

Consent for Treatment of Minors

1. SCOPE

- 1.1. System-wide
- 1.2. Facilities and departments included in the scope are further defined in the [Scope Definition Resource Guide](#) if not specifically outlined above.

2. DEFINITIONS & EXPLANATIONS OF TERMS

2.1. Abbreviations

- HIPAA: Health Insurance Portability and Accountability Act
- MCHS: Marshfield Clinic Health System
- PHI: Protected Health Information

2.2. Definitions

- Patient: All references to the "patient" in this policy mean the patient or her/his Personal Representative as defined in the [Personal Representatives of Patients](#) policy.
- Minor: A minor is a person under the age of 18 years. Generally minors do not have the authority to grant consent or refuse care, with the exceptions outlined below.
- Emancipated Minor: A minor who is or has been married or has been emancipated through a formal court proceeding.
- Guardian: A person appointed by the court to be the guardian of a child. The court appointed guardian has the duty and authority to make important decisions including the authority to consent to major medical, psychiatric, and surgical treatment for the child.
- Legal Custody: A legal status created by the order of the court, which confers the right and duty to provide food, shelter, and ordinary medical and dental care for the child, subject to the rights, duties, and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities, and the provisions of any court order.
- Legal Custodian: A person or agency, other than a parent or guardian, to whom legal custody of the child has been transferred by the court, but does not include a person who has only physical custody of the child.
- Parent: Either a biological parent, a husband who has consent to artificial insemination of his wife, a parent by adoption, a father who has acknowledged paternity in writing to the state registrar, or a person adjudicated to be the biological father. Parent does not include any person whose parental rights have been terminated.

- Physical Custody: Actual custody of the person in the absence of a court order granting legal custody to the physical custodian.
- Protected Health Information (PHI): The Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information Protected Health Information.
 - ◊ Individually identifiable health information: information, including demographic data, that relates to:
 - the individual's past, present, or future physical or mental health or condition; **or**
 - the provision of health care to the individual; **or**
 - the past, present, or future payment for the provision of health care to the individual; **and**
 - that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual (e.g., name, address, birth date, Social Security Number).

POLICY

3. POLICY BODY

Purpose Statement: It is the policy of Marshfield Clinic Health System to comply with applicable laws and regulations in providing care to minors. The consent of the parent/legal guardian will be obtained when required. In Wisconsin, minors may have rights to consent to their own medical care in certain circumstances. This policy has been created to clarify the rights of minors to consent to medical care and treatment and to authorize access of their protected health information in compliance with state and federal regulations.

3.1. Care and Treatment of the Minor

- a. General Medical Care for Minors: The care and treatment for a minor under the age of 18, unless emancipated, must be consented to by the minor's parent, guardian, or legal custodian. Certain statutory exceptions to this are defined in the Chart: [Minor's Consent: Care and Treatment for Which Exceptions to General Rule Requiring Parental or Guardian Consent Apply and Do Not Apply](#).
- b. Emergency Care for Minors: When a child's health is in immediate danger, the common law implies parental consent on the theory that if the parents were aware of the situation, they would authorize treatment.
- c. Routine/Non-Emergent Care for Minors Unaccompanied by Parent/Legal Guardian: When a minor presents for routine or non-emergent care, such as a clinic visit, every attempt shall be made to establish parental consent prior to the actual encounter. Parental consent should be in writing, but may be oral if necessary (oral consent should be documented in the medical record following the documentation guidelines in the [Informed Consent Policy](#).
 - If a minor presents for a prescheduled routine appointment, consent may be requested in advance from the parent, specifying the need for a written consent for treatment to accompany the minor. This may be provided in a handwritten note. The note should be signed and dated. See Form: [Consent for Treatment of Minors – Limited \(One Time Use\)](#)
 - If a minor presents for a prescheduled routine appointment and does not have a written consent/note from the parent, then oral consent shall be obtained from the parent (oral consent should be documented in the medical record following the documentation guidelines in the [Informed Consent Policy](#)).
 - If a minor presents for an appointment (routine or otherwise) that involves any type of invasive procedure, written informed consent of the parent is required prior to performance of the procedure.
 - If a minor is presenting for a series of routine appointments (e.g., allergy shots), parental consent may be obtained in advance to cover the entire series of appointments.
- d. Exceptions: In the State of Wisconsin, a minor has the right to consent for care and treatment (without parental or guardian consent) for certain conditions as defined in the Chart: [Minor's Consent: Care and Treatment for Which](#)

