

WISCONSIN

Minor Consent and Confidentiality

A Compendium of State and Federal Laws

National Center
for Youth Law

teenhealthlaw.org/compendium

Authors

Abigail English, JD, Consultant, National Center for Youth Law

Rebecca Gudeman, JD, MPA, Senior Director, Health, National Center for Youth Law

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

For the entire compendium of state laws,

English A, Gudeman R. Minor Consent and Confidentiality: A Compendium of State and Federal Laws. National Center for Youth Law (August 2024).

For a particular state,

English A, Gudeman R. Minor Consent and Confidentiality: A Compendium of State and Federal Laws (State name). National Center for Youth Law (August 2024).

Disclaimer

Minor Consent and Confidentiality: A Compendium of State and Federal Laws is made available for informational purposes only and does not constitute legal advice or representation. Laws can be interpreted in different ways. For legal advice, a practicing attorney who has comprehensive knowledge of all relevant laws – federal state, and local – and who has been informed of all relevant details of the situation should be consulted. The authors have attempted to assure that the information presented is accurate as of May 2024. However, laws change frequently, new regulations are promulgated, and cases decided. The National Center for Youth Law and the authors specifically disclaim any liability for loss or risk incurred as a consequence of the use and the application, either directly or indirectly, of any material in this publication.

Acknowledgements

This work was made possible through the generous support of the Collaborative for Gender and Reproductive Equity, a sponsored project of Rockefeller Philanthropy Advisors. The authors sincerely thank National Center for Youth Law attorneys Pallavi Bugga, Nina Monfredo, and Rachel Smith for their contributions to this work. The authors also gratefully acknowledge the extensive resources of the many organizations and individuals whose work provided essential information for this publication.

Copyright ©2024 National Center for Youth Law

This document may be reproduced and distributed for non-commercial purposes with acknowledgment of its source. All other rights reserved.

Help Us Keep This Up to Date! If you see anything that needs correcting or updating, please contact the National Center for Youth Law at info@teenhealthlaw.org.

WISCONSIN

Table of Contents

Quick Guide	1
General	2
Consent to Health Care	2
Confidentiality & Disclosure	4
Other	5
Resources	6
Appendices	7

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
- 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
- S** **F** Insurance Claims/Billing

Minor Consent to Health Care—Minor's Status

- Emancipated Minor
- High School Graduate
- 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," Partial Ban⁴
- S** Emergency Care
- S** Financial Responsibility
- Gender Affirming Care
- S** Good Faith Reliance/Immunity from Liability

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

Wis. Stat. Ann. § 990.01(3) provides that the age of majority is 18 years.

Emancipation

No statute expressly defines emancipated minor in general or specifies a legal process by which a minor may become emancipated; however, some statutes and court decisions acknowledge emancipation for specific purposes. For example, *Wis. Stat. Ann. § 324.02* (custody and visitation for deployed parents) and *Wis. Stat. Ann. § 48.375* (abortion) define an “emancipated minor” as a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to

reaching the age of majority. And in *Niesen v. Niesen*, 38 *Wis.2d* 599, 603 (1968), the Supreme Court of Wisconsin recognized that marriage and entering into military service have been held to be acts of self-emancipation; the court also opined that there is “no hard-and-fast rule to determine emancipation—much depends upon the circumstances and the intent of him who has the power to effect an emancipation.”

Minor Marriage

Wis. Stat. Ann. § 765.02 provides that a minor age 16 or 17 years may marry with the written consent of the minor’s “parents, guardian, custodian, or parent having the actual care, custody and control of the 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

No statute or case law was found that expressly authorizes minors to consent to health care based on their status. See “Other” section for related laws.

