to *Mass. Gen. Laws ch.111, § 6*. The authority to consent is limited to care that relates to the diagnosis or treatment of such disease, or prevention of HIV if the minor is sexually active. This section does not authorize a minor to consent for abortion or sterilization.

Sexually Transmitted Infection/Disease/HIV Care

Mass. Gen. Laws ch. 112, § 12F provides that minors may give consent to their medical or dental care if they reasonably believe themselves to be at risk of exposure or to be suffering from or to have come in contact with any disease defined as dangerous to the public health by the Department under *Mass. Ann. Laws ch. 111, § 6*. The ability to consent is limited to care that relates to the diagnosis or treatment of such disease, or prevention of HIV if the minor is sexually active. This section does not authorize a minor to consent for abortion or sterilization.

Mass. Gen. Laws ch. 111, § 117 provides that the Department of Public Health shall establish and maintain clinics for providing prevention of HIV or treatment for persons suffering from “venereal diseases” and that physical examination and treatment by a registered physician or surgeon of a minor patient who voluntarily requests the care is not considered assault or battery.

Mass. Regs. Code tit. 105, § 300.180 includes AIDS and HIV on the list of diseases declared dangerous and reportable to the Department of Public Health.

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

Mass. Gen. Laws ch. 112, § 12E provides that a minor age 12 or older who is found to be “drug dependent” by two physicians may consent for hospital and medical care related to the diagnosis or treatment of drug dependency and the consent of a parent or guardian is not necessary. This section does not apply to methadone maintenance therapy.

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

Consent for Release

Mass. Gen. Laws ch. 112, § 12F provides that all information and records of care given under § 12F (pertaining to care for minors who are married, divorced, widowed, a parent, a member of the armed forces, pregnant, believes herself to be pregnant, living “separate and apart,” or reasonably believes himself or herself to be at risk of exposure to or to be suffering from or to have come into contact

with a disease dangerous to the public health) shall be confidential between the minor and the physician or dentist, and shall not be released except upon the written consent of the minor or a proper judicial order. If the physician or dentist reasonably believes the minor’s condition is so serious that it endangers the minor’s life or limb, the physician or dentist is required to notify the parents or guardian of the condition and inform the minor of the parental notification.

Mass. Gen. Laws ch. 111, § 24E provides that information regarding a recipient of family planning services under the comprehensive family planning services program of the state's Department of Public Health may not be disclosed without the recipient's consent, except as required by law or as necessary to provide the services.

See **Appendix H** for information about minors' rights under the HIPAA Privacy Rule to access their own health records when they are authorized to consent for 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 §§ 12E and 12F

Mass. Gen. Laws ch. 112, § 12F provides that all information and records of care given under § 12F (pertaining to care for minors who are married, divorced, widowed, a parent, a member of the armed forces, pregnant, believes herself to be pregnant, living "separate and apart," or reasonably believes himself or herself to be at risk of exposure to or to be suffering from or to have come into contact with a disease dangerous to the public health) shall be confidential between the minor and the physician or dentist, and shall not be released except upon the written consent of the minor or a proper judicial order. If the physician or dentist reasonably believes the minor's condition is so serious that it endangers the minor's life or limb, the physician or dentist is required to notify the parents or guardian of the condition and inform the minor of the parental notification.

104 CMR 25.03 provides that throughout *104 CMR*, there are instances where the rights of emancipated or mature minors may be relevant. *104 CMR* does not attempt to identify them. However, where, by operation of law pursuant to *Mass. Gen. Laws ch. 112, §§ 12E or 12F*, a minor is an emancipated minor entitled to consent to drug or medical or dental treatment and has the capacity to do so, he or she shall be entitled to consent in the same manner as an adult. Further, a facility or program may determine, pursuant to

applicable Massachusetts law, that a minor is a mature minor and is therefore able to provide consent to treatment and may decide, in certain circumstances, not to notify the parents.

Substance Use

Mass. Gen. Laws ch. 112, § 12E ½ provides that the "department of public health shall produce a pamphlet with contact information for its bureau of substance addiction services, including its telephone helpline number, and with information on the benefits and availability of addiction treatment and on the prevention of overdoses. A physician, nurse practitioner or hospital that treats a person under 18 years of age for a drug or alcohol overdose, as defined by regulations of the department, shall: (i) notify the minor's parent, legal guardian or other person having custody or control of a minor child of the overdose as part of the discharge planning process; (ii) provide the pamphlet to the parent, legal guardian or other person having custody or control of a minor child and to the minor child; and (iii) provide access to a social worker, if available. The department shall promulgate regulations to ensure that the notification provisions of this section are applied in a manner consistent with the federal Health Insurance Portability and Accountability Act."

