

# A Minor's Right to Consent to Treatment and Authorize Disclosure of PHI

The chart below provides comprehensive guidance regarding the rights of patients under the age of 18 (minors) to consent to medical care and treatment and authorize disclosure of information about their diagnoses and care. The rules are complex and vary by diagnosis or type of treatment. Given this complexity, use this guidance as a starting point and contact the appropriate legal office for further assistance as needed. PHI refers to Protected Health Information, and is the acronym used in federal regulations regarding privacy of medical record information.

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Type of Care	Age	May Minor Consent to Medical Care Without Parent/Guardian Consent?	May Minor Authorize Disclosure of PHI Without Parent/Guardian Authorization?	May Minor Deny Parent/Guardian Access to PHI?	Reference
General Care (non-emancipated minor) <sup>1</sup>	<18	No <ul style="list-style-type: none"> <li>• Consent of one parent/guardian required.<sup>2</sup></li> <li>• If parents are not married, UW Health will generally rely on consent from either parent if there is no dispute about decision making or authority to make decisions. If unmarried parents disagree, request a copy of the court order authorizing custody of and decision making for the minor. Consult with the legal counsel for assistance.<sup>3</sup></li> <li>• Foster parents must provide court order to establish authority to consent.</li> <li>• Consent is implied in an emergency situation.</li> <li>• A parent may delegate decision making authority for their child in writing to another adult for up to one year. Must be in writing. A parent should complete the Wisconsin Power of Attorney Delegating Parental Power form to make delegation.</li> </ul>	No	No <sup>4</sup>	Wis. Stats. §146.82(1) §146.81(5) §48.979
Contraceptive Care	<18	Yes <sup>5</sup>	Yes	No <sup>4</sup> . PHI regarding contraceptive care is not available in after-visit reports or MyChart for minors between the ages of 12-17; however, this information is included in the medical record and typically accessible by parent/guardian upon request.	Carey v. Pop. Svcs., 431 US 678 (1977)

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Pregnancy Testing and Obstetrical Healthcare or Screening	<18	Yes <sup>5</sup>	Yes	No <sup>4</sup>	Wis. Stats. §48.981(2m)(b)2 §146.82(1) §146.81(5)
Sexually Transmitted Disease Testing and Treatment	<18	Yes	Yes	No <sup>4, 10</sup>	Wis. Stats. §252.11(1m) §146.82(1) §146.81(5)
Abortion (non-emancipated minor)	<18	No. Both minor and parental consent is required under most circumstances; however, there is a provision for judicial waiver of this requirement. Exceptions include emergency, sexual assault, suicide risk, incest, parental abuse. <sup>7</sup>	Yes	No <sup>4</sup>	Wis. Stats. §48.375
Abortion (emancipated minor)	<18	Yes. Statute defines emancipated minor as one who is or has been married; has previously given birth; or is freed from the care, custody, control of parents with little likelihood of returning. Document basis for determination of emancipation and obtain copy of legal documents (e.g., birth certificate, marriage certificate) if necessary.	Yes	Yes	Wis. Stats. §48.375
Alcohol or Drug Abuse Assessment, Evaluation, or Treatment (Outpatient or Detox Admission <b>Under</b> 72 Hours)	<12	Yes. Services may be rendered only if the parent/guardian cannot be found or there is no parent with legal custody of the minor. Notify parent/guardian as soon as practicable. Consent must be obtained from a parent/guardian before: (i) performing a surgical procedure, (ii) administering a controlled substance (except to detox), (iii) admitting minor for inpatient treatment (except to detox), or (iv) if detox admission exceeds 72 hours.	No. Consult with legal counsel.	No. <sup>4</sup> Consult with legal counsel.	Wis. Stats. §51.47(1) §51.30(4)(b)20 Wis. Admin. Code HFS 92.05(1)(c) HFS 92.06(2)
Alcohol or Drug Abuse Assessment, Evaluation, or Treatment (Outpatient or Detox Admission <b>Under</b> 72 Hours)	≥12	Yes. However, consent must be obtained from a parent/guardian before: (i) performing a surgical procedure, (ii) administering a controlled substance (except to detox), (iii) admitting minor for inpatient treatment (except to detox), or (iv) if detox admission exceeds 72 hours.	Yes	Yes. Must obtain minor's consent before billing 3rd party. If minor refuses consent, minor is responsible for all charges.	Wis. Stats. §51.47(1) §51.30(4)(b)20 Wis. Admin. Code HFS 92.06(2) 77 Op. Att'y Gen. 187, 189- 191 (1988)
Alcohol or Drug Abuse Treatment (Inpatient <b>Over</b> 72 Hours)	<18	No	No <sup>4</sup> . Consult with legal counsel.		Wis. Stats. §51.47(2) Wis. Admin. Code HFS 92.05(1)(c) HFS 92.06(2)
HIV Testing	<14	No	No	No <sup>4</sup>	
HIV Testing	≥14	Yes	Yes	Yes	Wis. Stats. §252.15(3m)(c)

