



CONSENT FOR CARE AND CONFIDENTIAL HEALTH INFORMATION Issue Brief

Michigan Laws Related to Right of a Minor to Obtain Health Care without Consent or Knowledge of Parents

This document summarizes the rights of minors to consent to various types of health care without the consent or knowledge of their parents¹. It also covers whether the law permits information concerning the minor's health care to be shared with the parent. Though the details of this document apply only in Michigan, the legal provisions likely have counterparts in other states. Lawyers in other states may have developed, or could develop, comparable summaries for their states. You may wish to talk with your attorney, or visit the [Public Health Lawyer Directory](#) to find a public health attorney in your state.

LAWS REGARDING CONSENT TO MEDICAL AND SURGICAL CARE BY MINORS IN GENERAL	IS PARENTAL CONSENT REQUIRED?	IS PARENTAL ACCESS TO THE MINOR'S INFORMATION PERMITTED?
<p>General Rule: A minor is a person 17 years or younger.</p> <p>Emancipation of Minors Act, MCL 722.1; Age of Majority Act, MCL 722.52.</p>	Required.	Yes.
<p>Emancipation/Emancipated Minor</p> <p>Emancipation of Minors Act, MCL 722.1 –722.6</p>	Not required.	No.

1. An emancipation occurs by court order via a petition filed by a minor with the family division of circuit court.
2. An emancipation also occurs by operation of law under any of the following circumstances:
 - When a minor is validly married.
 - When a person reaches the age of 18 years.
 - During the period when the minor is on active duty with the armed forces of the United States.

Emancipation/Emancipated Minor Continued

- For the purposes of consenting to routine, nonsurgical medical care or emergency medical treatment, when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located.
- For the purposes of consenting to his or her own preventive health care or medical care including surgery, dental care or mental health care, except vasectomies or any procedure related to reproduction, during the period when the minor is a prisoner committed to the jurisdiction of the department of corrections and is housed in a state correctional facility; or the period when the minor is a probationer residing in a special alternative incarceration unit.

Homeless Children and Youths

The McKinney-Vento Homeless Assistance Act, PL 100-77, [42 U.S.C. 11431 et seq.](#)

Homeless children are to have access to education and other services for which they are eligible. To the extent services for dental, medical and other such needs are available at school, children experiencing homelessness must have access to them.

Depends on services provided.

McKinney-Vento does not change state law with regard to consent for health services, whether or not the homeless minor is in the custody of a parent or guardian.

Depends on services provided.

McKinney-Vento does not change the applicability of federal or state privacy laws, whether or not the homeless minor is in the custody of a parent or guardian.

Abortion

The Parental Rights Restoration Act, [MCL 722.901 – 722.909](#)

Required.

- Written consent of minor and one parent/legal guardian or a judicial waiver (court order) of parental consent from probate court.
- Minors also must comply with the 24-hour waiting period prior to an abortion.

Yes, unless a court has issued an order waiving parental consent.**Birth Control**

- There are no specific MI statutes on this issue; this is a Federal Constitutional "right of privacy."
 - Federal Constitutional "right of privacy" limits state restrictions on sale/distribution of contraceptives. *Carey v. Population Services Int'l*, 431 US 678 (1977)
 - Parents have no constitutional right to be notified that their child is seeking or has obtained contraceptives. *Doe v Irwin*, 615 F2d 1162 (CA 6, 1980)
- Title X Agencies: Family planning agencies funded under Title X of the Public Health Service Act must provide family planning and related services without regard to age or marital status, [42 CFR 59.5](#).
- Other federally funded services might require that minors be provided with services and protect their health information. For example, states that receive federal funding for Medicaid (Title XIX) must (1) cover family planning services and supplies furnished to eligible individuals of child-bearing age, including minors who can be considered to be sexually active who desire such services and supplies and (2) develop safeguards to protect the privacy of individuals' information. [42 USC § 1396d\(a\)\(4\)\(c\)](#), [42 USC § 1396a\(a\)\(7\)](#).

Provider discretion applies for providers not funded by Title X or Title XIX.

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Parental consent not required for services provided by Title X funded agencies. See section on "Title X agencies."

Access not permitted when services provided by Title X funded agencies. See section on "Title X agencies."

LAWS REGARDING CONSENT TO MEDICAL AND SURGICAL CARE BY HEALTH SERVICE TYPE

IS PARENTAL CONSENT REQUIRED?

IS PARENTAL ACCESS TO THE MINOR'S INFORMATION PERMITTED?

- Emergency contraception: U.S. Food and Drug Administration has [approved](#) the use of Plan B One-Step (levonorgestrel) as a nonprescription (over the counter) product for all women of child-bearing potential.

Not required.

No.
Generally, pharmacies are covered by the HIPAA Privacy regulations, which would prohibit access.

