

NORTH DAKOTA

# Minor Consent and Confidentiality

## A Compendium of State and Federal Laws

National Center  
for Youth Law

[teenhealthlaw.org/compendium](https://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

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### Disclaimer

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# NORTH DAKOTA

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Quick Guide

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- S Emergency Care
- S Gender Affirming Care, Restrictions
- S Good Faith Reliance/Immunity from Liability
- S Minor Parent, Consent for Child’s Care

**Key**

- S State law found<sup>5</sup>
- F Federal/other law may apply

<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> This category includes parental involvement laws.

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

<sup>5</sup> 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**

*N.D. Cent. Code § 14-10-01* provides that the age of majority is 18. Unless otherwise specified in the code, “child” and “minor” are interchangeable terms.

**Emancipation**

No specific legal provision was found expressly defining emancipated minor in general or outlining a legal process by which a minor may emancipate; however, some statutes reference emancipation. For example, in the Vulnerable Adult Protection Services law, *N.D. Cent. Code § 50-25.3-01*

the definition of an adult includes a minor emancipated by marriage.

**Minor Marriage**

*N.D. Cent. Code § 14-03-02* provides that a marriage license may not be issued to a person “16 to 18 years of age” without the consent of the parents or guardian, “if there are any.” A marriage license may not be issued to any person below age 16, notwithstanding the consent of the parents or guardian of said person.

## 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****Minor Living Apart from Parent/Guardian**

*N.D. Cent. Code § 14-10-20* provides that an “unaccompanied homeless minor” may consent to, contract for, and receive medical, dental, or behavioral health examinations, care, or treatment without permission, authority, or consent of a parent or guardian if the minor has “acceptable documentation” as specified in the statute.

“Unaccompanied homeless minor” means a minor 14 years of age or older living in one of the situations described in *42 U.S.C. 11434 a(2)* [federal “Education for Homeless Children and Youth” act] and who is not in the care and physical custody of a parent or legal guardian. This section does not authorize an “unaccompanied homeless minor” to consent to an abortion. The identification of an individual as an unaccompanied homeless minor does not automatically mean the individual is a neglected child as defined in *N.D. Cent. Code § 50-25.1-02* or supersede the mandatory reporting requirements of *N.D. Cent. Code § 50-25.1-02* [North Dakota child abuse reporting law].

**Minor Consent—Services****Abortion**

*N.D. Cent. Code §§ 12.1-19.1-02 and 12.1-19.1-03* ban abortion at all stages of pregnancy, with only limited exceptions to prevent death or serious health risk or, prior to six weeks gestational age, in cases involving certain sexual offences and incest. Other restrictions either have been repealed or remain in place. For up to date information on the status of abortion restrictions in North Dakota, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State](#).

To the extent that abortion is legally permitted, minors may obtain an abortion, but *N.D. Cent. Code § 14-02.1-03 and 14.02.1-03.1* provide that an unmarried unemancipated minor may not obtain an abortion without the written consent of the minor and both parents and prior provision to both parents of the information required by *§ 14.02.1-02*. The law includes a judicial bypass and a medical emergency exception. *Fargo Women’s Health Org. v. Schafer*, 18 F.3d 526 (1994), held that the North Dakota Abortion Control Act, which includes these sections, is

constitutional. 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 restrictions and protections 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

*N.D. Cent. Code § 14-10-17.1* provides that a minor may contract for and receive emergency examination, care, or treatment in a life-threatening situation without parental permission, authority, or consent. If a minor has an emergency medical condition or the potential for an emergency medical condition, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the minor’s parent or guardian are unsuccessful. This subsection does not authorize a minor to withhold consent to emergency examination, care, or treatment.

## Family Planning/ Contraceptives

No specific statute expressly authorizes minors to consent for family planning services or contraceptive care.

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 contraception and the U.S. Constitution.

## Outpatient Mental Health Care

No specific legal provision was found expressly authorizing minors to consent for outpatient mental health services, unless they are “unaccompanied homeless minors,” who may consent for behavioral health examinations, care, or treatment under *N.D. Cent. Code § 14-10-20*. See *Minor Living Apart from Parents/Guardian*.

## Pregnancy-Related Care

*N.D. Cent. Code § 14-10-19* provides that a physician or other health care provider may provide pregnancy testing and pain management related to pregnancy to a minor, prenatal care to a pregnant minor in the first trimester of pregnancy, or a single prenatal care visit in the second or third trimester of pregnancy without the consent of a parent or guardian. A physician or other health care provider may provide prenatal care beyond the first trimester of pregnancy or in addition to the single prenatal care visit in the second or third trimester if, after a good-faith effort, the physician or other health care provider is unable to contact the minor’s parent or guardian. This section does not authorize a minor to consent to abortion or otherwise supersede the requirements of *N.D. Cent. Code chapter 14-02.1*. A physician or other health care professional or a health care facility may not be compelled against their

best judgment to treat a minor based on the minor’s own consent.

*N.D. Cent. Code § 23-12-13* provides that no person may provide informed consent for the sterilization of a minor without a mental health proceeding or other court order.

