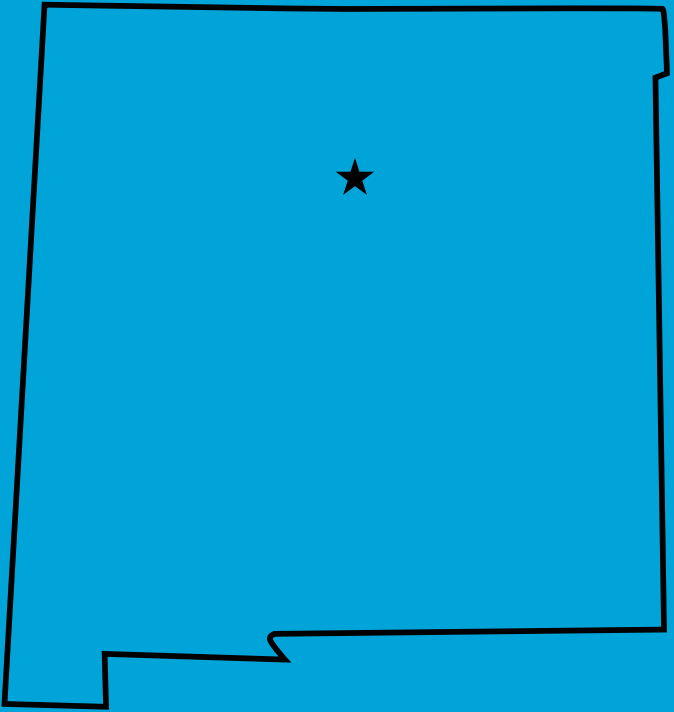


NEW MEXICO

Minors' Access to Confidential Reproductive Healthcare



November 2006

A Minor

A minor is a person under the age of 18.

Informed Consent

As a general rule, New Mexico law requires a minor who seeks medical treatment to obtain the consent of a parent or guardian. Several important exceptions are described below. In the situations outlined in this card, a minor who understands the risks, benefits and proposed alternatives to certain health services may give informed consent without the consent of a parent or guardian.

Emancipated Minors May Consent to Any Medical Care

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

- A minor who is married or has been married.
- A minor who serves in the armed forces.
- A minor who is age 16 or older who has been legally emancipated by a court order, unless the court order specifies otherwise.

Contraceptives

A minor may consent to confidential family planning services, including prescription contraceptives and counseling, without parental consent or notification.

Emergency Contraception (EC)

Minors may obtain and use EC without parental consent or notification. EC (also known as the morning-after pill or Plan B™) is a hormonal form of contraception. Clinicians offer EC up to 120 hours following intercourse; however, **women are urged to take EC as soon as possible to maximize efficacy.** Consistent with a recent FDA decision, Plan B™ will be available "over-the-counter," without a prescription, for individuals age 18 and older, but minors must still obtain a prescription. The National EC Hotline (1-888-NOT-2-LATE or www.not-2-late.com) offers information on EC options and providers. Providers may stock EC in their clinics and may write advance prescriptions for minors. Pharmacists who receive special training may prescribe EC to patients, including minors. Check with individual pharmacies to determine whether any of their pharmacists have authority to prescribe EC to patients.

Testing and Treatment for Pregnancy

A minor may consent to confidential pregnancy testing and prenatal, delivery and postnatal care without parental consent or notification.

Abortion Services

A minor may consent to confidential abortion services without parental notification or consent. A state criminal law that requires parental consent for abortion is not currently being enforced based on an opinion of the New Mexico Attorney General.

Testing and Treatment for Sexually Transmitted Diseases (STDs) and HIV

A minor may consent to testing and treatment for any sexually transmitted disease and HIV. However, New Mexico permits, but does not require, healthcare providers to release STD and HIV test results to parents or guardians, as long as doing so is consistent with the confidentiality policies of their practice setting. Some practice settings have adopted a policy of maintaining the confidentiality of STD and HIV tests for minors.

