

VIRGINIA

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
- 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
- S** Substance Use Care

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

Other

- S** "Conversion Therapy," Ban⁴
- S** Emergency Care
- S** Financial Responsibility
- Gender Affirming Care
- S** Minor Parent, Consent for Child's Care

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

Va. Code Ann. § 1-204 provides that for the purpose of all laws of the Commonwealth, including common law, case law, and the acts of the General Assembly, unless an exception is specifically provided in this Code, a person is an adult and has reached the age of majority when he or she becomes 18 years of age.

Emancipation

Va. Code Ann. § 16.1-331 provides that a minor age 16 years or older may petition the court for a declaration of emancipation. *Va. Code Ann. § 16.1-333* specifies what a petition for emancipation must include. *Va. Code Ann. § 16.1-333.1* provides the court may enter an order declaring the minor emancipated if, after a hearing, it is found that: (i) the minor has entered into a valid marriage, whether or

not that marriage has been terminated by dissolution; (ii) the minor is on active duty with any of the armed forces of the United States of America; (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his own financial affairs; or (iv) the minor desires to enter into a valid marriage and the requirements of *§ 16.1-333.1* are met.

Minor Marriage

Va. Code Ann. § 20-48 provides that the minimum age at which persons may marry is 18 years, unless a minor has been emancipated by court order. Upon application for a marriage license, an emancipated minor shall provide a certified copy of the order of emancipation.

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**

Va. Code Ann. § 16.1-334 provides that an emancipated minor may consent for medical, dental, or psychiatric care without parental consent or knowledge or liability.

Married Minor

Va. Code Ann. § 54.1-2969(F) provides that, except for the purposes of sexual sterilization, any minor who is or has been married may consent for surgical and medical treatment.

Minor Consent—Services**Abortion**

Abortion is legal but not protected in Virginia, and there are numerous restrictions, although some restrictions were repealed in 2020. For up to date information on the status of abortion restrictions and protections in Virginia, 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 *Va. Code Ann. § 54.1-2969(J)* provides that a minor may not consent for an abortion except through *Va. Code Ann. § 16.1-241*. *Va. Code Ann. § 16.1-241(W)* provides that an abortion may not be performed on an unmarried, "unemancipated minor" without consent of a parent or legal guardian or person standing in loco parentis. Consent requires either a

notarized, written statement consenting to the abortion after notice from a physician, or in person written authorization. An “unemancipated minor” means a minor who is not serving in the military, is not living apart from her parents with parental consent or acquiescence, and has not been emancipated by a court. The law includes a judicial bypass, a medical emergency exception, and an exception for reported cases of abuse and neglect. 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

Va. Code Ann. § 54.1-2969(E) provides that a minor may consent for medical or health services required for birth control or family planning, except for sterilization.

See **Appendix I** for information about the Title X Family Planning Program and minor consent for family planning, including contraception services. See **Appendix C** for discussion of contraception and the U.S. Constitution.

Outpatient Mental Health Care

Va. Code Ann. § 54.1-2969(E) provides that a minor may consent for medical or health services for outpatient care, treatment, or rehabilitation for “mental illness or emotional disturbance.”

Pregnancy-Related Care

Va. Code Ann. § 54.1-2969(G) provides that a pregnant minor shall be deemed an adult for the purpose of giving consent for surgical and medical treatment relating to the delivery of the child when such surgical or medical treatment is provided during delivery of the child or the duration of the hospital admission for such delivery.

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

Va. Code Ann. § 54.1-2969(E) provides that a minor may consent for medical or health services needed to determine the presence of or to treat any “infectious or contagious disease” which the State Board of Health requires to be reported.

Va. Code Ann. § 32.1-116.3 defines “communicable diseases” as any airborne infection or disease, including, but not limited to, tuberculosis, measles, certain meningococcal infections, mumps, chicken pox and

Hemophilus Influenzae Type b, and those transmitted by contact with blood or other human body fluids, including, but not limited to, human immunodeficiency virus, Hepatitis B and Non-A, Non-B Hepatitis.

Sexually Transmitted Infection/Disease/HIV Care

Va. Code Ann. § 54.1-2969(E) provides that a minor may consent for medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease which the State Board of Health requires to be reported.

