

NEW HAMPSHIRE

Minor Consent and Confidentiality

A Compendium of State and Federal Laws

National Center
for Youth Law

teenhealthlaw.org/compendium

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National Center for Youth Law

The National Center for Youth Law (NCYL) is a national, non-profit advocacy organization that has fought to protect the rights of children and youth for more than fifty years. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance.

What this compendium is:

This is a compendium of laws that may be relevant when minors wish to access certain types of sensitive health care and/or wish to access care on their own consent. Each state compendium begins with a chart entitled “quick guide.” The topics listed in the quick guide represent the categories of laws most frequently identified across all states. A circle next to a particular category signifies that a relevant state or federal law was found. Where a law was found, those laws are described in the “summary” section. Each state’s compendium ends with a list of resources, including links to a series of Appendices that delve deeper into key topics.

What this compendium is not:

This is not a comprehensive guide to all consent, confidentiality, and disclosure laws in any state. For example, the compendium does not include all laws that allow or require parents or persons acting *in loco parentis* to consent to care. Nor does it summarize disclosure laws that may allow or require disclosure of health information for mandated child abuse or public health reporting.

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Disclaimer

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NEW HAMPSHIRE

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Quick Guide

See glossary for explanation of categories and definitions of terms.

General

- S** Age of Majority
- S** Emancipation
- S** Minor Marriage

Minor Consent to Health Care—Services

- S** Abortion³
- Emergency Care
- F** Family Planning/Contraceptives
- S** Outpatient Mental Health Care
- F** Pregnancy-Related Care
- S** Reportable, Communicable, Infectious Disease Care
- Sexual Assault Care
- S** **F** Sexually Transmitted Infection/Disease/HIV Care
- S** Substance Use Care

Confidentiality and Disclosure

- S** **F** Confidentiality/Access to Records
- S** **F** Disclosure to Parents/Guardians
- F** Insurance Claims/Billing

Minor Consent to Health Care—Minor's Status

- S** Emancipated Minor
- High School Graduate
- S** Married Minor
- S** Minor, Age or Maturity
- Minor in Armed Forces
- Minor Living Apart from Parent/Guardian
- Minor Parent
- Minor in State Custody
- Pregnant Minor

Other

- S** Constitution
- S** "Conversion Therapy," Ban⁴
- S** Emergency Care
- S** Financial Responsibility
- Gender Affirming Care

Key

- S** State law found⁵
- F** Federal/other law may apply

¹ The information in this chapter represents the state of the law as of May 2024 after a diligent search of statutes, regulations, case law, and guidance.

² This chapter does not address all the consent and confidentiality rules that may apply when minors are in special care situations such as living with a relative, in federal or state custody, or under court jurisdiction (including dependency, delinquency, or immigration custody).

³ This category includes parental involvement laws.

⁴ This category includes statutes or case law that ban conversion therapy or prohibit banning of conversion therapy.

⁵ Symbol indicates law found that either allows providers to offer services without parental consent or explicitly gives minors authority to consent.

General

Age of Majority

N.H. Rev. Stat. Ann. §§ 21-B:1 and 21:44 provide that the age of majority is 18 years.

Emancipation

N.H. Rev. Stat. Ann. §§ 461-B:1 – 461-B:12 establish the procedures for a minor age 16 years or older to petition a court for emancipated status. *N.H. Rev. Stat. Ann. § 461-B:8* specifies the requirements for granting a petition and the rights and responsibilities that a court may include in an order of limited emancipation.

N.H. Rev. Stat. Ann. §§ 21-B:2 and 21-B:3 provide that married minors and minors who have been emancipated by the laws in the state of their prior residence are emancipated.

Minor Marriage

N.H. Rev. Stat. Ann. § 457:5 provides that the age of consent for marriage is age 18 years for both males and females. Any marriage contracted by a person below the age of consent, may in the discretion of the superior court be annulled at the suit of the party who at the time of contracting such marriage was below the age of consent, or at the suit of his or her parent or guardian, unless such party after arriving at such age shall have confirmed the marriage.

N.H. Rev. Stat. Ann. § 457:8 provides that a town clerk shall not issue a marriage certificate to a minor under age 18 unless the court has granted permission for the marriage as described in *N.H. Rev. Stat. Ann. § 457:7*.

