

MONTANA

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
- S** Reportable, Communicable, Infectious Disease Care
- Sexual Assault Care
- S** **F** Sexually Transmitted Infection/Disease/HIV Care
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Confidentiality and Disclosure

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

Minor Consent to Health Care—Minor's Status

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

- S** Gender Affirming Care, Restriction
- S** Financial Responsibility
- S** Health Insurance, Minor
- S** Minor Parent, Consent for Child
- S** Parent Consent
- S** Provider Discretion

Key

- S** State law found⁴
- 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 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

Mont. Const., Art. II, § 14 provides that the age of majority is 18.

Emancipation

Mont. Code Ann. § 41-1-501 provides that a court may issue an order of limited emancipation to a youth, which may include the right to obtain access to medical treatment and records upon the youth's own authorization.

Mont. Code Ann. § 41-1-401 defines emancipated minor for the purpose of consenting to health care.

Minor Marriage

Mont. Code Ann. § 40-1-202 provides that minors 16 and older may marry with judicial approval. *Mont. Code Ann. §*

40-1-213 provides that a court may order the clerk to issue a marriage license to a party age 16 or 17 years "who has no parent capable of consenting to the party's marriage or has the consent of both parents or of the parent having the actual care, parenting authority, and control to the party's marriage, if capable of giving consent, or of the party's guardian." The court must require marriage counseling of at least two sessions before issuing such an order. The court must find that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve the party's best interests. Pregnancy alone does not establish that the best interests of the party will be served.

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 Status**Emancipated Minor**

Mont. Code Ann. § 41-1-402 provides that emancipated minors may consent to health care. *Mont. Code Ann. § 41-1-401* defines emancipated minor for the purpose of consenting to health care.

High School Graduate

Mont. Code Ann. § 41-1-402 provides that the consent to the provision of health services and to control access to protected health care information by a health care facility or to the performance of health services by a health professional may be given by a minor who professes or is found to have graduated from high school.

Married Minor

Mont. Code Ann. § 41-1-401 provides that a minor who is

or has been married is emancipated for the purposes of health consent.

Mont. Code Ann. § 41-1-402 provides that a minor who professes to be or to have been married, or is found to be married, may consent for the provision of health services by a health care facility or a health professional and may control access to protected health care information, as determined by the health professional in good faith and with a reasonable belief as supported by fact.

Minor Living Apart from Parent/Guardian

Mont. Code Ann. § 41-1-401 provides that a minor who is separated from the individual's parent, parents, or legal guardian and is self-supporting is emancipated for the purposes of health consent.

Mont. Code Ann. § 41-1-402 provides that a minor who professes to be or is found to be separated from the

minor's parent for whatever reason and is providing self-support by whatever means may consent for the provision of health services by a health care facility or a health professional and may control access to protected health care information, as determined by the health professional in good faith and with a reasonable belief as supported by fact.

Minor Parent

Mont. Code Ann. § 41-1-402 provides that minors who profess to have or are found to have had a child may consent for the provision of health services for themselves.

Minor Consent—Services

Abortion

Abortion is legal and protected in Montana. In *Armstrong v. State*, 296 Mont. 361, (1999), the Montana Supreme Court held that Montana's state constitution protects the "right to seek and to obtain a ... pre-viability abortion, from a health care provider." For up to date information on the status of abortion protections and restrictions in Montana, 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 several laws have been enacted requiring parental notice and consent. In 1995, the state legislature passed laws requiring parental notice for a minor to seek an abortion. (*Mont. Code Ann. §§ 50-20-201 through 50-20-215*). In *Wicklund v. State*, No. ADV-97-671 (Mont. Dist. Ct. Feb 11, 1999) (summary judgment), No. ADV-97-671 (Mont. Dist. Ct. Feb. 25, 1999) (permanent injunction), appeal filed, No. 99-311 (Mont. Apr. 15, 1999), appeal dismissed (Mont. Nov. 29, 1999), the court ruled that the notice law violated the Montana Constitution and enjoined its enforcement.

