

MINORS' ACCESS TO CONFIDENTIAL HEALTH CARE IN PENNSYLVANIA

October 2009

Who Can Consent to Health Services

Generally, Pennsylvania law requires the consent of a parent or guardian for the medical treatment of anyone younger than 18 years of age (a “minor”).

However, Pennsylvania law permits a minor to consent to all medical, dental, and other health services, except abortion, if the minor has: (1) graduated from high school, **or** (2) been married, **or** (3) been pregnant.

An **emancipated minor** may consent to all health services including abortion. No other consent is required—a minor who meets one of these criteria enjoys the same rights to consent and confidentiality as an adult patient.

All minors have the ability to consent confidentially to **certain medical services** under Pennsylvania and U.S. law, which are described in detail below.

Confidentiality

Fear of disclosure prevents some minors from seeking health services. When young people are assured that providers will maintain their confidentiality, they are more likely to seek care. Generally the right to consent entitles the patient to confidentiality. When a minor has the right to consent, a provider generally may not disclose the minor's health care information to anyone, including the minor's parents or guardians, without the minor's consent, unless there is an explicit exception in the law that permits or requires the disclosure. These exceptions are noted in each applicable section and explained in “Exceptions to Confidentiality.”

Contraceptives

Minors can consent to confidential contraceptive care and counseling. To locate a clinic where minors can receive low cost or no cost services, call the CHOICE hotline at 1-800-84-TEENS.

Emergency Contraception (EC)

Minors do not need parental consent to obtain emergency contraception (also known as the “morning after pill” or “EC”). EC is a form of contraception and should not be confused with the “abortion pill” (RU-486). EC can be used up to 120 hours following intercourse or sexual assault to prevent pregnancy but should be taken as soon as possible to maximize efficacy.

There are several emergency contraception products. Plan B One-Step® and Next Choice® were approved for over-the-counter status in 2009 for persons ages 17 and older. A prescription for those younger than 17 is still required. Plan B®, the precursor to Plan B One-Step®, is in the process of being phased out.

The prescription requirement for minors younger than 17 is under review and may be changed or eliminated. For the most current status of minors' access to Plan B®, Plan B One-Step®, and Next Choice® without a prescription as well as information on other EC options and providers, see the website www.not-2-late.com.

Testing and Treatment for Pregnancy

All minors have the right to consent to confidential testing for pregnancy, as well as all medical and health services to treat pregnancy except abortion. Although not specified in the law, medical and health services to treat pregnancy include all prenatal care.

Abortion Services

Unless emancipated, a minor generally must obtain the consent of a parent or legal guardian to have an abortion in Pennsylvania. If the unemancipated minor does not wish to seek the permission of a parent or

legal guardian or if the parent or legal guardian will not consent, the minor may seek a court order (known as a judicial bypass) to obtain an abortion. The legal proceeding is kept confidential, and the minor is entitled to have a free, court-appointed attorney with her during the proceeding.

Like adults, minors who have abortions (with parental consent or via judicial bypass) are subject to the other Pennsylvania abortion restrictions, including the 24-hour waiting period. For further information, call the CHOICE hotline at 1-800-84-TEENS or the Women's Law Project at 215-928-9801.

Testing and Treatment for STDs (Including HIV)

A minor may consent to confidential medical and health services to test for or treat STDs (including HIV). Most STDs are reported to the State Health Department.

Minors Who Are Parents

A minor parent may consent to all health services for his or her child.

Drug and Alcohol Treatment

A minor may consent to medical care or counseling related to diagnosis or treatment of drug and/or alcohol abuse. Federal law states that if the treatment program or health services facility receives any federal assistance, which most facilities do, the clinician may not disclose information concerning the treatment or care of the minor without the minor's prior written consent. If the program or facility does not receive any federal assistance, the question of parental notification is governed by Pennsylvania law, which permits, but does not obligate, the clinician to inform the minor's parent or legal guardian about the minor's treatment.

Mental Health—Inpatient Care

A minor age 14 or older may consent to inpatient mental health treatment as long as the consent is knowing and voluntary. If minors ages 14 through 17 are admitted for inpatient care, their parents or guardians must be promptly notified. Once a minor gives consent to inpatient care, a parent or guardian cannot override that consent and remove the minor from care.

Should the minor revoke consent to inpatient care, the parent or guardian may override the minor's decision and continue inpatient treatment upon the recommendation of a physician.

Further, on the recommendation of a physician who has examined a minor 17 years old or younger, the parent or legal guardian may consent to inpatient mental health treatment for the minor without the minor's consent. Once the parent or legal guardian gives consent to inpatient care, the minor cannot override that consent and remove him- or herself from care. However, the law allows a minor to submit a petition objecting to treatment, and the objecting minor is entitled to a hearing within 72 hours.

Mental Health—Outpatient Care

Minors ages 14 and older may consent to outpatient mental health examination and treatment without parental consent or notice (see "Exceptions to Confidentiality"). A parent or legal guardian may also consent to outpatient mental health examination and treatment on behalf of a minor without the minor's consent. Neither the parent nor the minor may override the other's consent. For outpatient care, there is no process for a minor to object to treatment, unlike inpatient care.

Emergency Care

When an attempt to secure consent would result in a delay in treatment and would increase the risk to the minor patient's life or health, the minor may receive health services without the prior consent of a parent or legal guardian.

This includes medical treatment and forensic examination following sexual assault (see "Emergency Care Following Sexual Assault").

Emergency Care Following Sexual Assault

Minors may consent to all treatment following sexual assault. However, mandated reporting may compromise patient confidentiality (see “Exceptions to Confidentiality”).

A minor cannot be compelled to undergo forensic evidence collection (“rape kit”) by her parent, guardian, or police.

Exceptions to Confidentiality

The law occasionally permits or requires the disclosure of a minor’s treatment information without the minor’s consent:

- Parents or guardians receive notice when minors between the ages of 14 and 17 admit themselves for **inpatient mental health treatment**.
- If the minor’s parent or guardian consents to inpatient mental health treatment, the parent or guardian can authorize the **release of past records** to the minor’s current mental health provider and, in some cases, to the minor’s primary care provider.
- If a physician, intern, or resident, or any person conducting, managing, or in charge of any hospital or pharmacy, treats a patient for **injuries resulting from a crime**, including a sex crime, that person must report the patient’s injuries to the police.
- Health care providers in Pennsylvania are **mandatory reporters of child abuse** and must report any suspected abuse to Childline. The health care provider’s duty to report includes *all* acts of child abuse, regardless whether they were committed by a “perpetrator.” If a health care provider has reasonable cause to suspect that a child under the care, supervision, guidance, or training of that person or of an agency, institution, organization, or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a “perpetrator,” the health care provider must report the suspected child abuse to Childline at 800-932-0313. For detailed information about reporting requirements, visit www.jlc.org.

This publication is intended as a guide and is not meant to provide legal assistance in any particular situation. Additionally, the law in this area changes often. Please check with your legal counsel for situation specific clarification, including any new policies related to the HIPAA privacy rule.

Developed by:

The Children’s Hospital of Philadelphia
Children’s Hospital of Pittsburgh
Clara Bell Duvall Reproductive Freedom Project, ACLU of Pennsylvania
Juvenile Law Center
Ohio Valley Society for Adolescent Medicine
Physicians for Reproductive Choice and Health (PRCH)

To order cards or if you have questions or comments, please contact the Clara Bell Duvall Reproductive Freedom Project, ACLU-PA at 215-592-1513, x115, email duvall@aclupa.org or visit www.aclupa.org/duvall.