Emergency Care

- There are no specific MI statutes on this issue. Case law indicates that parent or guardian consent is required; however, parental consent can be implied for emergency care if actual consent cannot be obtained. *Zoski v Gaines*, 271 Mich 1 (1935); *Franklyn v Peabody*, 249 Mich 363 (1930); *Banks v Wittenberg*, 82 Mich App 274 (1978).
- Governor has power to issue executive orders and directives, which could allow prophylaxis or medical care to an unaccompanied minor during a declared emergency or disaster under Emergency Management Act, [MCL 30.401 et seq.](#)

Required, other than life-threatening circumstances, immediate medical attention needed, and parents cannot be located.

Potential for Governor to waive consent requirements that interfere with response to an emergency or disaster.

Yes.

Immunizations

Michigan's communicable disease rules mandate immunizing children against specified diseases and infections, [R 325.176](#). However, immunization requirements do not eliminate parental consent requirement.

Generally required.

For exceptions, see sections on "*Title X agencies*" and on "*Prenatal and Pregnancy-Related Health Care.*"

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Mental Health – Inpatient Care

Mental Health Code, Chapter 4A, [MCL 330.1498a-330.1498t](#)

- Parents may admit for inpatient care.
- Minor may request inpatient care if 14 years or older, but parent must consent.
- Absent consent, hospital may seek court order for admission if in best interest of child.

Required.

- A minor of any age may be hospitalized for mental health reasons if a parent/legal guardian or agency requests.
- A minor of 14 years or older who has been hospitalized may object to hospitalization and obtain court review.
- A minor 14 years or older may request hospitalization, but hospital must contact parents to obtain consent.
- For admission, minor must be found suitable for hospitalization. Suitability shall not be based solely on one or more of the following: epilepsy; developmental delay; brief periods of intoxication; juvenile offenses; or sexual, religious or political activity.

Yes.

Mental Health – Outpatient Care

Mental Health Code, [MCL 330.1707](#)

Minor may consent to limited outpatient care if 14 years or older.

Not required.

A minor age 14 or older may request and receive up to 12 outpatient sessions or four months of outpatient counseling.

Provider discretion applies.

Information may be given to parent, guardian or person in loco parentis for a compelling reason based on a substantial probability of harm to the minor or to another individual; mental health professional must notify minor of his/her intent to inform parent.

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Prenatal and Pregnancy-Related Health Care

Public Health Code, [MCL 333.9132](#)

Minor may consent to maintain life and preserve health of the minor or the minor's child or fetus.

Not required.

- The consent of any other person, including the father of the baby or spouse, parent, guardian or person in loco parentis, is not necessary to authorize health care to a minor or to a child of a minor.
- "Health care" refers to treatment or services intended to maintain the life and improve the health of both the minor and the minor's child or fetus.
- At the initial visit permission must be requested of the patient to contact her parents for any additional medical information that may be necessary or helpful.
- See section on "*Title X agencies*" if services provided to minor by Title X funded agency.

Provider Discretion Applies.

- Before providing care, the patient must be informed that notification may take place.
- For medical reasons information may be given to or withheld from spouse, parent, guardian or person in loco parentis without consent of the minor and notwithstanding her express refusal to the providing of the information.

Access not permitted when services provided to minor by Title X funded agency. See section on "*Title X agencies*."

Provision of Health Care for a Child of the Minor

Public Health Code, [MCL 333.9132](#)

Minor may consent to maintain life and preserve health of the minor or the minor's child or fetus.

- The minor mother shall consent to care for her child.
- The consent of any other person, including the father of the baby or spouse, parent, guardian or foster parent, is not necessary to authorize health care to a child of a minor.

Minor Mother.

See above regarding prenatal and pregnancy-related care.

Substance Use Disorder Services

Mental Health Code, [MCL 330.1264](#)

Minor may consent

Not required.

Provider discretion applies.

For medical reasons information as to the treatment given or needed, may be given to or withheld from the spouse, parent, guardian or person in loco parentis without consent of the minor even if the minor expressly refuses to consent to disclosure of the information.

Title X Agencies

Title X of the Public Health Service Act funds agencies to provide services to promote the reproductive and general health care of the family planning client population, [42 USC § 300 et seq.](#); [42 CFR Part 59](#). For information on required and related health services, go to www.michigan.gov/familyplanning.

Funded agencies must provide services without regard to age or marital status, [42 CFR 59.5](#).

Not required.

- Minors may obtain services from a Title X agency without parental consent.
- Title X Agencies: To the extent practical, funded agencies shall encourage minors to include their families, however, this is not mandatory in order to obtain services, [42 USC §300\(a\)](#).

No.

Title X Agencies: Parental access to minor's information not permitted without the minor's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality, [42 CFR 59.11](#).

Sexually Transmitted Infection (STI) and HIV

Public Health Code, [MCL 333.5127](#), [MCL 333.5133](#) and [MCL 722.623](#).

- Minor may consent to medical or surgical care for diagnoses and treatment of an STI or HIV.
- MCL 333.5127 does not apply to medical care to *prevent* an STI disease, such as a vaccine.
- Reportable as reasonable cause to suspect child abuse or neglect if pregnancy of a child less than 12 years of age.
- Reportable as reasonable cause to suspect child abuse or neglect if an STI is present in a child who is over 1 month of age but less than 12 years of age.

