

that the absence of confidentiality discourages minors from seeking sensitive reproductive health services. For these and other reasons, minors, as a matter of law, may receive certain health services without being required to tell their parents or needing their parents' permission.

Facilitating Communication Is Essential for the Treatment of Minors

- Initiate conversations with minors about their right to confidential healthcare.
- Discuss whether and how a minor's parents or guardians will be involved in her/his healthcare.
- Encourage the minor to involve a parent or guardian when appropriate.
- Establish a trusting relationship with the patient and the parent and discuss the issue of confidentiality.
- Write a confidentiality statement and share it with your minors.

Confidentiality

Fear of disclosure prevents some minors from seeking services. When young people are assured that providers will respect their privacy and provide confidential care, they are more likely to seek care, especially reproductive healthcare. Generally, when a minor can consent to treatment or testing, health providers may keep this information confidential.

However, there are circumstances in which confidentiality may not be possible, including:

- Cases of suspected child abuse or neglect, including sexual abuse.
- The billing and health insurance claims process, which may result in the disclosure of confidential

information to a minor's parents, particularly if a minor is covered under the parent's health insurance. Under Florida law, providers may not reveal that STI/HIV testing or treatment has taken place without permission from the minor, which includes the billing process.

To Help Ensure Confidentiality, Health Care Providers May:

- Ask the minor for alternative contact information (address and phone numbers where she/he can be reached) if the patient does not want to be contacted at home.
- Inform the patient if billing or the insurance claims process may compromise confidentiality.
- Notify the insurance company that you treated the minor confidentially based on his/her own consent and that disclosure of the information would be contrary to the patient's best interests.
- Discuss insurance, billing and alternative forms of payment with the minor.
- Educate the billing department about minors' rights to confidentiality and be sensitive to the information on bills sent home.
- Consult with legal counsel before releasing any medical records that might result in harm to the minor.
- Investigate ways to create filing and other systems that protect adolescents' confidentiality.
- Explain to the parent that the minor should be seen confidentially and ask the parent to agree to such an arrangement.

Resource:

English A, Kenney KE. State Minor Consent Laws: A Summary, 2nd Edition. Chapel Hill, NC: Center for Adolescent Health and the Law, 2003 (order form at www.cahl.org).

Please Note: This publication is intended as a guide, and does not provide individual legal assistance. Please check with your legal counsel for site-specific clarification about confidentiality and disclosure issues, including any new policies related to the HIPAA privacy rule.

Developed by:

Physicians for Reproductive Choice and Health[®]
(PRCH)

American Civil Liberties Union of Florida

Bernard P. Perlmutter, Esq.,
Assistant Professor of Clinical Legal Education,
Director, University of Miami School of Law
Children and Youth Law Clinic
and legal Intern Melissa Schaffer

Supported by:

Florida Chapter of the American
Academy of Pediatrics

Florida Association of Planned Parenthood
Affiliates, Inc.

To order cards or become a member of
Physicians for Reproductive Choice and Health[®]
call 646-366-1890, x24 or visit www.prch.org.

©2005 *Physicians for Reproductive Choice and Health*[®]

Minors' Access to Confidential Reproductive Healthcare in Florida As of September 2005

A Minor

A minor is a person under the age of 18.

Informed Consent

As a general rule, Florida law requires a minor who seeks medical treatment to obtain the consent of a parent or guardian. However, there are several important exceptions, which are described below. A minor who understands the risks, benefits and proposed alternatives to certain health services may give informed consent, and need not get the consent of a parent or guardian, as outlined in this card.

Minors Who May Consent to Any Medical Care

If a minor fits one of the following categories, she/he may consent to ALL healthcare evaluation and treatment without the consent of a parent or guardian:

- A minor who is married or has been married.
- A minor age 16 or older who has been legally emancipated by a court.

Specific Medical Care for Which Other Minors May Give Consent:

Contraceptives and Pregnancy Testing

A minor may consent to contraceptive information and services, pregnancy testing and prenatal care if she is married, pregnant or a parent. A minor may also consent to these services if, in the opinion of the physician, her health will be at risk if services are not provided. The physician may keep these services confidential.

