

Wisconsin Minors' Access to Confidential Reproductive Healthcare

November 2008

A Minor

A minor is a person younger than age 18.¹

Confidentiality

Fear of disclosure prevents some minors from seeking healthcare services, but when young people are assured that their healthcare providers will respect their privacy and keep their medical records confidential, they are more likely to seek out all types of care, including reproductive healthcare services. **Under Wisconsin law, healthcare providers must have their minor patients' permission in order to inform a parent or guardian that the minor child has been diagnosed with or treated for pregnancy, an STD, drug abuse, or alcohol abuse.**

Protecting Confidentiality

While it is ideal for a minor to involve a parent or guardian in making reproductive healthcare decisions, open communication may not always be possible for all young people. Some teens come from homes in which emotional abuse, sexual abuse, or physical violence is prevalent. Other teens have parents who do not support them in seeking reproductive healthcare. For these reasons and others, Wisconsin law requires healthcare providers to keep patients' reproductive health information confidential and makes no distinction on the basis of age.² To help protect confidentiality, healthcare providers can

- explain to parents that minors should be seen confidentially and ask parents to agree to such an arrangement
- ask the patient for alternative contact information (address and phone number where he or she can be reached) if the patient does not want to be contacted at home
- discuss insurance, billing, and alternative forms of payment with the minor
- inform the patient if billing or insurance claims could compromise confidentiality
- notify the insurance company that the minor was treated confidentially and that disclosure of the minor's information would be contrary to the patient's best interests
- refer the patient to a site offering confidential services to minors for free or on a sliding-fee scale so that bills are not sent to the minor's home where a breach of confidentiality could occur
- educate the billing department about minors' rights to confidentiality and how bills that include information about services rendered can break confidentiality
- consult with legal counsel before releasing medical records to any person other than the minor patient

Often confidentiality is breached through institutional billing and health insurance claims processes that result in the disclosure of health information to a minor's parents. Providers can work with patients to develop strategies to prevent such disclosure. Most Wisconsin teens who are 15 years and older are eligible for the Family Planning Waiver Program (FPW), a Medicaid initiative that covers selected family planning services and supplies. Under this program, enrolled teens concerned about confidentiality can provide alternate mailing addresses for billing purposes. For more information, call the Recipients Services Hotline at 1-800-362-3002.

Exceptions to Confidentiality

Confidentiality may be broken only under very specific circumstances, such as when a minor patient waives his or her confidentiality, allowing information to be disclosed. A healthcare provider may also break minors' confidentiality to fulfill his or her responsibilities as a "mandatory reporter."³ Healthcare providers and certain other professionals are deemed mandatory reporters and as such, must alert authorities when a minor poses a risk of harm to self or others or when the professional suspects child abuse. Under Wisconsin law, "child abuse" includes any sexual activity or contact involving the minor.⁴ But healthcare professionals providing family planning services are exempt from reporting a

minor's sexual activity and contact, with some exceptions. A healthcare provider must report a minor's sexual activity⁵ or contact if the provider:

- suspects that the sexual contact was with a caregiver⁶
- believes the minor is incapable of consent due to a mental illness⁷
- believes the minor is incapable of consent due to immaturity or a lack of understanding⁸
- suspects the minor was unconscious⁹
- suspects exploitation¹⁰
- suspects that the sexual contact was not voluntary¹¹

In addition to the examples listed above, institutional policies consistent with the HIPAA privacy rule may require a healthcare provider to override confidentiality in specific circumstances.

Unless an institutional policy interferes or any of the circumstances above is present, healthcare providers should take reasonable care to protect the medical information of their minor patients.

Informed Consent

As a general rule, Wisconsin law requires healthcare providers to obtain the consent of a parent or guardian prior to treating a minor, but **there are several important exceptions, including reproductive healthcare services**. Wisconsin law gives minors the right to consent to their reproductive healthcare so that confidentiality is protected. The major pediatric and adolescent medical organizations concur that providing confidential care to teenagers is both developmentally appropriate and clinically essential. It is important to note, though, that the ability to consent does not always mean that care is confidential, as these two concepts are legally distinct. (See "Exceptions to Confidentiality" for instances in which a minor's confidentiality may be breached.)