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

Mass. Gen. Laws ch. 1760 § 27, the "Act to Protect Access to Confidential Healthcare" (PATCH Act), addresses issues of access to and disclosure of health information in the health insurance claims process and contains detailed requirements

regarding the rights of “health care consumers” (including patients) and the obligations of health insurance carriers.

The statute provides that all “carriers” in Massachusetts are required to issue a common “summary of payments form” developed by the Division of Insurance, to each insured member at the member level. Carriers shall not specify or describe sensitive health care services in a common summary of payments form. [Massachusetts Division of Insurance Bulletin 2017-07](#), lists 18 services that are defined as “sensitive health care services” that must be suppressed from being identified on all Summary of Payments issued under *Mass. Gen. Laws ch. 1760 § 12*.

The statute also provides that all carriers shall permit the following individuals to choose, in writing, an alternative method of receiving the common summary of payments form: (i) a subscriber who is legally authorized to consent to care for the insured member; (ii) an insured member who is legally authorized to consent to that member’s own care; or (iii) another party who has the exclusive legal authorization to consent to care for the insured member. The alternative methods of receiving the common summary of payments form include, but are not limited to: sending a paper form to a specified address or allowing the subscriber, the insured member, or both to access the form through electronic means; provided, however, that such access is provided in

compliance with any applicable state and federal laws and regulations pertaining to data privacy and security.

The statute also provides that if the insured member has no liability for payment for any procedure or service, carriers shall permit all insured members who are legally authorized to consent to care, or parties legally authorized to consent to care for the insured member, to request suppression of common summary of payments forms for a specific service or procedure, in which case the common summary of payments forms shall not be issued; provided, however, that the insured member clearly makes the request orally or in writing. A carrier shall not require an explanation as to the basis for an insured member’s request to suppress the common summary of payments forms, unless otherwise required by law or court order.

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

The Massachusetts Supreme Judicial Court held, in *Moe v. Sec’y of Admin. & Fin.*, 382 Mass. 629, 645-648, 417 N.E.2d 387, 397-99 (Mass. 1981) that abortion is protected under the Massachusetts Constitution.

“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

Mass. Gen. Laws ch. 112, § 12F provides that health care providers, as defined in *Mass. Gen. Laws ch. 111, §1*, are not

liable for damages for failure to obtain consent of a parent or guardian to emergency examination and treatment, including blood transfusions, when delay will endanger the life, limb, or mental well-being of the minor patient.

Financial Responsibility

Mass. Gen. Laws ch. 112, § 12F provides that a parent or legal guardian shall not be liable for the payment for any care rendered pursuant to § 12F (pertaining to care for minors who are married, divorced, widowed, a parent, pregnant, believes herself to be pregnant, living “separate and apart,” or reasonably believes himself or herself to be at risk of exposure to or to be suffering from or to have come into contact with a disease dangerous to the public health) unless such parent or legal guardian has expressly agreed to pay for such care.

Gender Affirming Care

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

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.

Good Faith Reliance/Immunity from Liability

Mass. Gen. Laws ch. 112, § 12F provides that a physician, dentist, hospital, clinic, or infirmary is entitled to rely in good faith upon minors' representations that they are legally able to consent for the care provided or upon a minors' representations that they are age 18 or older.

Minor Parent, Consent for Child's Care

Mass. Gen. Laws ch. 112, § 12F provides that minor parents may consent for medical or dental care for their child. This section does not authorize a minor to consent for abortion or sterilization.

Shield Laws

In 2022, Massachusetts enacted 2022 Mass. Acts 127, "An Act Expanding Protections for Reproductive and Gender Affirming Care," which includes protections designed to shield health care providers when they legally provide "legally protected health care activity" including "gender-affirming health care services" and "reproductive health care services" and protect patients who receive these services. Mass. Gen. Laws ch. 9A, § 1 defines these terms. Read the Act [here](#).

These laws are changing rapidly. 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 shields laws for gender affirming care, see [Movement Advancement Project's "Equality Maps: Bans on Best Practice Medical Care for Transgender Youth"](#)

Resources

Massachusetts Statutes <https://malegislature.gov/Laws/GeneralLaws>

Code of Massachusetts Regulations <https://www.mass.gov/code-of-massachusetts-regulations-cmr>

Appendices

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

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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