

MARYLAND MINOR CONSENT LAWS

Who Can Consent For What Services and Providers' Obligations

MINORS OF ANY AGE MAY CONSENT	LAW	CONFIDENTIALITY AND/OR INFORMING OBLIGATION OF THE HEALTH CARE PROVIDER
GENERAL MEDICAL OR DENTAL TREATMENT	<p>A minor (<i>i.e.</i>, a person under the age of 18) has the same capacity as an adult to consent to medical or dental treatment if minor:</p> <ol style="list-style-type: none"> 1) Is married; 2) Is parent of a child; 3) i) Is living separate & apart from minor's parent, parents, or guardian, whether with or without consent of minor's parent, parents, or guardian; and ii) Is self-supporting, regardless of source of minor's income. <p>[Md. Code Ann., Health-Gen. II § 20-102(a)]</p>	
PREGNANCY	<p>A minor (<i>i.e.</i>, a person under the age of 18) has the same capacity as an adult to consent to treatment for or advice about <i>pregnancy</i> other than sterilization [Md. Code Ann., Health-Gen. II § 20-102(c)(1)-(5)]</p>	<p>Without the consent of or over the express objection of a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor, except information about an abortion [Md. Code Ann., Health-Gen. II § 20-102(f)]</p>
CONTRACEPTION	<p>A minor (<i>i.e.</i>, a person under the age of 18) has the same capacity as an adult to consent to treatment for or advice about <i>contraception other than sterilization</i> [Md. Code Ann., Health-Gen. II § 20-102(c)(1)-(5)]</p>	
DIAGNOSIS AND/OR TREATMENT FOR SEXUALLY TRANSMITTED DISEASES	<p>A minor (<i>i.e.</i>, a person under the age of 18) has the same capacity as an adult to consent to treatment for or advice about <i>venereal disease</i> [Md. Code Ann., Health-Gen. II § 20-102(c)(1)-(5)]</p>	
AIDS/HIV TESTING AND TREATMENT	<p>A minor (<i>i.e.</i>, a person under the age of 18) has the same capacity as an adult to consent to treatment for or advice about <i>venereal disease</i> [Md. Code Ann., Health-Gen. II § 20-102(c)(1)-(5)]</p> <p>Voluntary written informed consent of the individual to be tested is required for an HIV test, except in specified circumstances, including at anonymous test sites where an individual may be identified by a number [Md. Reg Code tit. 10, § 18.08.07]</p>	<p>Without the consent of or over the express objection of a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor [Md. Code Ann., Health-Gen. II § 20-102(f)]</p> <p>A student is not required to disclose his/her status of being infected with HIV to school authorities. The decision whether or not to disclose HIV infection is at the discretion of the parent/guardian on the advice of the infected individual's medical care provider</p>
ABORTION	<p>A physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor, except as provided with respect to "incomplete notice" and "waiver of notice" [Md. Code Ann., Health-Gen. II § 20-103(a)]</p>	<p><i>Waiver of Notice</i>-No notice required, if, in the professional judgment of the physician...</p> <ol style="list-style-type: none"> 1. Notice to the parent or guardian may lead to physical or emotional abuse of the minor 2. The minor is mature and capable of giving informed consent to an abortion; or 3. Notification would not be in the best interest of the minor. <p><i>Incomplete Notice</i>-No notice required if:</p> <ol style="list-style-type: none"> 1. The minor does not live with a parent or guardian; and 2. A reasonable effort to give notice to a parent or guardian is unsuccessful. <p>[Md. Code Ann., Health-Gen. II § 20-103(b)]</p> <p>**A physician is not liable for civil damages or subject to a criminal penalty for a decision under this subsection not to give notice [Md. Code Ann., Health-Gen. II § 20-103(c)]</p> <p><i>Notice Prohibited</i></p> <p>A physician may not provide notice to a parent or guardian if the minor decides not to have the abortion [Md. Code Ann., Health-Gen. II § 20-103(e)]</p>

