

CONFIDENTIAL

Contraceptive Services for Adolescents:

*What Health Care Providers Need to Know
About the Law*

**Center for Adolescent Health & the Law
Healthy Teen Network**

Helping Teens Stay Healthy & Safe

Health Care, Birth Control & Services

Confidential contraceptive services are an essential part of comprehensive health care and pregnancy prevention for teens. Some states in the U.S. do not have explicit laws authorizing minors to consent for contraceptive services, causing confusion among teens, parents, and health care providers. Healthy Teen Network and the Center for Adolescent Health & the Law investigated how the provision of confidential contraceptive services to adolescents is affected when a state's laws are unclear.

Healthy Teen Network (HTN) and the Center for Adolescent Health & the Law (CAHL) have developed a brochure summarizing the main points of this document. The brochure is available in print from HTN, info@HealthyTeenNetwork.org, and in electronic form on the websites of HTN at www.HealthyTeenNetwork.org and CAHL at www.cahl.org.

Specific information about the consent laws in each state is available from CAHL and the Guttmacher Institute. CAHL has produced *State Minor Consent Laws: A Summary, Second Edition*, a detailed monograph summarizing the laws in each state. Information about the monograph is available on the Center's website at www.cahl.org. An overview of minor consent laws in the states is available from the Guttmacher Institute at www.guttmacher.org/statecenter/spibs/spib_MACS.pdf.

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Center for Adolescent Health & the Law

The Center for Adolescent Health & the Law (CAHL) is a national nonprofit legal and policy organization that promotes the health of adolescents and their access to comprehensive health care. Center for Adolescent Health & the Law | 310 Kildaire Road, Suite 100 | Chapel Hill, NC 27516 | Phone: 919-968-8850 | Fax: 919-968-8851 | info@cahl.org | www.cahl.org.

Healthy Teen Network

Healthy Teen Network (HTN) is a national membership organization that provides resources and services to professionals working in the field of adolescent reproductive health – specifically teen pregnancy prevention, teen pregnancy, and teen parenting. Healthy Teen Network | 509 2nd Street, NE | Washington, DC 20002 | Phone: 202-547-8814 | Fax: 202-547-8815 | info@HealthyTeenNetwork.org | www.HealthyTeenNetwork.org.

Web Resources

Healthy Teen Network
www.HealthyTeenNetwork.org

Center for Adolescent Health & the Law
www.cahl.org

Guttmacher Institute
www.guttmacher.org

Planned Parenthood Federation of America
www.ppfa.org

Center for Reproductive Rights
www.reprorights.org

ACLU Reproductive Freedom Project
www.aclu.org/reproductiverights

Confidential contraceptive services are an important component of both comprehensive health care for adolescents and teen pregnancy prevention efforts. This has been documented in the findings of research studies, confirmed by the experience of health care professionals, and reflected in the policies of health care professional organizations. Numerous laws at the state and federal level help to ensure adolescents' access to contraceptive services and provide confidentiality protections that facilitate access.

This document provides a brief overview of why confidentiality is important, what can be learned from research findings and from the policies of health care professional organizations, what state and federal laws provide, and what it means when laws are not clear.

IMPORTANCE OF CONFIDENTIAL CONTRACEPTIVE SERVICES

Many adolescents need health care related to sexual health issues such as contraception, pregnancy, or sexually transmitted infections (STIs), as well other sensitive issues such as mental health or substance use. Although a majority of young people share information about these concerns with their parents and other adults in their lives,¹ sometimes adolescents need or want confidential services. Ultimately, when adolescents are discouraged from seeking health care due to concerns that the care will not be confidential, the result can lead to adverse health outcomes and significant social and economic costs.^{2,3} At least two recent studies have estimated the potential increase in pregnancies and STIs—with the likelihood of significant increases in public financial costs—when this occurs.^{4,5}

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FINDINGS FROM RESEARCH

Evidence from research over more than two decades confirms that concerns about privacy can act as an important barrier when adolescents seek health care.^{6,7,8,9,10,11,12}

Particularly with respect to contraceptives and other sexual health services such as STI testing and treatment, the impact of privacy concerns is significant, with many young people indicating they would not use the services if their parents had to be informed but few saying they would stop having sex.^{13,14} Recent research also has confirmed that privacy concerns influence adolescents' choice of health care provider or site,^{15,16} how openly they communicate with health care providers,¹⁷ and their willingness to accept a variety of specific services, including pelvic examinations.^{18,19,20}

SUPPORT FROM HEALTH CARE PROFESSIONAL ORGANIZATIONS

Numerous professional health care organizations have adopted ethical codes, issued organizational policy statements, and developed practice guidelines that affirm the importance of providing confidential care for adolescents.²¹ Many of these organizations—such as the Society for Adolescent Medicine, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists—have identified services related to sexual activity, including contraceptive services, as especially important ones to offer on a confidential basis. A compendium of these policies of professional organizations can be found on the website of the Center for Adolescent Health & the Law at www.cahl.org.

