

Understanding Minor Consent and Confidentiality in Health Care in Oregon



Oregon
Health
Authority

PUBLIC HEALTH DIVISION
Adolescent and School Health Unit

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Not a legal document.

This resource is intended to provide basic information about minors’ ability to consent to health care services, as well as how health care information is treated in Oregon. The information in this guide summarizes and references, to the best of our understanding, federal laws and Oregon state laws (e.g., Oregon Revised Statutes or ORS), and not those of other states. To find the most current versions of these laws, refer to the links provided throughout the publication. It is not intended to be a legal document or a substitute for legal advice or direction on specific client or health care provider questions related to the topics covered in this publication. The document also does not attempt to address other physician “best practices,” recommended standards of care or institutional policies related to client decision-making.

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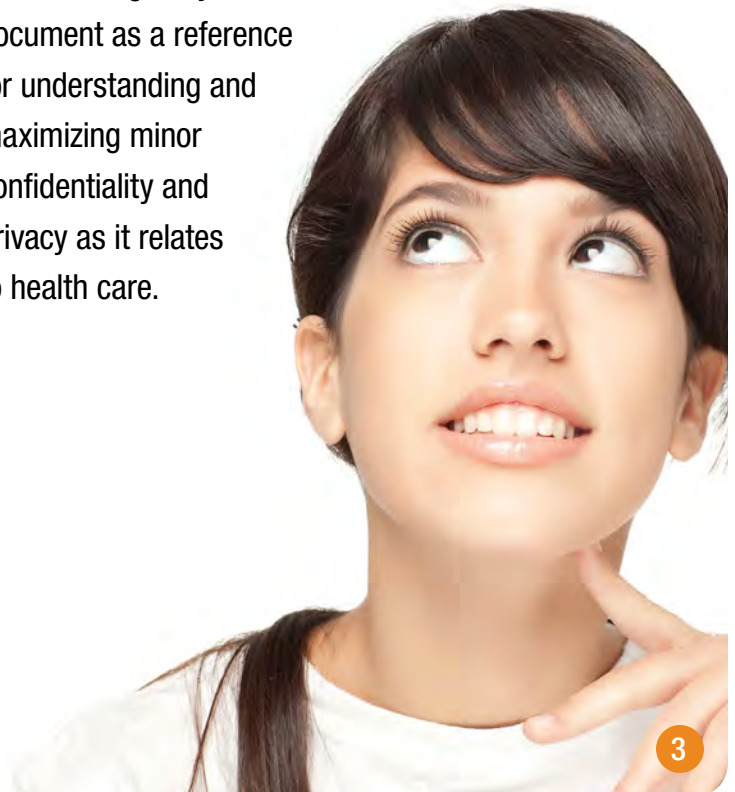
When youth feel safe and supported in their health care needs and choices, they have better health outcomes. For some youth, this means having a parent or guardian involved in all of their health care. Other youth may benefit from receiving confidential services for some or all of their health care. Adults will want to be aware of minors' consent rights in order to support good communication with the youth in their lives.

The process to ensure health care access, confidentiality and privacy can be quite complex when it pertains to minors (people under age 18). Health care providers must navigate: (1) which services a minor can obtain without parental/guardian consent; (2) when a parent/guardian can access a minor's health information; and (3) when a minor's consent must be obtained before the provider can share the minor's health information.

State statutes, federal laws and regulations provide a complicated patchwork of requirements that may be challenging to interpret and implement. The complexities around minor consent and confidentiality can be compounded by the minors' medical situation, inability to pay for their own health care, or a variety of other factors. Unfortunately, no single rule can be applied to all situations. However, a good place to start is with a resource like this document that compiles requirements regarding minors' consent and confidentiality in health care settings.

This resource is geared toward providers in clinical settings, however parents/guardians, persons working with youth, and minors may benefit from the information shared as well. This resource provides limited information about minor consent and confidentiality in the school health setting. Great care has been taken to present accurate information that is as clear as possible with citations to the entire text of the law or regulation.

We encourage anyone to use this document as a reference for understanding and maximizing minor confidentiality and privacy as it relates to health care.



Who is considered a minor and why does this matter?

Under Oregon law, anyone under the age of 18 is considered a minor¹ and anyone 18 and over is considered an adult.² However, if a minor is legally married or has been emancipated by the courts, they are treated as adults in most circumstances.^{3, 4}

In general, a minor's age determines whether they can access health care services independently or if

parent/guardian consent is required. Some services a minor accesses independently can be kept confidential, while other services cannot (this is explained in more detail below). Understanding the parameters of minor consent and confidentiality can be helpful information to plan the most appropriate health services for children and youth.