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EMERGENCY MEDICAL SERVICES	A minor (<i>i.e.</i> , a person under the age of 18) has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual [Md. Code Ann., Health-Gen. II § 20-102(b)]	The health care provider shall inform the minor's parent or guardian. The health care provider may treat a patient who is incapable of making an informed decision, without consent, if the treatment is of an emergency nature; the person who is authorized to give consent is not available immediately; and the attending physician determines that there is substantial risk of death or immediate and serious harm to the patient and that the life or health of the patient would be affected adversely by delaying treatment to obtain consent [Md. Code Ann., Health-Gen. II § 5-607]
DRUG AND ALCOHOL ABUSE TREATMENT	A minor (<i>i.e.</i> , a person under the age of 18) has the same capacity as an adult to consent to treatment for and advice about <i>drug abuse</i> and <i>alcoholism</i> [Md. Code Ann., Health-Gen. II § 20-102(c)(1)-(5)] <i>Psychological treatment for drug abuse or alcoholism</i> – A minor has the capacity to consent to psychological treatment for drug abuse or alcoholism if, in the judgment of the attending physician or a psychologist, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual [Md. Code Ann., Health-Gen. II § 20-102(d)] <i>Refusal of treatment.</i> The capacity of a minor to consent to treatment for drug abuse or alcoholism does not include the capacity to refuse treatment in a certified inpatient alcohol or drug abuse treatment program for which a parent/guardian has given consent [Md. Code Ann., Health-Gen. II § 20-102(c-1)]	Without the consent of or over the express objection of a minor, the health care provider may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor [Md. Code Ann., Health-Gen. II § 20-102(f)]
OUTPATIENT MENTAL HEALTH SERVICES	A minor who is 16 years old or older has the same capacity as an adult to consent to <i>consultation, diagnosis, and treatment of a mental or emotional disorder</i> by a physician, psychologist, or a clinic [Md. Code Ann., Health-Gen. II § 20-104(a)] The capacity of a minor to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a physician, psychologist, or a clinic does not include the capacity to refuse consultation, diagnosis, or treatment for a mental or emotional disorder for which a parent, guardian, or custodian of the minor has given consent.	Without the consent of or over the express objection of a minor, the health care provider may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor [Md. Code Ann., Health-Gen. II § 20-102(f)]
SEXUAL ASSAULT AND RAPE SERVICES	A minor (<i>i.e.</i> , a person under the age of 18) has the same capacity as an adult to consent to: <ul style="list-style-type: none"> • Physical examination and treatment of injuries • Physical examination to obtain evidence from an alleged rape or sexual offense [Md. Code Ann., Health-Gen. II § 20-102(c)(6)-(7)]	Without the consent of or over the express objection of a minor, the health care provider may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor [Md. Code Ann., Health-Gen. II § 20-102(f)]
ADMISSION TO DETENTION CENTER	A minor (<i>i.e.</i> , a person under the age of 18) has the same capacity as an adult to consent to: <ul style="list-style-type: none"> • Initial medical screening and physical examination on and after admission into a detention center [Md. Code Ann., Health-Gen. II § 20-102(c)(8)]	Without the consent of or over the express objection of a minor, the health care provider may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor [Md. Code Ann., Health-Gen. II § 20-102(f)]

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Source: Student Services Technical Assistance Guide. Maryland State Department of Education. June 2006 www.marylnadpublicschools.org

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ADDITIONAL ISSUES: MINOR STATUS

CIRCUMSTANCE	LAW	CONFIDENTIALITY AND/OR INFORMING OBLIGATION OF THE HEALTH CARE PROVIDER
MARRIED OR PARENT	A minor can consent to treatment if married or the parent of a child [Md. Code Ann., Health-Gen. II § 20-102(a)]	Without the consent of or over the express objection of a minor, the health care provider may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor [Md. Code Ann., Health-Gen. II § 20-102(f)]
EMANCIPATED MINOR OR MINOR LIVING APART	No specific Maryland legal provision expressly authorizes minors who are emancipated or living apart from their parents to consent for health care.	

What does emancipation mean?

"Emancipation of a minor" generally refers to the process of freeing a minor (person under age 18) from parental control. It means that the parent is no longer legally responsible for the acts of the child. It can allow the child to set up his/her own living arrangement. The term may also refer to freeing the earnings/income of a child from the control of a parent.