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Mental Health Treatment furnished in a Treatment Facility <sup>8</sup>	<14	No	No	No <sup>4</sup>	
Mental Health Treatment furnished in a Treatment Facility <sup>8</sup>	≥ 14	No. Both minor and parental consent is required. However, there is a judicial override provision for the consent requirements under certain circumstances.	Yes	No, <sup>4</sup> unless the minor is developmentally disabled and has filed a written objection to such access with the custodian.	Wis. Stats. §51.61(6) §51.30(5)(a)(b) 51.30(4)(b)(20)
Newborn/Young Child Care (Parent is a Minor)	<18	Yes. Minor becomes the legally authorized “adult” for the newborn/young child. <sup>7</sup>	Yes, with respect to the newborn or young child.		Wis. Stats. §146.82(1) §146.81(5)
Rape or Sexual Assault	<18	Yes <sup>10</sup>	Yes	No <sup>4</sup>	Wis. Stats. §146.82(1) §146.81(5)

Go to [uwhealth.org/patientrecords](http://uwhealth.org/patientrecords) for more information about the privacy of patients’ medical and personal information or to view this chart electronically.

- <sup>1</sup> Wisconsin does not have a statute expressly allowing emancipated minors to consent to their health care, but the emancipated minor concept is present in statutes pertaining to abortion and guardianship. It is reasonable in most cases to allow minors who meet traditional emancipation criteria (marriage, military service, freed from custody and care of parents with little likelihood of returning) to consent to their health care. A provider should document basis for determination of emancipation and obtain copies of legal documents if necessary (e.g., marriage certificate, military service, etc.).
- <sup>2</sup> “Parent” means a biological or adoptive parent as long as parental rights have not been terminated. If there is parental disagreement on a course of care, consult legal counsel. “Guardian” means a person (other than a parent) who has been granted legal custody of a child by a court. A copy of the court documentation should be obtained and reviewed to determine the scope of the guardian’s authority.
- <sup>3</sup> Parents denied physical placement (e.g. denied visitation) may not consent to care.
- <sup>4</sup> A health care provider may refuse to disclose a minor’s records to a parent/guardian if, in the provider’s professional judgment, the provider believes that disclosure would endanger the minor. 45 C.F.R. § 164.502(g)(5).
- <sup>5</sup> While Wisconsin law does not explicitly provide minors with the right to consent to contraceptives, pregnancy testing or obstetrical care, the expectation of privacy in matters of reproductive health is so substantial that the US Supreme Court has declared, as a matter of constitutional law, that reproductive privacy is a protected right or “liberty interest” of individuals regardless of age or marital status. *Planned Parenthood of Central Missouri v. Danforth*, 428 US 52 (1976), *Carey v. Populations Services International*, 431 US 678 (1977).
- <sup>6</sup> Wisconsin law does not specifically address consent for disclosure of STD testing and treatment records. These records are included in records of general medical care which are accessible to parents.
- <sup>7</sup> For abortion, parental consent may be provided by a parent, guardian, legal custodian, adult family member (grandparent, aunt, uncle, brother or sister who is 25 years of age or older), or foster parent if parental waiver has been signed granting foster parent right to consent to medical care.
- <sup>8</sup> “Treatment Facility” includes UWHC’s Inpatient Psychiatric Unit (B6/5), WISPIC and UW Health Behavioral Health and Recovery. Treatment furnished by a primary care provider outside of a “Treatment Facility” (elsewhere in UWHC or in physician clinics) should be considered under General Care.
- <sup>9</sup> UW Health generally relies on consent from either parent (without regard to marital status) when providing general medical care. However, when disagreements (regarding consent) arise (between parents), it is usually necessary to review court documents authorizing custody, decision making and access to records pertaining to the minor. If biological parents have never been married, then additional legal processes may need to be followed to establish paternity. Paternity can be established by (i) a court order or (ii) the father filing a declaration of his interests in matters pertaining to the child with the Wisconsin Department of Child and Family Services. If unmarried parents disagree on care or access to records, or if there are other questions, consult with legal counsel for assistance.
- <sup>10</sup> Wisconsin law does not explicitly provide minors with the right to consent to rape or sexual assault screening/treatment. However, providing this type of treatment is generally considered (best for minors and) low-risk. Providers are mandatory reporters so must also be aware of child abuse reporting requirements. Wis. Stats. 48.981. See UWHC Policy 4.52 or UWMF Policy, Suspected Child Abuse, as applicable to treatment location (UWHC or UWMF clinic).