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

*N.D. Cent. Code § 14-10-17.1* provides that a physician or other health care provider may provide emergency medical care or forensic services to a minor who is a victim of sexual assault without the consent of the minor’s parent or guardian.

## Sexually Transmitted Infection/Disease/HIV Care

*N.D. Cent. Code § 14-10-17* provides that any minor age 14 or older may contract for and receive examination, care, or treatment for sexually transmitted diseases without permission, authority, or consent of a parent or guardian.

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

*N.D. Cent. Code § 14-10-17* provides that any minor age 14 or older may contract for and receive examination, care, or treatment for substance use disorder without permission, authority, or consent of a parent or guardian.

## 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 Maintenance Organizations

*N.D. Cent. Code § 26.1-18.1-23* provides 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 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

#### Pregnancy related care

*N.D. Cent. Code § 14-10-19* provides that if a minor requests confidential services for pregnancy testing, pain management, or prenatal care, the physician or other health care professional shall encourage the minor to involve her parents or guardian. A physician or other health care professional who provides pregnancy care services to a minor based on their own consent may inform the parent or guardian of the minor of any pregnancy care services given or needed if the physician or other health care professional discusses with the minor the reasons for informing the parent or guardian prior to the disclosure and, in the judgment of the physician or other health care professional failure to inform the parent or guardian would seriously jeopardize the health of the minor or her unborn child; surgery or hospitalization is needed; or informing the parent or guardian would benefit the health of the minor or her unborn child.

#### Sexual assault

*N.D. Cent. Code § 14-10-17.1* provides that when emergency medical care or forensic services are provided to a minor who is a victim of sexual assault without the consent of

the minor’s parent or guardian, reasonable steps must be made to notify the minor’s parent or guardian of the care provided.

## Domestic Violence/Sexual Assault Counseling Center

*N.D. Cent. Code § 14-07.3-02* provides that except as provided in section *14-07.3-03*, a “counseling center” may not disclose “private information” concerning a minor to the parent, guardian, or custodian of the minor unless the minor authorizes the counseling center to disclose the information or the disclosure of the information is necessary for a party reasonably believed to be in need of protection.

*N.D. Cent. Code § 14-07.3-01* defines a counseling center as a domestic violence organization as defined in *N.C. Cent. Code § 14-07.1-01*, which defines a “domestic violence sexual assault organization” as a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four-hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault. “Private information” means any information disclosed by a minor to a counselor, employee, or volunteer at a counseling center in the course of counseling or treatment of the minor.

*N.D. Cent. Code § 14-07.3-02* provides that the counseling center shall establish procedures to provide access by a parent, guardian, or custodian of a minor to private information concerning the minor. However, the counseling center may deny parental access when the minor requests that the counseling center deny the access. The counseling center shall provide the minors who seek counseling, treatment, or other assistance from the center with a notification that the minor has the right to request that parental access to private information be denied. The counseling center may require the minor submit a written request that the access be denied. The written request must set forth the reasons for denying parental access and must be signed by the minor. Upon receipt of the request, the counseling center shall determine if honoring the request to deny parental access would be in the best interest of the minor. In making the determination, the

counseling center shall consider specific criteria related to the age and maturity of the minor, the need to protect the minor from physical or emotional harm; if the private information concerns medical, dental, or other health needs of the minor, the information may be released only if failure to inform the parent would seriously jeopardize the health 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.

### “Conversion Therapy” Partial 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

*N.D. Cent. Code § 14-10-17.1* provides If a minor has an emergency medical condition or the potential for an emergency medical condition, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the minor’s parent or guardian are unsuccessful.

## Gender Affirming Care

2023 *N.D. HB 1264* added *N.D. Cent. Code §§ 12.1-36.1 – 12.1-36.1-04*, a new chapter, titled “Minor Sex Change Treatment.” This statute prohibits a licensed physician, physician assistant, or nurse, or a certified medical assistant from providing specified surgeries, or providing any “drug that has the purpose of aligning the minor’s sex with the minor’s perception of the minor’s sex,” including puberty-blockers and cross-sex hormones. Willful violations are classified either as felonies or misdemeanors. Exceptions are included for treatment of medically verifiable genetic disorders of sex development.

*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

*N.D. Cent. Code § 14-10-17.1* provides that a physician or other qualified professional licensed to practice in this state who provides medical, dental, or behavioral health examinations, care, or treatment to an unaccompanied homeless minor under this section may not be held liable in any civil or criminal action for providing such services without having obtained permission from the minor’s parent or guardian. This section does not relieve the physician or other qualified professional from liability for negligence in the diagnosis or treatment of an unaccompanied homeless minor.

## Minor Parent, Consent for Child’s Care

*N.D. Cent. Code § 14-10-17.1* provides that an “unaccompanied homeless minor” who is a parent may consent to, contract for, and receive medical, dental, and behavioral health examinations, care, or treatment for the minor’s child. “Unaccompanied homeless minor” is defined in the statute.

## Resources

**North Dakota Statutes** <https://ndlegis.gov/general-information/north-dakota-century-code/index.html>

**North Dakota Administrative Regulations** <https://ndlegis.gov/agency-rules/north-dakota-administrative-code/index.html>

## Appendices

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