N.H. Rev. Stat. Ann. § 457:4 provides that no person under the age of 16 is capable of contracting a valid marriage and marriage by a person under the age of 16 years is null and

Consent to Health Care

Consent for healthcare refers to granting permission for a healthcare service. A healthcare provider generally must obtain consent before providing care. Adults typically consent to their own healthcare, except in cases of legal incapacity. State and federal laws and court decisions help establish who has the legal authority to provide consent on behalf of minors. Typically, federal and state law require parent or guardian consent for a minor's care. However, the laws in every state include exceptions that allow or require others to consent, in addition to or instead of a parent or guardian. These exceptions include exceptions that allow minors to consent to some or all health care based on the minor's "status" (situation in life) and exceptions that allow minors to consent to certain types of care based on the services sought. Sometimes, these laws are written in a way that allows providers to offer services without parental consent; sometimes, they are written in a way that explicitly gives minors the authority to consent. Federal law also allows minors to consent to specific care in some cases. See **Appendix B** for more on consent including the important role of parents and other adults in minors' healthcare.

The following sections summarize the minor consent laws in the state:

Minor Consent—Minor Status**Emancipated Minor**

N.H. Rev. Stat. Ann. § 461-B:8 provides that a court order of limited emancipation may include "the right to consent to medical[,] psychiatric, education, and social services."

Married Minor

No legal provision expressly authorizes a married minor to consent for health care. *N.H. Rev. Stat. Ann. § 21-B:3* provides that a married minor is emancipated, and *N.H. Rev. Stat. Ann. § 461-B:8* provides that a court order of limited emancipation may include "the right to consent to medical[,] psychiatric, education, and social services."

Minor, Age or Maturity

The New Hampshire Supreme Court, in *In re Berg*, 152 N.H. 658 (2005), recognized the mature minor rule in determining whether a minor has the right to assert the psychotherapist-patient privilege, stating "In finding that the child is sufficiently mature to make a sound judgment, the trial judge must consider the following factors: (1) the child's age, intelligence, and maturity; (2) the intensity with which the child advances his preference; and (3) whether the preference is based upon undesirable or improper influences. Based on this finding, the judge may then give substantial weight to the preference of the mature minor to either waive or assert his privilege." 152 N.H. at 666. *Consultation with counsel is essential to determine the*

scope of application for this common law rule and how it intersects with statutory law.

Minor Consent—Services

Abortion

Abortion is legal in New Hampshire, with some restrictions. *N.H. Rev. Stat. Ann. §§ 329.43 – 329:50* prohibit abortion after 24 weeks, with an emergency exception. New Hampshire law includes other restrictions on abortion. *For up to date information on the status of abortion restrictions and protections in New Hampshire, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State](#).*

Minors may obtain an abortion, however *N.H. Rev. Stat. Ann. §§ 132:32 – 132:36* require prior written notice to a parent for an abortion to be performed on an unemancipated minor. The law includes an emergency exception and a judicial bypass procedure. *For more information on judicial bypass, find the “Under Age__” tab on your state’s link in [If When How’s Abortion Laws by State](#).*

For up to date information on the status of abortion restrictions and protections in all 50 states and DC, see [Center for Reproductive Rights, After Roe Fell: Abortion Laws by State](#). See also Appendix C for further information about abortion and abortion restrictions. These laws are changing rapidly, so consultation with counsel is also essential.

Family Planning/ Contraceptives

No statute expressly authorizes minors to consent for contraceptives in New Hampshire.

See Appendix I for information about the Title X Family Planning Program and minor consent for family planning, including contraception services. See Appendix C for discussion of contraception and U.S. Constitution.

Outpatient Mental Health Care

No statute expressly authorizes minors generally to consent for outpatient mental health services. However, *N.H. Rev. Stat. Ann. § 135-C:12* provides that “[a]ny person seeking services from the state mental health services system may apply to an approved community mental health program or to a receiving facility” and “[a]pplication shall be made by, or with the consent of, the person seeking services.... Application for a person under 18 years of age may be made by the person’s parent or legal guardian.”

Pregnancy-Related Care

No statute expressly authorizes minors to consent for pregnancy-related care in New Hampshire.

See Appendix I for information about the Title X Family Planning Program and minor consent for family planning, including certain pregnancy-related care.

Sexually Transmitted Infection/Disease/HIV Care

N.H. Rev. Stat. Ann. § 141-C:18 provides that “any minor age 14 or older may voluntarily consent for medical diagnosis and treatment for sexually transmitted diseases, and a licensed physician may diagnose, treat or prescribe for the treatment of sexually transmitted diseases in a minor age 14 or older without the knowledge or consent of the parent or guardian.”

N.H. Rev. Stat. Ann. § 141-C:15 provides that any person infected with a communicable disease, or reasonably suspected of being infected with a communicable disease, and whose continued presence among the citizenry poses a significant threat to health and life, shall be ordered by the commissioner to report to a health care provider or health care facility to undergo such treatment and care as the commissioner may deem necessary to eliminate the threat.

N.H. Code Admin. R. Ann. He-P 301.03 sets forth procedures for reporting communicable diseases, including HIV.

See Appendix I for information about the Title X Family Planning Program and minor consent for family planning, including STI/STD/HIV care.