Emergency Care

When a minor needs immediate hospitalization, medical attention or surgery and a parent or guardian cannot be located after a reasonable effort has been made, another person standing in lieu of the parent or guardian may give consent.

Sexual Assault

Minors who have been sexually assaulted may consent to confidential medical care to the extent that they are allowed to do so as described in other sections of this card.

New Mexico law requires hospitals that provide emergency care for sexual assault victims to provide victims with medically accurate written and oral information about EC and to provide EC to each sexual assault victim who requests it.

Child Abuse

If medical personnel have reasonable suspicion that a minor is an abused or neglected child, then an immediate report must be made to a local law enforcement agency, to the Children, Youth and Families Department office in the county where the minor resides or to a tribal law enforcement or social services agency. Some practice settings have adopted specific policies regarding the reporting of child abuse.

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 healthcare. Generally, when a minor can consent to treatment or testing, healthcare providers may keep this information confidential.

Exceptions to Confidentiality

Confidentiality is not absolute. Confidentiality must be overridden when:

- Child abuse reporting is required, or
- There is a risk of harm to self or others.

Institutional policies adopted consistent with the HIPAA Privacy Rule or other medical records laws may also require that confidentiality be overridden in specific circumstances.

Communication Is Critical

It is usually helpful for a young person to talk with a parent or responsible adult. In fact, most young people do involve at least one parent when making healthcare decisions. Whenever possible, open communication with a parent or guardian should be encouraged.

Open communication with parents is not always possible for young people. Some come from homes where physical violence, sexual abuse or emotional abuse is prevalent. Other parents simply do not support their teenagers in seeking reproductive healthcare. In addition, research shows that the absence of confidentiality discourages minors from seeking reproductive health services. For these and other reasons, minors may legally receive certain health services without being required to tell their parents or obtain their parents' consent.

Facilitating Communication

- Encourage minor patients to involve their parents or guardians when appropriate.
- Establish a trusting relationship with patients and parents and discuss the issue of confidentiality.
- Initiate conversations with minors about when they can expect healthcare to be confidential.
- Discuss whether and how minors' parents or guardians will be involved in their healthcare.
- Write a confidentiality statement and share it with your minor patients and, where appropriate, with their parents.

To Help Protect Confidentiality, Healthcare Providers May:

- Ask the patient for alternative contact information (address and phone numbers where she/he can be reached) if she/he does not want to be contacted at home.
- Inform the patient if billing or insurance claims may compromise confidentiality.
- Notify the insurance company that you treated the minor's confidentially based on his/her own consent and that disclosure of the information would be contrary to the patient's best interest.
- Discuss insurance, billing and alternative forms of payment with the minor patient.
- Educate the billing department about minors' rights to confidentiality and be aware of what information appears on bills sent home.
- Consult with legal counsel before releasing any medical records that might result in harm to minor patients.
- Investigate ways to create filing and other systems that protect minors' confidentiality.
- Explain to parents that minors should be seen confidentially and ask parents to agree to such an arrangement.
- Encourage healthcare institutions to adopt a policy protecting the confidentiality of minors consistent with state laws.

New Mexico

November 2006

PLEASE NOTE: This publication does not provide clinical information. This publication is intended as a guide, and does not provide legal advice. Additionally, new laws may have been adopted related to any or all of the subjects addressed. Please check with your legal counsel for site-specific clarification about confidentiality and disclosure issues, including any policies related to the HIPAA privacy rule.

Developed by Physicians for Reproductive Choice and Health® in collaboration with legal and medical advisors in New Mexico and:

Center for Adolescent Health & the Law

New Mexico Pediatric Society

Pegasus Legal Services for Children

Planned Parenthood of New Mexico

Southwest Women's Law Center

University of New Mexico Department of Obstetrics
and Gynecology

University of New Mexico Department of Family
and Community Medicine

This card was published in November 2006. Updates are available online at www.prch.org.