

OFFICE POLICY

CONSENT AND CONFIDENTIALITY FOR ADOLESCENTS

See also: Consent and Confidentiality in Adolescent Healthcare: A Guide for Arizona Health Care Physicians 2018. Arizona laws may not be applicable to other states

POLICY

Provide confidential health care to adolescents in an atmosphere of acceptance and sensitivity, with open communication and involvement of parents and significant others in the patient's social network, as appropriate, and following generally accepted ethical guidelines and Arizona and federal laws.

CONSENT

In general, adolescents 14 and older should be the primary focus of education and consent, with parents/guardians involved as much as possible. The adolescent is the primary patient, but the parents are often the primary decision-maker recognized by the law. Both should understand the risks and benefits of proposed treatments and decide voluntarily to proceed or not with the physician's recommendations. Typically, consent forms should be signed by both the adolescent patient and the parents/guardians, except in certain, specific situations.

EMANCIPATED MINORS

Under Arizona law, adolescents may consent for any health care, excluding sterilization, if they are 18 years old and legally competent, lawfully married, emancipated, homeless, or in the military. Generally, emancipated minors under 18 years old are adolescents who are living away from home, free from parental control, and self-supporting.

SELF CONSENT FOR MEDICAL CARE

A number of special circumstances empower the minor to provide self-consent for medical care, including:

Emergency Care

Health care providers can give emergency care and perform emergency surgical procedures on minors without the consent of the minor's parents if:

- a. The minor is in need of immediate hospitalization, medical attention, or surgery;
- b. Such care and procedures are designed to treat a serious disease, injury, or drug abuse or to save the minor's life; and
- c. The minor's parents cannot be reached after reasonable effort.

Sexually Transmitted Infection (STI)

Any age minor may consent for the examination and treatment of STI.

Sexual Assault

A sexual assault victim 12 years old or older may consent to care if a legal guardian cannot be contacted within the short time span in which the examination is necessary.

Drug/Alcohol Treatment

Patients 12 years of age and older can consent to their own care for treatment of drug problems. Any minor 12 years old and older found to be under the influence of a dangerous drug may be considered an emergency; such minor is to be regarded as having consented to hospital or medical care.

Minor Parents and Pregnant Minors

Arizona law does not specifically address the right of minor parents or pregnant minors to consent to their own health care.

Abortion

Under Arizona law, a person may not perform an abortion on a pregnant unemancipated minor unless the physician has obtained written consent from one of the minor's parents, guardians, or conservators, or unless a judge authorizes the physician to perform the abortion. Parental consent is not required if the pregnancy resulted from sexual contact with the minor's parent, step-parent, uncle, grandparent, sibling, adoptive parent, legal guardian, foster parent, or an unrelated male living with the adolescent and her mother. Additionally, no parental consent is needed if the abortion is necessary to avert the minor's death or an irreversible impairment of bodily function.

Family Planning

The U.S. Supreme Court has ruled that contraception must be made available to minors. If a minor requests and consents to family planning services, the physician can provide them without parental consent.

Mental Health Treatment

Under a 2010 Arizona law, health care clinicians may not perform mental health screenings on a minor in a non-clinical setting or provide mental health treatment to a minor without the prior written or oral consent of the minor's parent or legal custodian. This requirement does not apply when an emergency exists that requires a mental health screening or treatment to prevent serious injury to or save the life of a minor child.

MATURE MINOR DOCTRINE

Arizona has not formally recognized the mature minor doctrine. Practically, however, health care providers may face situations where it is appropriate to consider this doctrine, for example in the case of a pregnant minor seeking treatment. In all cases, health care providers should understand that the mature minor doctrine substantially mitigates but does not eliminate the risk of liability.

Although there is not a legal definition for a mature minor in Arizona, other jurisdictions have found a minor to be "mature" when:

- He or she is 15 years old or older and is able to understand the risks and benefits of the proposed care sufficiently well to give informed consent; and
- The medical care is for the patient's benefit; and

- The care is necessary according to conservative medical opinion; and
- There is good reason (including the minor's objection) for not obtaining parental consent. (The above is not a legal definition.)

AGE OF CONSENT

Arizona law directs that any physician or other person having responsibility for the care or treatment of children immediately report "or cause to be reported" to a peace officer or to the Department of Child Safety if that individual's observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of non-accidental injury, sexual abuse, molestation, sexual exploitation, incest, child prostitution, death, abuse or physical neglect. **Arizona law does not allow a minor to consent to sexual activity with anyone aged 18 years or older.** A clinician does not have to report a minor's evidence or report of sexual activity if the sexual activity involves minors age 14 through 17 and there is no evidence that the sexual activity was anything other than consensual. **However, a clinician must report consensual oral sex or sexual intercourse with a minor whose partner is 18 or older as sexual abuse.** Arizona law makes it a felony for an adult to engage knowingly in sexual conduct with a minor less than 15 years old; it is a lesser felony if a minor is 15 or older. The statute also requires that the person who has custody or control of the minor's medical records make either the records or a copy of the records available to the investigating peace officer or child protective services' worker upon presentation of a written, signed request.

CONFIDENTIALITY

A minor's medical records, and the information contained within them, are generally confidential. This means that, in most instances, only the minor patient has access to his or her medical records. Arizona law allows a minor's parents to obtain the medical records upon the parents' written request. However, in situations in which the minor has exercised their ability to consent, the right to confidentiality is also preserved.

GUIDELINES FOR CONFIDENTIALITY

1. A minor patient can limit his or her parents' access to the minor's medical records by filling out the "Limitation of Access" form. The physician will document in the medical record his/her informed judgment that the patient was mature and capable of giving informed consent, informed consent was obtained, and parental involvement was encouraged and refused by the patient.
2. Regardless of whether a minor is emancipated, if the behavior of the patient is immediately life-threatening to him/herself or to others, disclosure will be made to parents or guardians as well as to appropriate authorities.
3. All child abuse reporting laws will be respected, and evidence of non-accidental injury, sexual abuse, molestation, sexual exploitation, incest, child prostitution, death, abuse, or physical neglect will be reported to the police or the Department of Child Safety. It is not necessary to report a minor's sexual activity if the minor is 14 years old or older, engaged in the activity with another minor aged 14 to 17, and sexual activity was consensual.

4. The Arizona Department of Health Services (ADHS) will be notified about reportable sexually transmitted diseases as required by law.

5. A minor's records are available to a noncustodial parent to the same extent as the records are available to the custodial parent, except where limited by law or court order.