Reportable, Communicable, Infectious Disease Care

N.H. Rev. Stat. Ann. § 141-C:15 provides that any person infected with a communicable disease, or reasonably suspected of being infected with a communicable disease, and whose continued presence among the citizenry poses a significant threat to health and life, shall be ordered by the commissioner to report to a health care provider or health care facility to undergo such treatment and care as the commissioner may deem necessary to eliminate the threat.

N.H. Code Admin. R. Ann. He-P 301.03 sets forth procedures for reporting communicable diseases, including HIV.

Substance Use Care

N.H. Rev. Stat. Ann. § 318-B:12-a provides that any minor 12 years of age or older may voluntarily submit himself to treatment for “drug dependency” as defined in *§ 318-B:1(IX)* or any problem related to the use of drugs at any municipal health department, state institution or facility, public or private hospital or clinic, any licensed physician or advanced practice registered nurse practicing within such nurse practitioner’s specialty, or other accredited state or local social welfare agency, without the consent of a parent, guardian, or any other person charged with the care or custody of said minor. Nothing in the statute shall be construed to mean that a minor of sound mind is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof.

Confidentiality & Disclosure

Federal and state laws determine the privacy and confidentiality of medical and health information. Different laws may apply depending on the health services provided, the source of funding, the location of care, the type of provider, and the characteristics of the patient.

One law with overarching importance is the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, a federal regulation that protects the privacy of patient health information held by health care providers who transmit certain information electronically and other “covered entities.” As a general rule, HIPAA prohibits healthcare providers from disclosing protected health information without a signed authorization. HIPAA specifies who must sign an authorization to release information. When minors have consented for their own care, HIPAA says the minors usually must sign the release. HIPAA includes exceptions that allow or require a provider to disclose protected information without an authorization in some circumstances, such as to meet state child abuse reporting requirements. HIPAA also addresses when parents and guardians may access a minor’s health information: It explains how this HIPAA rule intersects with state law and other federal laws regarding parent access, and includes rules for what to do about parent access when state law is silent, and for authorized limitations on access in some situations.

See **Appendix H** for a detailed discussion of HIPAA. Other appendices address other important federal health privacy laws that may apply in addition to, or instead of, HIPAA. See **Appendix I** (Title X, family planning), **Appendix J** (Part 2, substance use), **Appendix K** (FERPA, education records), **Appendix L** (insurance and billing), and **Appendix M** (21st Century Cures Act Information Blocking, EHI).

The following sections summarize selected state laws related to confidentiality, access to records, and disclosure to parents/guardians:

Confidentiality/Access to Records

Medical Records

N.H. Rev. Stat. Ann. § 332-I:1 – I:13 contains provisions related to the protection and disclosure of individual’s confidential health care information. *N.H. Rev. Stat. Ann. § 332-I:1* provides that “patients” are entitled to a copy of their medical record held by a health care provider, upon request. The statute defines “health care provider” for this purpose.

Mental Health

N.H. Rev. Stat. Ann. § 135-C:19-a provides that treatment information regarding a seriously or chronically mentally ill person receiving services from a community mental health program or state facility, may be disclosed to a family member who lives with the person or provides direct care, after the facility has received the written consent of the patient or, if consent cannot be obtained, has notified the patient in writing as to what is being disclosed, the reason for its disclosure, and to whom.

See **Appendix H** for information about minors’ access to and control of their medical information under HIPAA when they have consented to their own care.

Federal laws that may apply in addition to or in lieu of HIPAA and state laws

See **Appendix H** for information about the HIPAA Privacy Rule and disclosure of information to parents and guardians.

See **Appendix K** for information about federal confidentiality protection for education records.

See **Appendix J** for information about federal confidentiality protections for certain substance use treatment records.

See **Appendix I** for information about federal confidentiality protection for information about services delivered using Title X Family Planning Program funding.

See **Appendix M** for information about disclosure of information to parents under the 21st Century Cures Act Information Blocking Rule

Disclosure of Health Information to Parents/Guardians

Mental Health Therapist-Patient Privilege

The New Hampshire Supreme Court in *In re Berg*, 152 N.H. 658 (2005), interprets *N.H. Rev. Stat. Ann. § 330-A:32* to include a therapist-client privilege to cover minor clients, and the privilege may not always be waived by the minor client’s parent. (A father was not allowed to access his minor child’s psychotherapy notes in a custody dispute).

Sexually Transmitted Disease/HIV

N.H. Rev. Stat. Ann. § 141-C:18 provides that any minor age 14 or older may receive voluntary treatment for sexually transmitted diseases without the knowledge of the parent or guardian.

N.H. Rev. Stat. Ann. § 141-F:7 provides that HIV test results shall be disclosed by the physician or the person authorized by the physician to the person who was tested. Such person shall be provided with appropriate counseling at

the time of notification. If the person with an HIV positive test result is under age 18, the physician or the person authorized by the physician may disclose the test results to a parent or legal guardian.