Minor Consent—Services**Abortion**

Abortion is legal in Wisconsin with many restrictions. For up to date information on the status of abortion restrictions and protections in Wisconsin, 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 *Wis. Stat. Ann. § 48.375* provides that an abortion may not be performed on an unmarried, unemancipated minor under age 18 years without the informed written consent of the minor and one parent or

grandparent, aunt, uncle, or sibling age 25 years or older; of one of the minor’s foster parents, if the minor has been placed in a foster home and the minor’s parent has signed a waiver granting the department, a county department, or the foster parent the authority to consent to medical services or treatment on behalf of the minor. The law includes a judicial bypass, and exceptions for medical emergency, documented suicide risk, and reported sexual assault and incest. 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 Wisconsin statute expressly authorizes minors generally to consent for contraception or family planning services. As part of the state's Medicaid program, Badger Care+, [the Family Planning Services Only Program](#) provides people of reproductive age with family planning services and supplies to prevent unplanned pregnancies; services are provided to eligible minors under age 18 years without contacting their parents.

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

Wis. Stat. Ann. § 51.138 provides that a treatment director of an "outpatient mental health treatment" provider may provide "outpatient mental health treatment" to a minor for 30 days without first obtaining informed consent if all of the following criteria are satisfied:

- An emergency situation exists or time and distance requirements preclude obtaining written consent before beginning outpatient mental health treatment, and potential harm will come to the minor or others if treatment is not initiated before written consent is obtained, and
- A reasonable effort has been made to obtain consent from a parent or guardian of the minor before initiating treatment.

During the 30-day treatment period, the treatment director shall either obtain informed, written consent of a parent or guardian of the minor or, if consent is not obtained, file a petition to initiate a review of outpatient mental health treatment of a minor under § 51.14. The section does not allow prescribing of medications or admission of the minor for inpatient treatment without parent consent.

Wis. Stat. Ann. § 51.14 defines "outpatient mental health treatment" for this purpose.

Pregnancy-Related Care

No Wisconsin 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.

Sexually Transmitted Infection/Disease/HIV Care

Wis. Stat. Ann. § 252.11 and Wis. Admin. Code DHS § 145.21 provide that a physician may treat a minor infected with a sexually transmitted disease or examine and diagnose a minor for the presence of a sexually transmitted disease without the consent of the parent or guardian. Wis. Stat.

Ann. § 252.11 provides that "sexually transmitted disease" includes syphilis, gonorrhea, chlamydia and other diseases the department includes by rule.

Wis. Stat. Ann. § 252.15(2m) provides that a health care provider may not subject a person to an HIV test without notifying the person or the person's authorized representative that the person will be subjected to an HIV test unless the person or the person's authorized representative declines the test. If the subject of an HIV test is a minor who is age 14 years or older, a health care provider shall provide the notifications and offer the information to the minor or the minor's authorized representative, and only the minor or the minor's authorized representative may consent to or decline an HIV test. However, a health care provider may subject a person under age 14 to an HIV test without obtaining the consent of the test subject if the provider obtains the consent for the test from the minor's 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

Wis. Stat. Ann. § 51.45(2m) and (10am) provides that except as otherwise provided in § 51.47, a minor may apply for voluntary treatment directly to an approved facility for alcohol abuse and drug dependence, but only for outpatient, follow-up, and prevention and intervention services.

Wis. Stat. Ann. § 51.47 provides that any physician or health care facility may provide preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to minors age 12 or older without obtaining the consent or notifying the parents or guardian. The physician or facility must obtain parent or guardian consent before performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and parent or guardian consent is not readily obtainable. See also OAG 5-81, 1981 Wisc. AG LEXIS 57; 70 Wis. Op. Att'y Gen. 19.

Wis. Stat. Ann. § 51.47 also provides that any physician or health care facility may render those services to a minor under 12 years of age without obtaining the consent of or notifying the minor's parent or guardian, but only if a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age.

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 Records

Wis. Stat. Ann. § 146.82 provides that all patient health care records shall remain confidential and may be released only to the persons designated in § 146.82(2) or to other persons with the informed consent of the patient or of a person authorized by the patient.

Mental Health, Substance Use

Wis. Stat. Ann. § 51.30(5) provides that a minor who is age 14 years or more may consent to the release of confidential alcohol, drug abuse, and mental health information in court or treatment records without the consent of the minor’s parent, guardian, or person in the place of a parent. *Wis. Stat. Ann. § 51.30(5)* provides that a minor who is age 14 years or older has access to the minor’s own court and treatment records.