Minors Who May Consent to Any Medical Treatment¹²

As a general rule, certain minors may consent to any medical treatment based on their emancipation status. A healthcare provider who acts in good faith may rely on the representations of a minor regarding his or her age or status. A minor is considered emancipated if he or she

- is or has ever been married
- has given birth
- has been freed from the care, custody, and control of their parents by the court

Reproductive Healthcare

Family Planning and Contraceptives

Wisconsin and federal law do not require parental consent in order for minors to receive family planning services, and minors are not required to disclose medical records relating to this care. In 1977, the Supreme Court issued a ruling protecting a minor's right to access confidential family planning services. As a result of this decision, clinics supported by Title X funds can provide family planning services to adolescents without the consent of their parents. For a complete listing of family planning clinics in your area, please visit www.wiphrc.org or www.psssst.org.

For non–Title X clinics, Wisconsin law explicitly excludes family planning providers from the mandatory reporting of sexual activity in order to allow young people "to obtain confidential health services."¹³ Therefore, minors in Wisconsin can obtain family planning services, including contraception, without the consent of their parents. (Note that family planning providers are not exempt from mandatory reporting in cases of suspected sexual abuse—see "Exceptions to Confidentiality.")

Intrauterine Devices (IUDs) and Emergency Contraception (EC)

Intrauterine devices and emergency contraception are family planning services. As a result, healthcare professionals may provide IUDs and EC to their minor patients without parental consent.

Minors who are unable to obtain EC confidentially from their regular healthcare providers may do so at any Title X or Title V family planning clinic without parental consent or notification. Although clinicians offer EC up to 120 hours following intercourse, women are urged to take EC as soon as possible to maximize efficacy. In keeping with a 2006 FDA decision, EC is available “over-the-counter” for individuals age 18 or older, but minors still must obtain a prescription from a licensed healthcare provider. The National Emergency Contraception Hotline (1-888-NOT-2-LATE) and Website (www.not-2-late.com) offer information on how to obtain EC.

Pregnancy Testing, Pregnancy-Related Care, Prenatal Care, and Childbirth

Neither Wisconsin law nor federal law requires parental consent in order for minors to receive pregnancy testing, pregnancy-related care, prenatal care, or childbirth services. Moreover, Wisconsin law explicitly recognizes the need to provide confidential pregnancy-related care. Healthcare professionals providing pregnancy testing and obstetric care are excluded from the mandatory sexual activity reporting requirements (unless the provider suspects abuse—see “Exceptions to Confidentiality.”)¹⁴

Abortion Services

Under Wisconsin law, abortion is addressed separately from family planning services. A minor may consent to an abortion only if she meets one of the criteria listed below.

- the written consent of a parent, legal guardian, or adult family member (grandmother, grandfather, aunt, uncle, or sibling) who is at least 25 years old¹⁵
- evidence of a judicial bypass¹⁶
- proof of emancipation¹⁷
- medical emergency¹⁸
- pregnancy is the result of a sexual assault¹⁹ (requires written statement from minor and physician performing abortion has to report)
- suicide risk²⁰ (requires written statement by physician or psychologist)
- caregiver sexual abuse²¹ (requires written statement from minor and physician performing abortion has to report)
- parent or guardian abuse²² (requires written statement from minor and physician performing abortion has to report)

Sexually Transmitted Diseases Testing and Treatment

A minor may consent to STD testing and treatment.²³ In this context, “sexually transmitted disease” means syphilis, gonorrhea, chlamydia, chancroid, genital herpes infection, sexually transmitted pelvic inflammatory disease, or another disease identified by the health department.²⁴

HIV Testing and Treatment

If HIV/AIDS services are funded in full or in part by Title X, minors of any age may consent to receiving them. For services not funded by Title X, state law applies. Although HIV testing is handled differently from other sexually transmitted diseases in Wisconsin, the law protects the right of persons 14 years and older to consent to their own HIV screenings.²⁵ Additionally, the results of these tests must remain confidential for persons 14 years and older.²⁶

While Wisconsin law does not specifically address treating minors for HIV/AIDS, healthcare providers often interpret statutes regarding HIV testing to protect confidential treatment for persons 14 years and older.

Sexual Abuse and Sexual Assault

Any licensed healthcare professional who has reasonable cause to suspect that a minor has been a victim of sexual abuse—including forcible rape, sexual assault, or incest—is required to make a report to law enforcement, child protective services, or the child welfare office. (For more information

about sexual abuse, see “Exceptions to Confidentiality.”) A minor can consent to a forensic medical examination following an assault.

Other Healthcare

Emergency Care

In an emergency situation where the patient and/or parent or guardian is unable to consent to care, consent to healthcare is implied. An emergency situation is one in which it is imminently necessary to provide medical care, and any delay caused by an attempt to obtain consent would jeopardize the life, health, or limb of the minor patient.

