

Minors' Rights to Confidential Health Care In Maine: A Practitioner's Resource

A Minor

A minor is a person under the age of 18.



Minors' Consent

As a general rule, Maine law requires a minor who seeks medical treatment to obtain the consent of a parent or guardian. However, as described below, minors who meet specific criteria may consent to *all* medical treatment. In addition, all minors may give consent to certain medical treatments outlined in this card, if the practitioner believes they are capable of giving informed consent.

Minors Who May Consent to ALL Medical Care

If a minor fits one of the following categories, she/he may consent to ALL health care evaluation and treatment without the consent of a parent or guardian:

- The minor has been living separately from the minor's parents or legal guardians for at least 60 days and is independent of parental support.
 - The minor is or was legally married.
 - The minor is or was a member of the Armed Forces of the United States.
 - The minor has been legally emancipated by a court.
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Specific Medical Care for Which ANY Minor May Give Consent:

Contraceptives and Pregnancy Testing

Minors do not need parental consent to receive pregnancy tests or contraceptives, which include birth control pills, patches, injectables and implantables, so long as the physician believes that the minor would "suffer probable health hazards" (including sexually transmitted infections, unintended pregnancy, etc.) if she or he does not receive these services.

Emergency Contraception (EC)

Emergency contraception (also known as the morning-after pill) is a form of contraception that may be used within 120 hours following intercourse. It is intended for situations such as unprotected intercourse, contraceptive failure or sexual assault. For more information on EC, contact the Family Planning Health Center closest to you at 1-877-326-2345. The National EC Hotline (1-888-NOT-2-LATE or www.not-2-late.com) offers additional information on EC options and providers. Minors do not need parental consent to obtain EC.

STIs and HIV

Minors may obtain testing and treatment for sexually transmitted infections, including HIV, without the consent of a parent or guardian.

Maine law requires that anyone who is tested for HIV status receive personal counseling before and after the test. The counseling must include information on the test, such as its reliability and who may be informed of the test results. In addition, the provider must offer the patient specific *written* information concerning HIV. A recently enacted law also requires providers to document the substance of the pre- and post-test counseling in the patient's medical record. It is permissible to use a written consent form for this purpose.

Minors may also obtain anonymous testing for HIV/AIDS at the Department of Human Services-certified anonymous testing sites.

Abortion Services

A minor may consent to an abortion if she does **one** of the following:

1. Provides the physician performing the abortion with her informed written consent and the written consent of a parent or another adult family member (aunt, grandmother, etc.).
2. Provides the physician performing the abortion with her informed written consent and receives abortion counseling. The counseling may be provided by a physician or from an approved counselor, who may be a psychiatrist, a psychologist, a social worker, an ordained clergy member, a physician assistant, a nurse practitioner, a guidance counselor, a registered nurse or a licensed practical nurse.
3. Provides the physician performing the abortion with her informed written consent and the written consent of a judge.

Sexual Assault

A minor may consent to health services associated with a sexual assault forensic examination after a sexual assault. If medical personnel believe that the minor has been sexually assaulted or abused, it must be reported, pursuant to the child abuse reporting law.

Emergency Care

When an attempt to secure consent would result in a delay of treatment and increase the risk to the minor's life or health, a minor may receive health services without the consent of a parent or guardian. In an emergency situation, if the patient is incapacitated or unable to make an informed decision about medical treatment, medical care may be provided without the minor's consent or that of a parent or guardian.

Mental Health and Substance Abuse Care

In general, minors may consent to confidential outpatient counseling and treatment for alcohol, drug, and emotional or psychological problems.

Please Note: In cases where minors give their own consent to treatment for substance abuse, STIs, or collecting evidence of sexual assault *provided in a hospital*, the hospital must notify and obtain the consent of the parent or guardian if hospitalization of the minor continues more than 16 hours.

Communication is Critical

Most young people do involve at least one parent when making health care decisions. However, open communication is not always possible. Some cannot involve their parents because they come from homes where physical violence, sexual abuse or emotional abuse is prevalent. For these and other reasons, Maine law allows minors to receive a number of health services, including confidential reproductive health care, without their parents' permission.

Health Care Providers May Facilitate Communication By:

- Establishing a trusting relationship with both patient and parent and discussing the issue of confidentiality.
- Initiating conversations with adolescents about confidential health care.
- Encouraging the adolescent patient to involve a parent or legal guardian when appropriate.
- Discussing whether and how a minor's parents or legal guardians will be involved in her/his health care.



Confidentiality

Fear of disclosure prevents some minors from seeking services. When young people are assured that providers will respect their privacy and provide confidential care, they are more likely to seek care, especially reproductive health care. Generally, when a minor has the right to consent to treatment or testing, the minor has the same right to confidentiality that adults have.

However, there are circumstances in which confidentiality may not be possible, including:

1. Cases of suspected child abuse or neglect, including sexual abuse.
2. Threats by the minor against self or others.
3. Cases where the provider believes that failure to inform the parent or guardian would seriously jeopardize the health of the minor or would seriously limit the provider's ability to provide medical care.
4. The billing and the health insurance claims process, which may result in the disclosure of confidential information to a minor's parents.

To Help Ensure Confidentiality, Health Care Providers May:

- Ask the minor patient for alternative contact information (address and phone numbers where they can be reached) if the patient does not want to be contacted at home.
- Inform the patient if billing or the insurance claims process may compromise confidentiality; take steps to prevent the inadvertent disclosure of confidential information.
- Discuss insurance, billing, and alternative forms of payment with the minor patient.
- Educate their billing department about minors' rights to confidentiality and be sensitive to the information on bills sent home.

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To Help Ensure Confidentiality ... *continued*

- Investigate ways to create filing and other systems that protect adolescents' confidentiality.
- Seek the permission of the patient prior to releasing medical records of confidential care provided to minors.
- Consult with legal counsel before releasing any medical records that might result in harm to the adolescent patient.

Please Note: This publication is intended as a guide, and is not meant to provide individual legal assistance. Please check with your legal counsel for site-specific clarification.

Developed by:

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