



Health Care and Confidentiality of Records for Minors

Prepared by: Emily Hicks, Staff Attorney, and Margit Kelley, Principal Attorney

As a general rule, a health care provider may not treat a minor without the consent of the minor's parent or guardian. Further, a minor generally cannot deny a parent or guardian access to the minor's health records. However, there are several exceptions to both of these rules, which are briefly explained below.

OVERVIEW

The requirement for health care providers to obtain parental consent prior to treating a minor patient generally arises from the duty placed on health care professionals to obtain a patient's informed consent for treatment; under common law, minors are considered incompetent to provide informed consent for medical treatment on their own.² However, minors may consent to their own treatment for certain types of care, including treatment for sexually transmitted diseases (STD), human immunodeficiency virus (HIV) testing, and certain treatment related to abuse of alcohol and other drugs.

Additionally, parents have a legal right to access their children's medical records, subject to some exceptions. This includes, in most cases, records related to treatment that a minor child may legally consent to without parental consent.³ However, a medical provider can refuse to release a minor's records in the case of suspected child abuse, or if the provider has reason to believe releasing the information could endanger the minor.⁴ Unless otherwise noted, for the types of care outlined below, the minor's parent has a right to access the health records related to the care unless either of the above exceptions apply.

STD Testing and Treatment

Under state law, a physician may examine, diagnose, and treat a minor infected with an STD without obtaining the consent of the minor's parent.⁵

HIV Testing

A minor who is 14 years of age or older may consent to HIV testing without the consent of the minor's parents. A minor under the age of 14 requires parental consent for HIV testing. Under state law, the results of an HIV test of a minor who is at least 14 years old are strictly confidential and may only be disclosed to the minor's parent with the minor's permission.⁶

Alcohol and Drug Abuse Treatment

A minor who is at least 12 years old may consent, without parental consent, to outpatient preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs. A physician or facility that provides such care is not required to notify the minor's parent. If a minor is younger than 12 years old, treatment may only be rendered without parental consent if the minor's parent cannot be found or there is no parent with legal custody of the minor.

Additionally, a physician or licensed health care facility may admit a minor, without the consent of the minor's parent, to an inpatient treatment facility to detoxify the minor for ingestion of alcohol or other drugs. If this admission extends beyond 72 hours, the facility must obtain the consent of the minor's parent.⁷

Abortion

Wisconsin law includes various criminal prohibitions against the performance of abortions, including a provision commonly referred to as the state's abortion ban, which was unenforceable under prior U.S. Supreme Court case law. However, in the 2022 decision in *Dobbs v. Jackson Women's Health Organization*, the U.S. Supreme Court overruled the prior case law, making the state's abortion ban enforceable, subject to prosecutorial discretion and a pending court challenge. Within this context, state law provides that a minor may consent to abortion without parental consent if the minor is emancipated, or in cases of emergency, sexual assault, suicide risk, incest, or parental abuse.⁸

Contraceptives

In *Carey v. Population Services Int'l*, the U.S. Supreme Court held that a state may not constitutionally restrict the advertisement, sale, and distribution of contraceptives to individuals of any age. Therefore, under *Carey*, a state may not require parental consent for a minor to access treatment related to contraceptives. However, the Court's reasoning in *Carey* relied heavily on *Roe v. Wade*, which was overturned by the *Dobbs* decision in 2022; therefore, its precedential weight may be questioned in a future case that relies on *Dobbs*.⁹

Mental Health Care

Generally, before a health care provider may treat a minor for mental health concerns, the provider must obtain the consent of the minor's parent. However, if a minor is age 14 or older, both the minor's and the parent's consent are required for inpatient admission to a mental health treatment facility, unless a court approves the admission. Also, minors age 14 or older may access their treatment records. In certain emergency situations, outpatient mental health treatment can be provided to a minor before obtaining a parent's consent, if reasonable efforts are made to obtain parental consent before initiating treatment.¹⁰

METHOD OF ACCESS TO MEDICAL RECORDS

A health care provider may require a patient or parent to submit a written request for access to a medical record, and may charge a fee for copies of the records.¹¹ Additionally, electronic medical records are subject to a health care provider's electronic access policy, which may be more restrictive than the general access to a minor's medical records.

ETHICAL CONSIDERATIONS FOR PHYSICIANS

The American Medical Association (AMA) provides guidance for physicians in providing health care services to minors. It states that a physician has an ethical duty to promote the developing autonomy of a minor patient by "involving" the child in making decisions commensurate with a child's age, maturity, medical experience, and other factors. If a child requests confidential care, a physician is advised to explore the patient's reasons and explain the physician's duties to inform a parent of certain situations.¹²

¹ Throughout this issue brief, references to parents include legal guardians.

² Other states have adopted a "mature minor doctrine," under which a minor who is mature enough to appreciate the importance of making a medical decision may consent to medical care on their own behalf. Wisconsin generally does not recognize the mature minor doctrine.

³ ss. [146.81\(5\)](#) and [146.83\(1c\)](#), Stats. A parent who has been denied physical placement of a minor child does not generally have a right to access the minor's medical or mental health records. [ss. [51.30\(5\)\(bm\)](#) and [146.835](#), Stats.]

⁴ [45 C.F.R.s. 164.502\(g\)\(5\)](#).

⁵ s. [252.11\(1m\)](#), Stats.

⁶ s. [252.15\(2m\)\(c\)](#) and [\(3m\)\(c\)](#), Stats.

⁷ ss. [51.45\(2m\)\(b\)](#) and [\(10\)\(am\)](#) and [51.47\(1\)](#) and [\(2\)](#), Stats., and ss. [DHS 92.05\(1\)\(c\)](#) and [92.06\(2\)](#), Wis. Adm. Code.

⁸ ss. [48.375](#) and [940.04](#), Stats.; and *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ____ (2022).

⁹ *Carey v. Pop. Svcs.*, 431 U.S. 678 (1977).

¹⁰ ss. [51.13\(1\)\(b\)](#), [51.138](#), [51.30\(4\)\(b\)20](#), and [\(5\)\(a\)](#) and [\(b\)](#), and [51.61\(6\)](#), Stats. For a more information, see Legislative Council, *Minor's Right to Refuse Admission to Inpatient Treatment Facility*, Issue Brief (October 2019).

¹¹ ss. [146.81\(2\)](#) and [146.83\(1c\)](#) and [\(3f\)](#), Stats.

¹² AMA Code of Medical Ethics, Opinion 2.2.2, [Confidential Health Care for Minors](#) (July 13, 2022).