Substance Use

N.H. Rev. Stat. Ann. § 318-B:12-a provides that when a minor consents to treatment for drug dependency, the treating facility, agency or individual shall keep records on the treatment given to minors as provided under this section in the usual and customary manner, but no reports or records or information contained therein shall be discoverable by the state in any criminal prosecution. No such reports or records shall be used for other than rehabilitation, research, or statistical and medical purposes, except upon the written consent of the person examined or treated.

HIPAA rules relevant to disclosure to parents/guardians

See [Appendix H](#) for information about minors' access to and control of their medical information under HIPAA when they have consented to their own care, the HIPAA rule when state law is silent as to parent access, and the HIPAA rule authorizing providers to limit access to records in certain circumstances.

Federal laws that may apply in addition to or in lieu of HIPAA and state laws

See [Appendix H](#) for information about the HIPAA Privacy Rule and disclosure of information to parents and guardians.

See [Appendix K](#) for information about federal confidentiality protection for education records.

See [Appendix J](#) for information about federal confidentiality protections for certain substance use treatment records.

See [Appendix I](#) for information about federal confidentiality protection for information about services delivered using Title X Family Planning Program funding.

See [Appendix M](#) for information about disclosure of information to parents under the 21st Century Cures Act Information Blocking Rule.

Insurance Claims/ Billing

See [Appendix L](#) for information about confidentiality protection in the billing and insurance claims process under the HIPAA Privacy Rule.

Other

This section summarizes a range of laws that may not explicitly address minor consent or disclosure of information but that health care providers often have questions about when minors seek care, especially when they seek care on their own.

Constitution

Article 2-b of Part 1 of the Constitution, effective on December 5, 2018, provides: "An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."

"Conversion Therapy" Ban

For up to date information on the status of statutes or case law that ban conversion therapy for minors, or prohibit state entities from banning conversion therapy for minors in all 50 states and DC, see Movement Advancement Project's ["Equality Maps: Conversion "Therapy" Laws."](#) These laws are changing rapidly so consultation with counsel is essential.

Emergency Care

N.H. Rev. Stat. Ann. § 153-A:18 provides that "no licensed emergency medical care provider or any health professional is subject to civil liability for failure to obtain consent in rendering emergency medical services to any person, regardless of age, where the person is unable to give consent for any reason, including minority status, and

there is no other person reasonably available who is legally authorized to consent for the care, and the provider has acted in good faith knowledge of facts negating consent."

Financial Responsibility

N.H. Rev. Stat. Ann. § 318-B:12-a provides that when minors voluntarily submit themselves to treatment for drug dependency or any problem related to the use of drugs without the consent of a parent or legal guardian, the parent or legal guardian is not liable for payment for services.

Gender Affirming Care

There are no restrictions on minors' access to gender affirming care in New Hampshire at this time.

For up to date information on the status of protections and restrictions on gender affirming care for minors, see [Movement Advancement Project's "Equality Maps: Bans on Best Practice Medical Care for Transgender Youth"](#). These laws are changing rapidly so consultation with counsel is essential.

Resources

New Hampshire Statutes <https://www.gencourt.state.nh.us/rsa/search/default.aspx>

New Hampshire Regulations https://www.gencourt.state.nh.us/rules/about_rules/listagencies.aspx

Appendices

Appendix A. Glossary of Terms

Appendix B. Overview of Consent and Confidentiality When Minors Seek Health Care

Appendix C. Contraception, Abortion, and Pregnancy-Related Care for Minors: Consent and Confidentiality Considerations

Appendix D. Sexually Transmitted Infections, Sexually Transmitted Diseases, and HIV Care for Minors: Consent and Confidentiality Considerations

Appendix E. Mental Health Care for Minors: Consent and Confidentiality Considerations

Appendix F. Substance Use Care for Minors: Consent and Confidentiality Considerations

Appendix G. Gender Affirming Care for Minors: Consent and Confidentiality Considerations

Appendix H. HIPAA Privacy Rule and Confidentiality Implications for Minors' Health Information

Appendix I. Title X Family Planning Program and Family Planning Services for Minors

Appendix J. 42 CFR Part 2 and Confidentiality Implications for Substance Use Care for Minors

Appendix K. FERPA and Confidentiality Implications for School-Based and School-Linked Health Care for Minors

Appendix L. Confidentiality in Health Insurance Claims and Billing

Appendix M. Electronic Health Information, the 21st Century Cures Act, and Confidentiality for Minor Patients

Appendix N. State Law Table: Minor Consent/Access Based on Status

Appendix O. State Law Table: Minor Consent/Access for Specific Services