In at least one case, the court said that emancipation can be either partial or complete. **"Complete"** means the parents are no longer legally responsible for the child. **Partial emancipation** means that child is emancipated only for:

- for a certain period of time *or*
- for some special purpose (such as the right to earn and spend his/her own wages) *or*
- from a part of a parent's rights (such as the right to make decisions about a pregnancy).

Before July 1973, the age a person reached majority (or became emancipated) in Maryland was 21. As of July 1973, the law lowered the age of majority to 18. It is very likely that the number of minors seeking emancipation who are capable of living on their own has been significantly reduced. Minors under the age of 18 are more likely to need the support and protection of an adult. Therefore, there is a greater reason to look at other solutions.

How does emancipation occur?

There are a number of ways in which a minor may be emancipated (completely or partially).

- #1 A minor reaches the age of majority.** As of July 1, 1973 in Maryland, a person age 18 or older is considered an adult with all the legal capacity, rights, powers, privileges, duties, liabilities and responsibilities of an adult [Md. Ann. Code Art. 1§24(a)]
- #2 The minor has been declared emancipated through the courts.**
Example - Misconduct by a parent. "Parental abuse, neglect or failure to support" or other misconduct are key factors that a court might consider in an emancipation action.
- #3 The minor is living independently of his/her guardian.**
Example - A parent (formally or informally) **agrees to give up** (some/or all of his/her) **parental control.** A parent might consent to allowing a child to establish a separate household. Or a parent may force the minor to leave and support him/herself.
- #4 Certain situations occur, such as marriage or entering the military occur.** In these situations, it usually does not make sense to say that a parent must still support a minor and have control over his/her actions. Members of the military are subject to government control. A husband and wife generally have a duty to support his/her spouse. There are limitations.

Generally, a minor unmarried individual who is living independently of his/her parent/guardian and who is not emancipated by court decree is still under the responsibility of his/her parent/guardian.

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Source: Student Services Technical Assistance Guide. Maryland State Department of Education. June 2006 www.marylnadpublicschools.org

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ADDITIONAL ISSUES: MEDICAL RECORDS, LIABILITY & FINANCIAL RESPONSIBILITY

	LAW
ACCESS TO A MINOR'S MEDICAL RECORD UNDER MARYLAND LAW	<p>The following qualify as a "person in interest" that may access the medical records of a minor under Maryland law (Md. Code Ann., Health-Gen. I § 4-301(k)(4)-(5)):</p> <ul style="list-style-type: none"> • A minor, if the medical record concerns treatment to which the minor has the right to consent and has consented • A parent, guardian, custodian, or a representative of the minor designated by a court, in the discretion of the attending physician who provided the treatment to the minor, as provided in § 20-102 or § 20-104 of the Md. Code Ann., Health-Gen. Article • A parent of the minor, except if the parent's authority to consent to health care for the minor has been specifically limited by a court order or a valid separation agreement entered into by the parents of the minor • A person authorized to consent to health care for the minor consistent with the authority granted • An attorney appointed in writing by an authorized person as listed above <p>[HIPAA, 45 CFR § 164.502(g)(3)]</p>
DESTRUCTION OF A MINOR'S MEDICAL RECORDS UNDER MARYLAND LAW	<p>In the case of a minor patient, a medical record or laboratory or X-ray report about a minor patient may not be destroyed until the patient attains the age of majority (<i>i.e.</i>, 18) plus three (3) years or for five (5) years after the record or report is made, whichever is later, unless:</p> <ul style="list-style-type: none"> • The parent or guardian of the minor patient is notified <i>or</i> • If the medical care documented in the record was provided under Md. Code Ann., Health-Gen. II § 20-102(c) or § 20-103(c) the minor patient is notified <p><i>Notice</i> - Any notice required by this provision shall:</p> <ul style="list-style-type: none"> • Be made by first-class mail to the last known address of the patient; • Include the date on which the record of the patient shall be destroyed; and • Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30 days of the proposed date of destruction. <p>[Md. Code Ann., Health-Gen. I § 4-403(c)]</p>
SUBSTANCE ABUSE TREATMENT RECORDS	<p>The confidentiality of substance abuse treatment records is governed by federal law, 42 U.S.C. §§ 290dd-3 and 290ee-3; 42 C.F.R. Part 2, and State law, § 8-601 of the Health General Article. In general, information regarding alcohol and drug abuse treatment is confidential and may not be disclosed without consent of the individual except in certain limited circumstances as set forth in the law.</p>
LIABILITY OF HEALTH CARE PROVIDER	<p>A physician, psychologist, or an individual under the direction of a physician or a psychologist who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent [Md. Code Ann., Health-Gen. § 20-102]</p>
FINANCIAL RESPONSIBILITY	<p>A parent, guardian, custodian, or spouse of the parent is not responsible for the costs of consultation, diagnosis, or treatment for a mental or emotional condition for which a minor may consent, unless the parent, guardian, custodian, or spouse of a parent has consented to the care. [Md. Code Ann., Health-Gen. § 20-104]</p>