In 2011, the state legislature passed a new set of laws requiring parental notice for a minor to seek an abortion, (*Mont. Code Ann. §§ 50-20-201 – 50-20-235*) and in 2013, voters passed laws by referendum requiring parental consent for a minor to seek an abortion. The Consent Act was codified at *Mont. Code Ann. §§ 50-20-501 – 50-20-511*. This Consent Act repealed the notice act of 2011. Both were challenged as violating minors' rights under the state constitution. The court preliminarily enjoined the Consent Act, however, so its repeal of the notice act did not take effect and thus the Notice Act has been in effect since 2013 as the court challenge to its constitutionality proceeds.

The Notice Act of 2011 prohibits a physician from performing an abortion for an unemancipated minor under age 16 years unless "the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor of the physician's intention to perform the abortion. ... If actual notice is not possible after a reasonable effort, the physician or the physician's agent

shall give alternate notice." The law includes a judicial bypass and a medical emergency exception. On August 14, 2024, in *Planned Parenthood of Montana v. State of Montana*, 20224 MT 178, the Montana Supreme Court held that the Consent Act violates the Montana Constitution. *Because this is an active case, the law in this area may change. 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

Mont. Code Ann. § 41-1-402 provides that a minor who needs emergency care, including transfusions, necessary to prevent serious injury or harm, may consent for health services.

Mont. Code Ann. § 41-1-405 provides that any health professional may render or attempt emergency services or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person regardless of age who is in need of immediate health care when the professional believes that the aid is the only alternative to probable death or serious physical or mental damage. Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given. Self-consent of minors to emergency situations does not apply to sterilization or abortion, except as provided by laws addressing adolescent abortion.

Family Planning/ Contraceptives

Mont. Code Ann. § 41-1-402 provides that a minor who professes or is found to be pregnant may consent for health services given in connection with the prevention of pregnancy. A health professional providing care in these cases of self-consent must provide counseling or refer the minor to another professional for counseling.

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

Mont. Code Ann. § 53-21-112 provides that notwithstanding any other provision of law, a minor who is age 16 years or older may consent for mental health services by a licensed physician, licensed mental health professional, or facility as defined in *Mont. Code Ann. § 53-21-102*.

Pregnancy-Related Care

Mont. Code Ann. § 41-1-402 provides that a minor who professes or is found to be pregnant may consent for health services given in connection with the prevention, diagnosis, and treatment of pregnancy. The treating health professional providing care in these cases must provide counseling or refer the minor to another professional for counseling. *Mont. Code Ann. § 41-1-405* provides that a minor may not consent for sterilization or abortion except as provided in Title 50, chapter 20, part 5 of the Montana Code.

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 Disease Care

Mont. Code Ann. § 41-1-402 provides that a minor who professes or is found to be afflicted with any reportable communicable disease, including a sexually transmitted disease, may consent for the provision of health services given in connection with the prevention, diagnosis and treatment of such disease. A health professional providing care in these cases of self-consent must provide counseling or refer the minor to another professional for counseling. *Mont. Admin. R. 37.114.203* lists reportable communicable diseases.

Sexually Transmitted Infection/Disease/ HIV Care

Mont. Code Ann. § 41-1-402 provides that a minor who professes or is found to be afflicted with any reportable communicable disease, including a sexually transmitted disease, may consent for the provision of health services given in connection with the prevention, diagnosis and treatment of such disease. A health professional providing care in these cases of self-consent must provide counseling or refer the minor to another professional for counseling. *Mont. Admin. R. 37.114.203* lists reportable communicable diseases, which include HIV and other STIs.

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

Mont. Code Ann. § 41-1-402 provides that a minor who professes or is found to be “afflicted with ...drug and substance abuse, including alcohol,” may consent for the provision of health services given in connection with the prevention, diagnosis, and treatment of this condition. A health professional providing care in these cases of self-consent must provide counseling or refer the minor to another professional for counseling.

Confidentiality & Disclosure

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

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

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

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

Confidentiality/Access to Records

Health Care Information

Mont. Code Ann. § 41-1-402 provides that a minor who is authorized to consent for health care under § 41-1-402 may also control access to protected health care information.

Mont. Code Ann. § 50-16-521 provides that when a minor is authorized under § 41-1-402 to consent for care without parental consent, only the minor may exclusively exercise the rights of a patient under the state's Uniform Health Care Information Act, *Mont. Code Ann. §§ 50-16-501 – 50-16-553*.