1. ORS 419B.550 [definition of minor]
2. ORS 109.510 [age of majority]
3. ORS 419B.552 [emancipation of a minor]
4. ORS 419B.550 through 419B.558 [juvenile code]

Minor

Any person under the age of 18



Consent

Understanding consent for health care services

What is consent?



Consent is an acknowledgement of any or all of the following:

- The patient understands the treatment they will receive.
- The patient authorizes the treatment.
- The patient understands how private information will be shared.

All consent should be **informed consent**.⁵ Informed consent for health services should be verbal or in writing and include:

- A description of the treatment the patient will receive;
- A description of alternative treatments; and
- A description of any risks involved with the treatment.

Common health services and consent

Although adults may support minors in making health care decisions, there can be times when a minor

does not need or want adult involvement or may not have a trusted adult to help them.

It should be noted that Oregon law protects providers from civil liability when a diagnosis or treatment is provided to an authorized minor without the consent of the parent or legal guardian.⁶

Below is a brief (not exhaustive) list of common services and their consenting requirements in Oregon

Medical and dental services ([ORS 109.640](#))

Minors who are 15 years and older can consent to medical and dental services administered by a licensed provider without parental/guardian consent (for more information and a list of providers, see [ORS 109.640](#)). This includes medical, dental, optometric (eye care) and surgical diagnosis and treatment. This includes services such as:

- Hospital care
- Treatment for illnesses or injuries (colds, sprained ankle)
- Adolescent well-visits (routine check-ups, exams)
- Immunizations, including COVID-19 vaccination(s)
- Sports or athletic camp physicals
- Dental visits (check-ups, cleanings, fillings)
- X-ray service
- Emergency room visits
- Vision care (except for the first-time contact lens visit)

5. ORS 677.097 [procedure to obtain informed consent]

6. ORS 109.685 [immunity from civil liability for person providing treatment or diagnosis]

Mental health, drug, or alcohol treatment ([ORS 109.675](#))



A minor who is 14 years or older may access outpatient mental health, drug, or alcohol diagnosis or treatment (except for methadone) without parental/guardian consent, if those services are administered by a licensed provider listed in [ORS 109.675](#). These services may include:

- Help from a psychiatrist or psychologist
- Mental health therapy from a counselor, therapist, or social worker
- Treatment for drug or alcohol use

If diagnosis or treatment services are provided to a minor without the consent of their parent/guardian, the parent/guardian is not liable for the payment of the services provided.⁷

Details regarding disclosure of mental, drug, or alcohol information can be found on page [9](#) and [10](#) of this document.

Family planning/sexual and reproductive health ([ORS 109.610](#), [ORS 109.640](#))



Minors of any age can access birth control information and services as well as testing and treatment for sexually transmitted infections (STIs) including HIV without parental/guardian consent. More information on minor consent to STI testing and treatment can be found [here](#).

7. ORS 109.690 [parent/guardian not liable for payment]

Confidentiality and Privacy

Confidentiality of minor health care services



Patient confidentiality generally means a patient's medical and personal information is kept private, and health care providers must follow legal and ethical standards regarding information sharing. In most cases, information is only shared if the patient agrees to disclose the information. However, providers are permitted or may be required to share health information without consent in limited circumstances. More information about these circumstances can be found on page [9](#) and [10](#) of this document.

Most people, minors included, expect some level of confidentiality when receiving health care services. However, Oregon law says a provider may advise a parent or legal guardian of the minor's care, diagnosis, treatment, or the need for any treatment, without the

consent of the minor.⁸ When a minor consents to health care services, providers are encouraged to use their best clinical judgment in deciding whether to share information with the parent or guardian.⁸

Confidentiality and information sharing practices should be discussed prior to and during the delivery of services. Providers and minor patients should discuss confidentiality practices, as well as the types of information that providers are required to report. Discussing confidentiality and disclosure obligations can create a trusting environment by respecting patient privacy and encourage a minor to seek health care services.

8. ORS 109.650 [disclosure without minor's consent and without liability]

Federal privacy laws: HIPAA and FERPA

When considering how patient confidentiality intersects with minor’s consent, it is important to be aware of two federal privacy laws: the Health Insurance Portability and Accountability Act (HIPAA) and Family Education Rights and Privacy Act (FERPA).

Both of these privacy laws are meant to protect confidential information of individuals in different settings where private information is used. It is important to know what information is considered “protected” under both HIPAA and FERPA when providing and accessing health information (see page [12](#) for links to more information).

