

SOUTH DAKOTA

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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Disclaimer

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SOUTH DAKOTA

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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
- Emergency Care
- F** Family Planning/Contraceptives
- Outpatient Mental Health Care
- F** Pregnancy-Related Care
- Reportable, Communicable, Infectious Disease Care
- Sexual Assault Care
- S** **F** Sexually Transmitted Infection/
Disease/HIV Care
- S** Substance Use Care

Confidentiality and Disclosure

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

Other

- S** Emergency Care
- S** Financial Responsibility
- S** Gender Affirming Care, Restriction
- S** Good Faith Reliance/Immunity from Liability

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

S.D. Codified Laws § 26-1-1 provides that the age of majority is 18 years.

Emancipation

S.D. Codified Laws § 25-5-24 provides that minors are emancipated if they have entered a valid marriage, are on active duty with any of the armed forces of the United States, or have received a declaration of emancipation from the court. *S.D. Codified Laws § 25-5-26* provides that a minor age may petition a court for a declaration of

emancipation. The petition must allege that the minor is at least age 16 years; willingly lives separate and apart from parents or guardian with their consent or acquiescence; is managing the minor's own financial affairs; and the source of income is not derived from any criminal activity.

Minor Marriage

S.D. Codified Laws § 25-1-9 provides that the notarized, written consent of one parent or legal guardian is required for a minor between the ages of 16 and 18 years 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 Status**Emancipated Minor**

S.D. Codified Laws § 25-5-25 provides that an emancipated minor may consent for medical, chiropractic, optometric, dental, or psychiatric care, without parental consent, knowledge, or liability.

Married Minor

S.D. Codified Laws § 25-5-24 provides that a minor is emancipated by marriage and remains emancipated even if the marriage is dissolved. *S.D. Codified Laws § 25-5-25* provides that an emancipated minor may consent for medical, chiropractic, optometric, dental, or psychiatric care, without parental consent, knowledge, or liability.

Minor in Armed Forces

S.D. Codified Laws § 25-5-24 provides that a minor is emancipated upon joining the armed forces of the United States. *S.D. Codified Laws § 25-5-25* provides that an emancipated minor may consent for medical, chiropractic, optometric, dental, or psychiatric care, without parental consent, knowledge, or liability.

Minor Living Apart from Parent/Guardian

A minor living apart from parent or guardian may consent for their own health care if they have been granted a declaration of emancipation pursuant to *S.D. Codified Laws § 25-5-26*.

Minor Consent—Services**Abortion**

Abortion is banned in South Dakota, with limited exceptions. *For up to date information on the status of abortion restrictions in South Dakota, 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 *S.D. Codified Laws §§ 34-23A-1, 34-23A-7, 34-23A-7.1, 34-23A-10.1, 34-23A-10.2, 34-23A-22, 26-1-1* provide that an abortion may not be performed on an unemancipated minor under age 18 years until the minor has provided voluntary and informed consent and until written notice has been given to one parent. The law includes a judicial bypass and an emergency exception.

§ 34-23A-22 also gives parents a civil cause of action for abortions performed on their minor child in violation of the statute. 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.

Family Planning/ Contraceptives

No 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 discussion of contraception and the U.S. Constitution.

Pregnancy-Related Care

No statute expressly authorizes minors to consent for pregnancy-related care.

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

S.D. Codified Laws § 22-22-26.3 provides that a minor age 16 years or older may consent to a forensic medical examination, as defined under S.D. Codified Laws § 22-22-26. The consent is not subject to disaffirmance because of minority, and consent of a parent or guardian is not required under this section. The physician, hospital, or clinic shall take reasonable steps to notify a minor's parent or guardian that an examination has taken place, unless the parent or guardian is the suspected perpetrator.

Sexually Transmitted Infection/Disease/HIV Care

S.D. Codified Laws § 34-23-16 provides that any licensed physician "upon consultation by any minor as a patient, may, with the consent of such person ... may make a diagnostic examination for venereal disease and prescribe for and treat such person for venereal disease including prophylactic treatment for exposure to venereal disease whenever such person is suspected of having a venereal disease or contact with anyone having a venereal disease." S.D. Codified Laws § 34-23-17 provides that treatment of a minor for "venereal disease" by county or state health departments shall be offered to a minor at the minor's request and without the necessity of consent of or notification to the parents.

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

S.D. Codified Laws § 34-20A-50 provides that a minor "suffering from alcohol or drug abuse" may apply to an accredited facility for voluntary treatment, as can the minor's parent, guardian or other legal representative.

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

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 Information to Parents/Guardians

Emancipated or Married Minor

S.D. Codified Laws §§ 25-5-24 and 25-5-25 provide that a married minor or an emancipated minor may receive medical, chiropractic, dental, or psychiatric care without parental knowledge.

Sexual Assault

S.D. Codified Laws § 22-22-26.3 provides that when a minor age 16 years or older consents to a forensic medical examination, physician, hospital, or clinic shall take reasonable steps to notify the minor’s parent or guardian that an examination has taken place, unless the parent or guardian is the suspected perpetrator.

STI/STD/HIV

S.D. Codified Laws § 34-23-17 provides that treatment of a minor for “venereal disease” by county or state health departments shall be offered to a minor at the minor’s request without the necessity of consent of or notification to the parents.

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.

Emergency Care

S.D. Codified Laws § 20-9-4.2 provides that a minor may be treated by a licensed physician before the parent's or guardian's consent is obtained if the parent or guardian is not immediately available and if, in the opinion of the treating physician, the attempt to secure consent would result in delay of treatment which would threaten the minor's life or health. The section does not apply to an elective abortion or to sterilization or to any device or medication for birth control.

Financial Responsibility

S.D. Codified Laws §§ 25-5-24 and 25-5-25 provide that when a married minor or an emancipated minor receives medical, chiropractic, dental, or psychiatric care without parental knowledge the parents are not financially responsible for the care.

Gender Affirming Care, Restriction

S.D. Codified Laws §§ 34-24-33 – 34-24-38 provides that a health care professional may not “for the purpose of attempting to alter the appearance of, or to validate a minor's perception of, the minor's sex, if that appearance or perception is inconsistent with the minor's sex, knowingly: (1) Prescribe or administer any drug to delay or stop normal puberty; (2) Prescribe or administer testosterone, estrogen, or progesterone, in amounts greater than would normally be produced endogenously in a healthy individual of the same age and sex; (3) Perform any sterilizing surgery, including

castration, hysterectomy, oophorectomy, orchiectomy, penectomy, and vasectomy; (4) Perform any surgery that artificially constructs tissue having the appearance of genitalia differing from the minor's sex, including metoidioplasty, phalloplasty, and vaginoplasty; or (5) Remove any healthy or non-diseased body part or tissue.” Violations may result in loss of professional license or potential liability for damages in a civil action.

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

S.D. Codified Laws § 20-9-4.2 provides that “[n]o physician, hospital, or other person assisting in the treatment of a minor may be held liable for providing medical or surgical treatment for a minor without consent of the minor's parent or guardian, if in the opinion of the treating physician, exercising competent medical judgment, the minor's life or health would be threatened by delaying treatment.”

Resources

South Dakota Statutes <https://sdlegislature.gov/Statutes>

South Dakota Administrative Code <https://rules.sd.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