LEGAL SUPPORT FOR CONFIDENTIAL CONTRACEPTIVE SERVICES

Some adolescents are adults—age 18 or older—and others are minors—younger than age 18. Although privacy is an important concern for adolescents of all ages, this overview focuses on the legal considerations in providing confidential contraceptive services for minors. Legal support for

confidential contraceptive services can be found in state laws, including consent and medical records laws; in federal laws, including both funding program requirements and medical privacy laws; and in both federal and state constitutional privacy provisions.

SUPPORT IN STATE LAWS

State laws support the provision of confidential contraceptive services to minors in two ways: they may allow minors to give their own consent for contraceptive services; and they may contain specific protections for the confidentiality of information related to contraceptive services. The confidentiality protections may be found in laws that govern minor consent, medical records, professional licensing, or program funding. The various requirements may be contained in statutes, regulations, court decisions, or a state's constitution.

State Minor Consent Laws

Every state has some “minor consent laws” that allow adolescents under age 18 to give their own consent for health care.²² Some of these laws are based on the *status of the adolescent*—for example, as an emancipated or mature minor, a minor living apart from family, or a minor parent. Other minor consent laws are based on the *services being sought*—such as contraceptive services, diagnosis or treatment of STIs, or substance abuse counseling.

Both the laws that allow specific groups of minors to consent for a broad array of health services and the ones that explicitly authorize minors to give their own consent for family planning, pregnancy prevention, or contraceptives are of great importance in determining minors' access to confidential contraceptive services. It is essential to know what the laws provide in a specific state. Information about each state's laws can be found on the websites of the Center for Adolescent Health & the Law, www.cahl.org, and the Guttmacher Institute, www.guttmacher.org.

Mature Minor Doctrine

The mature minor doctrine has been developed and recognized in court decisions in a number of states.^{23,24} According to the mature minor doctrine, when a minor has the capacity to give informed consent for care and voluntarily gives such consent, and the care is within mainstream medical practice and is not provided in a negligent manner, a health care provider will not be liable for relying on the minor's consent or for not obtaining the consent of a parent for the care. *This doctrine may provide an important basis for minors to consent for their own health care, including contraceptive services, when there is no explicit state statute authorizing them to do so, although when a state's courts have not previously considered the doctrine there is not a guarantee that they will accept it.*

State Confidentiality Protections

Many different types of state laws may provide confidentiality protection when minors receive contraceptive services. Often the minor consent laws include confidentiality protections for information about the contraceptive services minors have received. Some state medical records or medical privacy laws specifically provide confidentiality protection when minors are allowed to consent for their own care. Professional licensing laws sometimes incorporate by reference ethical codes of professional organizations that include confidentiality requirements. It is also important to note that sometimes state laws allow health care professionals the discretion to share information with parents even when minors have been able to consent for the care.

SUPPORT IN FEDERAL LAWS

Federal laws provide important legal protections related to confidential contraceptive care in several ways, through the Title X Family Planning Program, the Medicaid program, and the HIPAA Privacy Rule. Each of these provides protections for adolescents as well as adults.

Title X

Title X provides minors with access to family planning services based on their own consent in sites funded under the federal Title X Family Planning Program.²⁵ This facilitates access for adolescents in every state. However, Title X is especially important in states that do not have explicit protections under state law for confidential contraceptive services for minors or that place limitations on which minors may give their own consent for contraceptive services or on the circumstances in which they may do so.

The Title X statute and regulations require Title X providers to offer confidential family planning services without regard to age. The Title X confidentiality requirements “pre-empt” or take precedence over state law. Therefore, even when state laws do not explicitly authorize minors to consent for contraceptive services or do not provide confidentiality protection when they do allow minors to consent for the services, minors can consent for and receive confidential contraceptive services in Title X funded sites. A list of Title X providers is available at

<http://opa.osophs.dhhs.gov/titlex/ofp-service-grantees.html>.