What is HIPAA?



HIPAA stands for the Health Insurance Portability and Accountability Act.

HIPAA created national standards to protect a patient’s identifiable information in health records. HIPAA also allows a patient greater access

to their own records. HIPAA governs privacy policies in “covered entities” which generally includes physical and mental health care settings, hospitals, dentists, pharmacies and clinics, including Oregon’s certified school-based health centers (SBHCs).

What is FERPA?

FERPA stands for the Federal Education Rights and Privacy Act. In many ways this federal law establishes privacy protections similar to HIPAA, but FERPA applies to educational records.



FERPA protects the educational record of a student, including both K-12 and higher education settings. The educational record includes the school health record. The school health record typically includes content from health care providers employed or contracted by the school, like a school nurse or licensed counselor. Under FERPA, the educational record, including health records, can be requested by parent(s)/guardian(s) and some school officials. FERPA permits the parent/guardian to access the educational record without student consent until a student is 18 or older.

Intersection of HIPAA and FERPA in schools

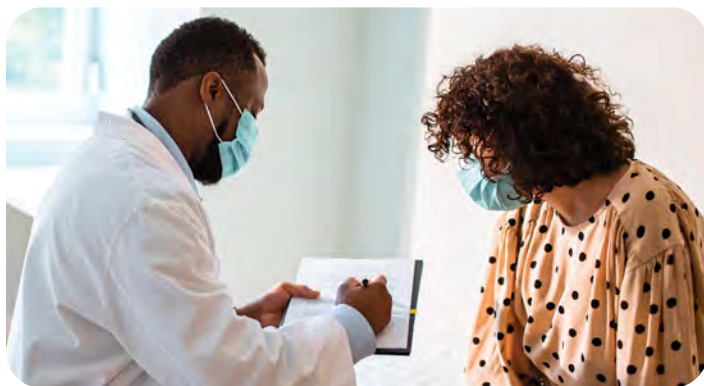
With very rare exceptions, Oregon’s certified SBHC are “covered entities” per HIPAA laws. Therefore, information sharing is governed by HIPAA regulations for SBHCs. Generally, school nurses in Oregon are employed or contracted by the education agency. They do not provide school health services for a HIPAA “covered entity.” Therefore, for Oregon school nurses, information sharing is governed by FERPA regulations.

There may be many persons providing health services in schools such as public health nurses giving immunizations on-site, a dental van providing dental care in the parking lot, speech therapists, occupational therapists, mental health counselors, and more. It is important to know who is operating under HIPAA and who is operating under FERPA so that information can be protected and information sharing can be done correctly. For more information, see the [resources section](#) of this document.

Disclosure and Information Sharing

Generally, a provider may only share a patient's medical and personal information when the patient has provided written consent, typically called a release of information, to do so. Examples of when written consent is required include:

- If a provider from another health care system requests a patient's health records.
- If a patient wants someone else to have access to their health information.



It should be noted, under HIPAA, a health care provider can share information if the patient poses a threat of serious and imminent harm to the patient or another person.

To ensure continuity of care, providers within a hospital or clinic may share information with others assigned to the same patient. In certain situations, a provider may not be able to keep information relating to a minor's care completely confidential. Sometimes, the law requires a provider to report medical and personal information to a government agency, and in other situations, a provider may be compelled to share a confidential communication in a legal proceeding. Below is a brief overview of different forms of information sharing related to health records and other private information.

Mental health, drug, or alcohol treatment



For minors, best practice is that parent(s)/guardian(s) be involved in their treatment as early as possible. In all situations, Oregon rules state that by the end of the minor's treatment, providers are required to involve parent(s)/guardian(s) in the minor's care *unless*:⁹

- The parent/guardian refuses involvement;
- There are clear clinical indications, documented in the treatment record, that notifying the parent(s)/guardian(s) would be detrimental to the health of the minor and/or parental/guardian involvement would be contrary to any prescribed treatment plans, goals, or progress;
- There is identified sexual abuse by a parent/guardian; or
- The minor has been emancipated and/or separated from the parent(s)/guardian(s) for at least 90 days.