Sexually Transmitted Disease

Wis. Stat. Ann. § 252.11 provides that “reports, examinations and inspections and all records concerning sexually transmitted diseases are confidential and not open to public inspection, and may not be divulged except as may be necessary for the preservation of the public health, in the course of commitment proceedings under sub. (5), or as provided under [*Wis. Stat. Ann. §§ 938.296(4) or 968.38(4)*].”

Wis. Stat. Ann. § 252.15(3m) provides that when the subject of an HIV test is a minor who is age 14 years or older, only

the minor or the minor’s authorized representative may exercise the test subject’s authority to disclose HIV test results as specified in subsections (a) or (b).

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

Substance Use

Wis. Stat. Ann. § 51.47 provides that when a physician or health care facility provides preventive, diagnostic,

assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to minors age 12 or older without obtaining the consent of the parents or guardian, the health care providers shall notify the parents or guardian of any services rendered as soon as possible. However, in *Wis. Op. Att’y Gen. No. 42-88 (August 26, 1988)*, the Wisconsin Attorney General opined that, the notice provision in § 51.47 only applies to services for which parental consent is necessary or in situations where a minor aged 12 or older has given informed consent to parent notification, and that, except for those services for which parental consent is necessary, a physician or health care facility may only release outpatient or detoxification services information to a parent or guardian with the consent of a minor patient, provided the minor is age 12 or older.

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

Wis. Stat. Ann. § 51.138 provides that for outpatient mental health treatment services provided to a minor without parental consent under this section, the treatment director of an outpatient mental health treatment provider shall obtain the minor’s consent before billing a 3rd party for the services. If the minor does not consent to billing a 3rd party, the minor shall be responsible for paying for the services, which the department shall bill to the minor under § 46.03.

Wis. Stat. Ann. § 51.47 provides that unless consent of the minor’s parent or guardian is required under § 51.47 for services related to substance use care, “the physician or health care facility shall obtain the minor’s consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under [Wis. Stat. Ann.] § 46.03(18(b)).”

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

Emergency Care

Wis. Stat. Ann. § 448.30 provides an exception in emergencies to the physician’s duty to inform the patient about the availability of reasonable alternate medical modes of treatment and about the benefits and risks of these treatments.

Financial Responsibility

Wis. Stat. Ann. § 51.138 provides that when a minor obtains

outpatient mental health treatment on their own consent, “the treatment director of an outpatient mental health treatment provider shall obtain the minor’s consent before billing a 3rd party for the services. If the minor does not consent to billing a 3rd party, the minor shall be responsible for paying for the services, which the department shall bill to the minor under [Wis. Stat. Ann.] § 46.03(18(b)).”

Wis. Stat. Ann. § 51.138(18)(b) provides that “[e]xcept as provided in [Wis. Stat. Ann.] § 46.10(14)(b) and (c), any person receiving services provided or purchased [by certain government departments] and, in the case of a minor, the parents of the person...shall be liable for the services in the amount of the fee established [by the statute]. If a minor receives services without consent of a parent or guardian under [Wis. Stat. Ann.] §§ 51.138 or 51.47, the department or, if applicable, the county department shall base the fee solely on the minor’s ability to pay.”

Wis. Stat. Ann. § 51.47 provides that unless consent of the minor's parent or guardian is required under § 51.47 for services related to substance use care, "the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under [Wis. Stat. Ann.] § 46.03(18(b))."

Gender Affirming Care

There are no restrictions on access to gender affirming care in Wisconsin 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.

Good Faith Reliance/Immunity from Liability

Wis. Stat. Ann. § 51.47 provides that no physician or health care facility rendering minor consent substance use services under § 51.47 is liable solely because of the lack of consent or notification of the minor's parent or guardian.

Wis. Stat. Ann. § 252.11 provides that a physician shall incur no civil liability solely by reason of the lack of consent of the minor's parents or guardian for provision of care related to sexually transmitted disease as authorized by § 252.11.

Resources

Wisconsin Statutes <https://docs.legis.wisconsin.gov/statutes/statutes>

Wisconsin Administrative Code https://docs.legis.wisconsin.gov/code/admin_code

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