Va. Code Ann. § 32.1-116.3 defines “communicable diseases” as any airborne infection or disease, including, but not limited to, tuberculosis, measles, certain meningococcal infections, mumps, chicken pox and Hemophilus Influenzae Type b, and those transmitted by contact with blood or other human body fluids, including, but not limited to, human immunodeficiency virus, Hepatitis B and Non-A, Non-B Hepatitis.

Va. Code Ann. § 32.1-116.3 provides that HIV is a communicable disease. Va. Code Ann. § 32.1-37.2 provides that prior to performing any test to determine HIV infection, the informed consent of the test subject must be obtained. Every person with a confirmed positive result shall be afforded the opportunity for appropriate counseling.

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

Va. Code Ann. § 54.1-2969(E) provides that a minor may consent for medical or health services for outpatient care, treatment, or rehabilitation for substance abuse, as defined in Va. Code Ann. § 37.2-100, which provides that “substance abuse” means the use of drugs, enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

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/Medical Record

Va. Code § 32.1-127.1:03 recognizes an individual’s right of privacy in the content of their health records and prohibits disclosure except when permitted or required by this section or other provisions of state law.

Va. Code Ann. § 32.1-127.1:03(D) provides that a minor shall be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to Va. Code Ann. § 54.1-2969(E)(1)-(4) [minor consent for venereal disease, reportable communicable disease, substance abuse, mental illness or emotional disturbance].

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 Minor

Va. Code Ann. § 16.1-334 provides that an emancipated minor may consent for medical, dental, or psychiatric care without parental knowledge.

Substance Use

Va. Code Ann. § 54.1-2969(K) provides that Va. Code Ann. § 54.1-2969 (which allows a minor to consent for care, treatment, or rehabilitation for substance abuse) does not prevent a parent, legal guardian, or person standing *in loco parentis* from obtaining the results of a minor’s nondiagnostic drug test when the minor is not receiving care, treatment, or rehabilitation for substance abuse. Va. Code Ann. § 54.1-2969(K) also provides that Va. Code Ann. § 54.1-2969 does not prevent a parent, legal guardian, or person standing *in loco parentis* from obtaining the minor’s other health records, except when the minor’s treating physician or clinical psychologist has determined, in the exercise of professional judgment, that the disclosure of health records would be reasonably likely to cause substantial harm to the minor or another person.

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.

“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, see [Movement Advancement Project’s “Equality Maps: Conversion “Therapy” Laws.”](#) These laws are changing rapidly so consultation with counsel is essential.

Emergency Care

Va. Code Ann. § 54.1-2969(C) provides that whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor’s recovery and no person authorized in this section to consent for such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel at the scene of an accident, fire, or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent for such medical or surgical treatment. In the case of a minor age 14 or older who is physically capable of giving consent, such consent shall be obtained first.

Va. Admin. Code tit. 18, §§ 85-20-28, 85-40-87, and 85-50-178 provide that parental consent is not required prior to performance of surgery or invasive procedure by, in order of statute: (i) an osteopathic practitioner, podiatrist, or chiropractor; (ii) a respiratory care practitioner; or (iii) a physician assistant if in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient. Va. Admin. Code tit. 18, §§ 85-20-28, 85-40-87, and 85-50-178 define invasive procedure to

mean any diagnostic or therapeutic procedure performed on a patient that is not part of routine, general care or for which the usual practice within the health care entity is to document specific informed consent from the patient prior to proceeding.

Financial Responsibility

Va. Code Ann. § 16.1-334 provides that an emancipated minor may consent for medical, dental, or psychiatric care without parental consent or knowledge or liability.

Gender Affirming Care

There are no restrictions on access to gender affirming care in Virginia law 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**.

Minor Parent, Consent for Child’s Care

Va. Code Ann. § 54.1-2969(G) provides that a minor mother of a child shall be deemed an adult for the purpose of giving consent for surgical and medical treatment for her child.

Code of Virginia <https://law.lis.virginia.gov/vacode/>

Virginia Administrative Code <https://law.lis.virginia.gov/admincode/>

Appendices

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

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Appendix G. Gender Affirming Care for Minors: Consent and Confidentiality Considerations

Appendix H. HIPAA Privacy Rule and Confidentiality Implications for Minors' Health Information

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Appendix M. Electronic Health Information, the 21st Century Cures Act, and Confidentiality for Minor Patients

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Appendix O. State Law Table: Minor Consent/Access for Specific Services