Drug and Alcohol Abuse Care

Any minor 12 years old or older may consent to preventive care, diagnostic services, assessment, evaluation, or treatment for drug and/or alcohol abuse if the facility is licensed, approved, or certified by the state.²⁷ Minors under 12 years of age may consent only if a parent or guardian cannot be found. Parental consent is mandatory for all minors if the care for drug and/or alcohol abuse requires

- performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and the consent of the minor’s parent or guardian is not readily obtainable²⁸
- administering controlled substances to the minor (except to detoxify)²⁹
- admitting the minor to an inpatient treatment facility (unless the admission is to detoxify the minor for ingestion of alcohol or drugs)³⁰
- the minor’s period of detoxification to extend beyond 72 hours after admission³¹

Blood Donations

Any person who is 17 years or older may donate blood. Any person who is 16 may donate blood with the consent of a parent.³²

Communication Is Critical

It is usually helpful for a minor to talk to a parent, a guardian, or another responsible adult when making healthcare decisions, and research shows that most young people involve at least one parent or guardian when doing so. Open communication with a parent or guardian should be encouraged—both during the initial decision-making process and throughout the course of medical care—to help the minor patient better understand a particular medical treatment and its risks, benefits, side effects, and alternatives.

Facilitating Communication

- Encourage minor patients to involve their parent or guardian when appropriate.
- Initiate conversations with minors about the issues they can expect to be kept 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 when appropriate, with their parents.

For additional resources about providing confidential health services to minors, please visit Health Professionals for Reproductive Care at www.wihprc.org or Physicians for Reproductive Choice and Health at www.prch.org/arhep.

Please Note: *This publication is intended as a guide and does not provide clinical information or legal advice. Be aware that laws related to any or all of the subjects addressed in this pamphlet may have been added, repealed, or amended since publication. Please check with your legal counsel for site-specific clarification on confidentiality and disclosure issues, including any policies related to the HIPAA privacy rule.*

Developed by:

Physicians for Reproductive Choice and Health
WI Health Professionals for Reproductive Care
WI Alliance for Women's Health

Sponsored by:

ABC for Health
Covering Kids & Families—Wisconsin
Planned Parenthood of Wisconsin
Wisconsin Chapter of the American Academy of Pediatrics
Wisconsin Public Health Association
Wisconsin Section of the American College of Obstetricians and Gynecologists

¹ Wis. Stat. § 990.01.

² Wis. Stat. § 48.981(2m)(a).

³ Wis. Stat. § 48.981(2)(a).

⁴ Wis. Stat. § 48.02 (1)(b).

⁵ Wis. Stat. § 48.981(2m)(c)(4).

⁶ Wis. Stat. § 48.981(2m)(d)(1).

⁷ Wis. Stat. § 48.981(2m)(d)(2).

⁸ Wis. Stat. § 48.981(2m)(d)(3).

⁹ Wis. Stat. § 48.981(2m)(d)(4).

¹⁰ Wis. Stat. § 48.981(2m)(d)(5).

¹¹ Wis. Stat. § 48.981(2m)(d)(5)(e).

¹² Wis. Stat. § 48.375(2)(e).

¹³ Wis. Stat. § 48.981(2m).

¹⁴ Wis. Stat. § 48.981(2m).

¹⁵ Wis. Stat. § 48.375(4)(a)(1).

¹⁶ Wis. Stat. § 48.375 (4)(a)(2)(7).

¹⁷ Wis. Stat. § 48.375 (4)(a)(2)(7).

¹⁸ Wis. Stat. § 48.375(4)(b)(1).

¹⁹ Wis. Stat. § 48.375 (4)(b)(1g).

²⁰ Wis. Stat. § 48.375 (4)(b)(1m).

²¹ Wis. Stat. § 48.375 (4)(b)(2).

²² Wis. Stat. § 48.375 (4)(b)(3).

²³ Wis. Stat. § 252.11(1m).

²⁴ Wis. Stat. § 252.11(1).

²⁵ Wis. Stat. § 252.15(2)(a)(4)(a).

²⁶ Wis. Stat. § 252.15(5)(a)(15).

²⁷ Wis. Stat. § 51.47(1).

²⁸ Wis. Stat. § 51.47(2)(a).

²⁹ Wis. Stat. § 51.47(2)(b).

³⁰ Wis. Stat. § 51.47(2)(c).

³¹ Wis. Stat. § 51.47(2)(d).

³² Wis. Stat. § 146.33.