Medicaid

Medicaid provides health insurance coverage for low-income women and adolescents and includes coverage for “family planning services,” which are one of the benefits that states must make available to most Medicaid-eligible beneficiaries. Medicaid law specifies that family planning services are a covered benefit for sexually active women *and adolescents*.²⁶ Medicaid also includes confidentiality protections.²⁷ This provision of Medicaid applies in any setting where a Medicaid beneficiary receives services. In addition, a significant number of states have implemented, with federal approval, family planning “waivers” that enable them to provide family planning services through their state Medicaid

programs to women and adolescents who would not otherwise be eligible.²⁸

HIPAA Privacy Rule

The HIPAA Privacy Rule contains special provisions that apply to minors.²⁹ Specifically, the Rule provides that when a minor is allowed to consent for health care and does so, the minor is treated as the individual who receives protection under the Privacy Rule. That is also true when there is a confidentiality agreement between the minor and the health care provider to which the minor’s parent has assented.

The HIPAA Privacy Rule contains special provisions regarding the sharing of information with parents.³⁰ On that particular issue, the Rule defers to “state or other applicable law,” which may prohibit, require, or permit disclosure of information to parents, or which may be silent or unclear on the issue. If state or other law prohibits disclosure, then the information may not be disclosed. If state or other law requires disclosure, then the information must be disclosed. If state or other law permits disclosure, then the provider has discretion to determine whether or not to disclose the information. If state or other law is silent or unclear on the issue, then providers have discretion to determine whether or not to grant parents access to information.^{31,32}

CONSTITUTIONAL LAW

For three decades, under decisions of the United States Supreme Court and other courts, the constitutional right of privacy has protected minors as well as adults. This means that minors, like adults, have a constitutionally protected right to decide whether to “bear or beget” a child.³³ The right to choose to use contraception is encompassed within this right,³⁴ and has been extended to minors as well as adults.³⁵ Thus far, no court has decided that minors do not have a constitutionally protected right to choose to use contraception or that parental notification for contraception is required or permissible. Some state constitutions also contain an explicit right of

privacy that protects minors. *The constitutional privacy protection for contraceptive choices can be looked to for additional support in providing confidential contraceptive services to minors, when there is not an explicit statute authorizing minors to consent for such services.*

EXCEPTIONS TO CONFIDENTIALITY REQUIREMENTS

There are a variety of circumstances in which confidentiality protections must be overridden. For example, if a minor is presenting a serious risk of harm to self, including suicidal ideation or homicidal threats, confidentiality cannot be maintained.³⁶ In addition, health care providers are required to report suspicions of child abuse and neglect, including sexual abuse, according to the requirements of their state laws.³⁷ Recently, efforts have been made at the federal and state levels to increase the application of child abuse reporting laws to the consensual activity of minors, as well as to sexual activity involving predators, exploitation, force, duress, or abuse.³⁸ These developments are evolving rapidly and requirements and legal interpretations vary significantly among the states.

WHAT DOES IT MEAN IF A STATE DOES NOT HAVE AN EXPLICIT MINOR CONSENT LAW FOR CONTRACEPTIVE SERVICES?

Even when a state does not have an explicit minor consent law authorizing minors to give their own consent for contraceptive services, that does not necessarily mean contraceptive services cannot or should not be provided to minors based on their own consent, that parental consent must be obtained, or that services cannot be confidential.

There are several different ways in which minors can legally receive confidential contraceptive services in the absence of an

explicit state statute that allows them to give their own consent for these services:

- In Title X funded sites, minors can receive contraceptive services without parental consent or notification.
- Depending on the state, minors may be able to consent for contraceptive services based on their status—if they are married, emancipated, serving in the armed forces, living apart from parents, older than a specified age, or a high school graduate—even if the statute allowing minors who have that status to consent for their own health care does not mention contraceptive services explicitly.
- Minors may be able to receive services based on their own consent under the mature minor doctrine, unless a court in their state has rejected the doctrine.
- The constitutional right of privacy in the United States Constitution has been found to protect minors as well as adults, and extends protection to contraceptive decisions by minors as well as adult women. Some state constitutions also contain an explicit right of privacy.
- Minors may be able to receive confidential contraceptive services if their parent has agreed to allow them to receive confidential care from their physician or other health care provider.

Even so, barriers sometimes stand in the way. Sometimes, legal advisors, health care administrators, risk managers, or health care providers themselves are reluctant to rely on anything other than an explicit state statute. However, it should be noted that diligent searches have not found cases in which health care providers have been held liable for providing contraceptive services to minors without parental consent. Ultimately, therefore, under current laws there is likely to be a legal basis for minors to receive confidential contraceptive services in any state, at least in some settings.

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- ²⁶ 42 U.S.C. § 1396d(a)(4)(C).
- ²⁷ 42 U.S.C. § 1396a(a)(7).
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