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ADDITIONAL ISSUES: HIPAA

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104-191, 110 Stat. 1996), required the U.S. Department of Health and Human Services to develop rules regarding the distribution and privacy of patient information.
- HIPAA's "Privacy Rule" provides standards to protect the security and privacy of "protected health information" (PHI) for children and adolescents as it does for adults. The Privacy Rule defines PHI as individually identifiable health information that is transmitted or maintained in any form or media.
- These new regulations limit the ways that health entities can use patients' PHI. The regulations protect medical records and other individually identifiable health information, whether it is on paper, in computers or communicated orally. Key provisions of these new standards include:

ACCESS TO MEDICAL RECORDS	<ul style="list-style-type: none"> • Patients should be able to see and obtain copies of their medical records and request corrections if they identify errors and mistakes • Health entities should provide access these records within 30 days and may charge patients for the cost of copying and sending the records
NOTICE OF PRIVACY PRACTICES	<ul style="list-style-type: none"> • Health care providers must provide a notice to their patients how they may use personal medical information and their rights under the new privacy regulation typically on the patient's first visit • Patients should be asked to sign, initial or otherwise acknowledge that they received this notice • Patients may ask covered entities to restrict the use or disclosure of their information beyond the practices included in the notice, but the covered entities would not have to agree to the changes
LIMITS ON USE OF PERSONAL MEDICAL INFORMATION	<ul style="list-style-type: none"> • The privacy rule sets limits on how health entities may use individually identifiable health information • To promote the best quality care for patients, the rule does not restrict the ability of health care providers to share information needed to treat their patients • In other situations, though, PHI generally may not be used for purposes <i>not</i> related to health care, and covered entities may use or share only the minimum amount of PHI needed for a particular purpose <ul style="list-style-type: none"> ○ In addition, patients would have to sign a specific authorization before a covered entity could release their PHI to a life insurer, a bank, a marketing firm or another outside business for purposes <i>not</i> related to their health care
CONFIDENTIAL COMMUNICATIONS	<ul style="list-style-type: none"> • Under the privacy rule, patients can request that their health care providers take reasonable steps to ensure that their communications with the patient are confidential <ul style="list-style-type: none"> ○ For example, a patient could ask a doctor to call his or her cell rather than home, and the doctor's office should comply with that request if it can be reasonably accommodated
PROHIBITION ON MARKETING	<ul style="list-style-type: none"> • The final privacy rule sets new restrictions and limits on the use of PHI for marketing purposes • An individual's specific authorization <i>is required</i> before disclosing PHI for marketing • At the same time, the rule permits health care providers to communicate freely with patients about treatment options and other health-related information, including disease-management programs
STRONGER STATE LAWS	<ul style="list-style-type: none"> • The new federal privacy standards do not affect state laws that provide additional privacy protections for patients <ul style="list-style-type: none"> ○ For example, Maryland state law requires health care providers report a Gonorrhea, Chlamydia or syphilis care to the public health authorities -- the federal privacy regulations do not preempt this law
COMPLAINTS	<ul style="list-style-type: none"> • Consumers may file a formal complaint regarding the privacy practices • Such complaints can be made directly to the covered provider or health plan or to HHS' Office for Civil Rights (OCR), which is charged with investigating complaints and enforcing the privacy regulation • Information about filing complaints should be included in each covered entity's notice of privacy practices • Consumers can find out more information about filing a complaint at http://www.hhs.gov/ocr/hipaa or by calling (866) 627-7748