During the minor's mental health, drug, or alcohol

9. ORS 109.675 [right to diagnose or treatment for mental or emotional disorder or chemical dependency without parental consent]

treatment, providers may disclose health information to a minor's parent/guardian without the minor's consent if:

- It is clinically appropriate and in the minor's best interests;
- The minor must be admitted to a detoxification program;
- The minor is at risk of dying by suicide and requires inpatient admission¹⁰; or
- The minor is assessed to be at serious and imminent risk of a suicide attempt but inpatient treatment is not necessary or practicable. Note that in this circumstance the provider *shall* disclose information.¹¹

It is important to note that involvement does not mean that adults always have access to a minor's mental health or chemical dependency records. Federal regulation [42 CFR 2.14](#) states that if a minor is able to self-consent for drug or alcohol treatment, the minor's treatment records cannot be disclosed without the minor's written consent (including to the parent or guardian).

For more intensive types of mental health treatment, such as day treatment or residential care, parent(s)/guardian(s) must be notified of the minor's treatment plan; minors may only be admitted to treatment with their parent(s)/guardian(s)' consent.

Disease reporting

There may be times when a minor's health information must be reported to other entities. Some health information must be shared with state and local public health authorities, including cases of certain infections and communicable diseases (such as COVID-19, West Nile virus or HIV/AIDS). This information is gathered

in order to monitor disease patterns with the goal of preventing further infections or outbreaks. To find out more about Oregon reportable diseases and conditions, visit healthoregon.org/diseasereporting.

Mandatory reporting

If there is a reasonable suspicion of abuse of a minor, even if the minor provided this information in confidence, certain health care providers and social service professionals in the community are legally required to report suspected abuse.



Here is a list of some (but not all) professions that are mandatory reporters:¹²

- Doctors and nurses
- Social workers
- Teachers and school employees
- Day care providers
- Police officers
- State employees
- Mental health counselors
- University and community college employees
- Coaches & youth group leaders

10. ORS 109.680 [disclosure without minor's consent]

11. ORS 109.680(2)(c)(A) (2021 provision) [disclosure by mental health provider]

12. Refer to ORS 419B.005 for a full, detailed list of positions that are designated mandatory reporters and those that are excluded.

Conclusion

Youth face complex health care needs, and questions or concerns over privacy and confidentiality may exacerbate the confusion many youth experience in health care delivery settings. Research has found that some youth will forgo care, keep information to themselves, delay, or not seek help in order to keep their parent(s)/guardian(s) from finding out about a health issue.¹³

This document seeks to clarify the myriad of state and federal rules and policies around minor consent and confidentiality for adults who work with youth, including health care providers, educators, and parent(s)/guardian(s). Questions and answers around minor consent and confidentiality can be complex and adults are encouraged to engage in open and supportive conversations with youth about minor's rights and responsibilities related to health care.

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13. Kaiser Family Foundation, Adolescent Health: Coverage and Access to Care, Women's Issue Brief, October 2011. Retrieved from: <https://www.kff.org/womens-health-policy/issue-brief/adolescent-health-coverage-and-access-to-care/>.



Additional Resources

Resources for parents/guardians and caregivers

- Guide to Confidential Services and Information for Parents — <http://www.cahl.org/PDFs/AGuideforParentsBrochure.pdf>
- Talk With Your Kids — <https://www.talkwithyourkids.org/>
- Teen health information from the American Academy of Pediatrics — <https://www.healthychildren.org/English/ages-stages/teen/Pages/default.aspx>
- Planned Parenthood — <https://www.plannedparenthood.org/learn/parents>

General resources

- Adolescent Health Care and Confidentiality (American Association of Family Physicians) — <https://www.aafp.org/about/policies/all/adolescent-confidentiality.html>
- Center for Adolescent Health & the Law — <https://www.cahl.org/>
- Family Educational Rights and Privacy Act (FERPA) — <https://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

- Federal regulations on confidentiality of minor drug and alcohol treatment records (42 CFR 2.14) — <https://www.govinfo.gov/content/pkg/CFR-2019-title42-vol1/pdf/CFR-2019-title42-vol1-sec2-14.pdf>
- Health Insurance Portability and Accountability Act (HIPAA) — <https://www.hhs.gov/hipaa/index.html>
- Minor rights to consent by state — <https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law>
- Oregon Adolescent and School Health Unit — <https://www.oregon.gov/oha/PH/HEALTHYPEOPLEFAMILIES/YOUTH/Pages/Program-Information.aspx>
- Oregon Health Authority Child and Family Behavioral Health Unit — <https://www.oregon.gov/oha/HSD/BH-Child-Family/pages/index.aspx>
- Oregon Law on Consent for STI Testing and Treatment of Minors — <https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/HIVSTDVIRALHEPATITIS/SEXUALLYTRANSMITTEDDISEASE/Documents/STI%20Minors%20Fact%20Sheet%202019.pdf>

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