Emergency Contraception (EC)

Emergency Contraception (also known as the morning-after pill or Plan B) is a form of contraception, which contains only progesterone. Clinicians have begun offering EC up to 120 hours following intercourse; however, women are urged to take EC as soon as possible to maximize efficacy. The National EC Hotline (1-888-NOT-2-LATE or www.not-2-late.com) offers information on EC options and providers. Providers are encouraged to prescribe EC in advance of unprotected intercourse, as a precaution. Minors do not need parental consent to obtain EC, and confidential services may be provided.

Sexually Transmitted Infections/HIV

Minors may receive confidential testing and treatment for sexually transmitted infections (STIs) and HIV (in Florida, HIV is designated as an STD). Providers may not reveal—either directly or indirectly, such as by sending a bill to a parent or guardian—that testing or treatment has taken place without permission from the minor. Disclosure of positive results may be made to appropriate public officials and agencies, as required by law; in cases of criminal

transmission of HIV; and in medical emergencies when disclosure is necessary to protect the health or life of potentially exposed individuals.

Abortion Services

An abortion may not be performed on a minor until the physician performing the abortion or the referring physician has given at least 48 hours notice to one parent or guardian in person or over the telephone. If this is not possible after a reasonable effort has been made, notice may be given by certified mail. A minor also has the right to seek a court waiver of the parental notice requirement and a free lawyer to help her through the process.

Notice is not required if one of the following is true:

- Notice is waived in writing by a parent or guardian.
- The minor is married.
- The minor has been legally emancipated.
- The minor is a parent.
- A medical emergency (as defined in the Parental Notice of Abortion Act) exists and there is insufficient time to comply with the notification requirements.
- Notice has been waived by a court.

Please Note: Legal efforts are underway to block the new Florida abortion law. As of September 2005, the case had not been decided. While the case is pending, the law is being enforced.

Sexual Assault

Healthcare providers must follow the state's child abuse reporting laws, and are strongly encouraged to seek a social worker's support in cases of sexual assault. Please see sections on Contraceptives and Pregnancy Testing, Emergency Contraception (EC), Sexually Transmitted Infections/HIV, Emergency Care and Mental Health for further clarification.

Emergency Care

A minor who has been injured in an accident or who is suffering from an acute illness may receive emergency health services from a licensed service provider in a hospital or college health service or from emergency personnel without the prior consent of a parent or guardian if the parent cannot be immediately located at home or work and delaying care would endanger the health or physical well-being of the minor. A parent or guardian of the minor must be notified as soon as possible after the emergency care has been given.

Substance Abuse Care

A minor may consent to confidential medical services and counseling related to substance abuse. Parental consent is not required for outpatient treatment. Disclosure of medical records regarding these services requires minor consent.

Mental Health

Healthcare personnel may provide confidential outpatient counseling and treatment to minors age 13 and over. Treatment does not include medication and other somatic treatments, aversive stimuli or substantial deprivation. Parental consent is required only when a minor makes more than two outpatient visits within a one-week period.

Minor Foster Care Patients

A minor in foster care generally may consent to confidential reproductive healthcare on the same basis as any other minor. Parental or guardian rights exist unless they have been legally terminated. As long as parental rights have not been terminated, parents or guardians retain the ability to consent to healthcare for their children in foster care, although in specific circumstances the court or the Department of Children and Families may also consent. (In any situation in which a minor in foster care wishes to obtain an abortion, specific legal advice should be sought.)

Incarcerated Minors

A minor who is prosecuted as an adult and is confined in a state correctional institution is considered emancipated for the purpose of consenting to medical treatment, except in cases of abortion and sterilization. Minors who are not prosecuted as adults are subject to the information outlined in this card.

Communication is Critical

It is usually helpful for a young person to talk with a parent or responsible adult when making healthcare decisions. In fact, most young people do involve at least one parent when making healthcare decisions. Whenever possible, open communication with a parent or guardian should be encouraged, both in making the initial decision and in having their ongoing support during and after medical treatment.

However, open communication with parents is not always possible for young people. Some cannot involve their parents because they come from homes where physical violence, sexual abuse or emotional abuse is prevalent. Other parents simply do not support their teenagers in seeking reproductive healthcare. In addition, research shows