Source: Pub. L. 104-191, 100 Stat. 1936

Source: U.S. Department of Health & Human Services <http://www.hhs.gov/ocr/hipaa/>

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ADDITIONAL ISSUES: RELATIVES PROVIDING “KINSHIP CARE” TO A MINOR

What is Kinship Care?

“*Informal kinship care*” means a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local Department of Social Services, provides for the care and custody of the child due to a serious family hardship.

“*Relative*” means an adult related to the child by blood or marriage within the fifth degree of consanguinity.

“*Serious family hardship*” means:

- (i) Death of a parent or legal guardian of the child;
- (ii) Serious illness of a parent or legal guardian of the child;
- (iii) Drug addiction of a parent or legal guardian of the child;
- (iv) Incarceration of a parent or legal guardian of the child;
- (v) Abandonment by a parent or legal guardian of the child; or
- (vi) Assignment of a parent or legal guardian to active military duty.

Definitions per Md. Code Ann., Health-Gen. II § 20-105(a)

How Does this Impact Health Care of a Minor in Kinship Care?

It does not.

A relative providing informal kinship care for a child may consent to health care on behalf of a minor if:

- (1) A court has **not** appointed a guardian for the child or awarded custody of the child to an individual other than the relative providing informal kinship care; and
- (2) The relative **verifies** the informal kinship care relationship through a sworn affidavit that meets the requirements below and is filed with Department of Human Resources, Social Services Administration.

[Md. Code Ann., Health-Gen. II § 20-105(b)]

The affidavit shall include (form of affidavit – see example):

- (1) The name and date of birth of the child;
 - (2) The name and address of the child’s parent or legal guardian;
 - (3) The name and address of the relative providing informal kinship care;
 - (4) The date the relative assumed informal kinship care;
 - (5) The nature of the serious family hardship and why it resulted in informal kinship care; and
 - (6) The kinship relation to the child of the relative providing informal kinship care.
- A copy of the affidavit shall be given to the health care provider that treats the child [Md. Code Ann., Health-Gen. II § 20-105(h)]
 - An affidavit does not abrogate the right of the parent or guardian of a child to consent to health care on behalf of the child in a future health care decision [Md. Code Ann., Health-Gen. II § 20-105(j)]

Adapted from: Student Services Technical Assistance Guide. Maryland State Department of Education. June 2006 www.marylnadpublicschools.org

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ADDITIONAL ISSUES: "KINSHIP CARE" AFFIDAVIT FORM

Per Md. Code Ann., Health-Gen. II § 20-105(d), the affidavit shall be in the following form.

- (1) I, the undersigned, am over eighteen (18) years of age and competent to testify to the facts and matters set forth herein.
- (2) _____ (name of child), whose date of birth is _____, is living with me because of the following serious family hardship (check each that is applicable):

- _____ Death of father/mother/legal guardian
_____ Serious illness of father/mother/legal guardian
_____ Drug addiction of father/mother/legal guardian
_____ Incarceration of father/mother/legal guardian
_____ Abandonment by father/mother/legal guardian
_____ Assignment of father/mother/legal guardian to active military duty

- (3) The name and last known address of the child's parent(s) or legal guardian is:

- (4) My kinship relation to the child is: _____

- (5) My address is:

_____ Street Apt. No City State Zip Code

Home Phone: _____ Work Phone: _____

Cell Phone: _____ Pager: _____

- (6) I assumed informal kinship care of this child for 24 hours a day and 7 days a week on _____ (month/day/year).

- (7) The name and address of the school that the child attends is:

- (8) I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief.

Signature

Date: _____ (month/day/year)

Witness (Position)

Date: _____ (month/day/year)