Not required for diagnosis or treatment. Also not required for medical care to prevent sexually transmitted infection or HIV (e.g. vaccine) if services provided by Title X funded agency. See section on "*Title X agencies*."

Provider discretion applies as to the treatment given or needed.

For medical reasons information as to the treatment given or needed, may be given to or withheld from the spouse, parent, guardian or person in loco parentis without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

Access not permitted when services provided to minor by Title X funded agency. See section on "*Title X agencies*."

Other Laws Related to Minors' Right to Privacy Regarding Health Information**Reporting of Communicable and Other Diseases, Disabilities and Conditions**

Public Health Code, [MCL 333.5111](#) and Communicable Disease Rules, [R 325.171](#) *et seq.*

- Requires physicians and laboratories and permits other health care providers to report designated communicable and other diseases, disabilities and conditions to the local health department or the Michigan Disease Surveillance System.
- Information to be provided includes individually identifiable information.

- See https://www.michigan.gov/documents/mdch/Reportable_Diseases_Michigan_by_Pathogen_478489_7.pdf for 2016 list of reportable diseases, disabilities and conditions.
- Health departments required to protect confidentiality of individuals' information regarding HIV/AIDS. Information may be disclosed in limited circumstances, such as to protect the health of an individual, to prevent further transmission of HIV and to diagnose and care for a patient, [MCL 333.5131](#)
- Health departments required to protect medical and epidemiological information that identifies an individual. Information may be disclosed if health officer determines disclosure is necessary to protect the public health, [MCL 333.5111\(3\)](#); [R 325.181](#).

Reporting of Abuse or Neglect

Child Protection Law, [MCL 722.621](#) *et seq.*

The following individuals are required to report suspected "child abuse or neglect" to Child Protective Services:

Audiologists	Nurses	Physician's assistants
Certain DHHS employees	Medical examiners	Psychologists
Dentists	Members of the clergy	Registered social service technicians
Friend of the Court professionals	Licensed professional counselors	School administrators
Law enforcement officers	Physicians	School counselors
Licensed bachelor's social workers	Marriage and family therapists	Social service technicians
Licensed emergency medical care providers	Regulated child care providers	Social workers
Licensed master's social workers	Registered dental hygienists	Teachers

- "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through non-accidental physical or mental injury, sexual abuse, sexual exploitation or maltreatment, by a parent, a legal guardian or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide or a member of the clergy.
- "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian or any other person responsible for the child's health or welfare that occurs through either of the following:
 - (i) Negligent treatment, including the failure to provide adequate food, clothing, shelter or medical care.
 - (ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.
- Sexual activity that is illegal under criminal sexual conduct statute may or may not be reportable. Look at whether the actor is a person responsible for the child's welfare or other individual identified by law. See *Peo v Beardasley*, 263 Mich App 408 (2004).
- Pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred and must be reported.

Medical Records Access Act, [MCL 333.26261-MCL 333.26271](#)

Provides for and regulates access to and disclosure of medical records.

- Under this act, a minor's parent, guardian or person acting in loco parentis has the right to review and obtain a copy of the minor's medical record, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this act with respect to those medical records relating to that care.

HIPAA Privacy Regulations, 45 CFR Parts [160](#) and [164](#)

- Apply to most health care providers
- Establish minimum national privacy standards
- Establish right of patients to access their own health information

Under these regulations, generally, a parent, guardian or other person authorized by state law to consent to the minor's health care, has access to the minor's health information. Exceptions:

- If minor has right to consent to health care under state or other law, minor has exclusive right to control access to health information relating to that care.
- If another person authorized by law consents to the health care service, then parent has no right of access to health information concerning that service.
- When parent agrees to a confidential relationship between provider and minor, then parent has no right of access to health information concerning that service.
- Provider may refuse to provide parent with access in situations of domestic violence, abuse or neglect or where minor could be endangered.
- Provider may disclose health information when required by state law, also in situations of imminent threat to the health and safety of the minor, another person or the public.

[45 CFR 164.502\(g\)](#); [45 CFR 164.512](#)

Laws Available Online

Michigan Statutes:

www.legislature.mi.gov

Michigan Administrative Rules:

http://www.michigan.gov/lara/0,1607,7-154-10576_35738_5698---,00.html

Federal Statutes:

<http://uscode.house.gov/search/criteria.shtml>

Federal Regulations:

<http://www.ecfr.gov/>

¹ "Parent" is used throughout this document for brevity. It is meant to include guardians or other legal representatives of the minor who are authorized by law to make decisions or act on behalf of the minor.

SUPPORTERS



Robert Wood Johnson Foundation

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

This document was developed by Denise Chrysler, J.D., director for the Network for Public Health Law- Mid-States Region at the University of Michigan School of Public Health, while employed by the Michigan Department of Community Health. Thank you to MDCH for its permission to update and make this fact sheet available. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.