Health Maintenance Organizations

Mont. Code Ann. § 33-31-113 requires that “data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person, or from any provider, by any health maintenance organization shall be held in confidence and shall not be disclosed” except upon the express consent of the enrollee or applicant or for other specified purposes.

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

Emancipated Minors

Mont. Code Ann. § 41-1-403 provides that emancipated minors and their health information are not subject to the disclosure of information to a parent, custodian, or guardian of a minor by a health professional.

Emergency Care

Mont. Code Ann. § 41-1-402 provides that when a minor receives emergency care without parental consent, the parent or guardian shall be informed as soon as practical, except in the case of minors who authorized to give their own consent for care under *Mont. Code Ann. § 41-1-402*.

Minor Consent Services

Mont. Code Ann. § 41-1-403 provides that a health professional shall inform the parent or guardian of a minor authorized to consent for health care under *Mont. Code Ann. § 41-1-402* of any treatment given or needed when:

- in the judgment of the health professional, severe complications are present or anticipated;
- major surgery or prolonged hospitalization is needed;
- failure to inform the parent/guardian would jeopardize the safety and health of the minor patient, younger siblings, or the public;
- informing them would benefit the minor’s physical and mental health and family harmony; or
- the health professional or health care facility providing treatment desires a third-party commitment to pay for services.

If the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from drug abuse, then information may not be given to the parent or guardian without the consent of the minor, if they have not already been informed pursuant to §§ 41-1-401 – 41-1-407.

For providers subject to the Montana Uniform Health Care Information Act, *Mont. Code Ann. § 50-16-521* provides:

“(1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-401 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.”

HIPAA rules relevant to disclosure to parents/guardians

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

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

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

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

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

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

Insurance Claims/ Billing

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

Other

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

Financial Responsibility

Mont. Code Ann. § 41-1-404 provides that the spouse, parent, parents, or legal guardian of a minor who consents for services under *Mont. Code Ann. § 41-1-402* are not liable for payment for the service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for the care. Minors giving consent for the health services are financially responsible for the cost, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied to cover services rendered.

Gender Affirming Care

In 2023, Montana enacted *S.B. 99, the Youth Health Protection Act, codified at Mont. Code Ann. §§ 50-4-1001 – 50-4-1006*, which prohibits a person from knowingly providing surgical procedures, cross-sex hormones, and puberty blockers to address a minor's perception of their gender identity. Violations may subject health care professionals to professional discipline or to civil lawsuits for damages or equitable relief. The law also contains prohibitions on the use of Medicaid or other public funds for the prohibited procedures. The Act has been challenged. A state trial court issued a preliminary injunction on enforcement of the Act, and as of May 2024, the case is on appeal to the Montana Supreme Court.

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**.

Health Insurance, Minor

Mont. Code Ann. § 33-15-103 provides that a minor who is at least 15 years of age may contract for life and health insurance.

Minor Parent, Consent for Child

Mont. Code Ann. § 41-1-402 provides that a minor who has a child may give effective consent for health service for the child.

Parent Consent

Mont. Code Ann. § 40-6-701, enacted in 2023, provides in part:

"(1) A government entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the government entity demonstrates that the interference:

- (a) furthers a compelling governmental interest; and
- (b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:...

- (e) make and consent to all physical and mental health care decisions for the child;
- (f) access and review all health and medical records of the child;....

...

(5) When a parent's fundamental rights protected by [section 2], [section 3], 41-1-402, 41-1-403, 41-1-405, and this section are violated, a parent may assert that violation as a claim or defense in an administrative or judicial proceeding and may obtain appropriate relief without regard to whether the proceeding is brought by or in the name of a government entity, a private person, or any other party. The prevailing party in an action filed pursuant to [section 2], [section 3], 41-1-402, 41-1-403, 41-1-405, and this section is entitled to reasonable attorney fees and costs."

Mont. Code Ann. § 40-6-701 provides that “[g]overnment entity” for this purpose “means the state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of the state, including a municipality, county, consolidated municipal-county government, school district, or other special district.”

Provider Discretion

Mont. Code Ann. § 41-1-407 provides that no physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on their own consent.

Resources

Montana Code Annotated: <https://leg.mt.gov/statute/>

Montana Administrative Rules: <https://rules.mt.gov/>

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