[Exceptions to General Rule Requiring Parental or Guardian Consent Apply and Do Not Apply.](#)

- e. **Delegated Authority for Minor:** In certain situations such as school, day care, or camp, a minor's parent or guardian may not be available to provide consent. In these situations, the healthcare provider can accept the consent of a person in care, custody, or possession of the minor if there has been prior authorization in writing by the parent or guardian for the person in care to consent to treatment. A copy of the authorization should be made a part of the minor's medical record. See [Consent for Treatment of Minors - Limited \(One Time Use\)](#) or [Consent for Treatment of Minors in Parent/Legal Guardian Absence](#)
- f. **Minors Under the Supervision of Foster Parents:** In most circumstances, foster parents do not have the legal authority to consent for medical care, since the natural parents generally retain this legal right, or the right to consent may have been transferred to a child welfare agency. Only when the natural parents' parental rights have been terminated by a court, will custody, control, and legal authority for the minors be transferred permanently to another adult or agency.
- g. **Minors Placed for Adoption/Adoption in Progress:** Prior to the adoption, if the natural parent retains parental privileges, the natural parent shall provide consent for medical care. If the minor has been placed for adoption but the adoption has yet to be finalized, then the county or state welfare department or adoption agency should be contacted in order to determine who has authority to consent. Once the adoption has been legally carried out, the adoptive parents have the right to consent for the minor's medical care.
- h. **Minors as Parents:** Parents who are themselves minors may consent to medical treatment for their child. Consent may be obtained from either of the minor parents if they are married. If the parents are not married, only the mother should be permitted to consent for treatment unless the parental rights of the father have been determined by a court proceeding and the father has been granted the authority to make treatment decisions.
- i. **Minors with Divorced Parents:** Consent for medical care should be obtained from the parent having legal custody of the minor. If joint custody has been awarded and each parent has the authority to consent to medical treatment, only one parent's consent is required. If both parents have joint custody and medical decision making ability and they disagree regarding the child's recommended medical care, health care providers may refrain from providing care (except in cases of emergency) until the parents can come to an agreement. Alternatively, one parent may petition a court for sole authority to make medical decisions for the child.
- j. **Parents Who Have Been Denied Physical Placement:** If a parent has been denied periods of physical placement with the minor, the parent's ability to consent for treatment should be confirmed to determine if parental rights have been terminated, including the right to consent to health care or to access the minor's medical record.

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3.2 Disclosure of Protected Health Information (PHI) of the Minor

- a. **Parental Access to Minors' PHI:** A parent or guardian may be granted access to the minor's records, even where the parent or guardian's consent was not required for treatment, unless the statutes specifically grant access only to the minor, or the parent has been denied periods of physical placement with the minor, or in the case of developmentally disabled minors, age 14 or older, when they have requested no disclosure of their mental health records.
- b. **Denying Parents Access to Minors' PHI:** A healthcare provider may reserve the right to limit disclosure of PHI to a minor's parent or guardian if, in the provider's professional judgment, they believe the minor would be in imminent danger if the PHI was released.
- c. **Emancipation or Reaching Age of Majority:** Once a minor becomes emancipated or reaches the age of majority, the individual has the right to access and authorize disclosure of his or her PHI. This includes access and disclosure of PHI created while the individual was a minor. The parent's right of access terminates when the minor becomes emancipated or reaches the age of majority. If doubt exists regarding emancipation in a minor 17 years or younger, parental authorization should be secured in addition to the authorization of the minor.
- d. **Special Circumstances:** In certain situations, parents may be denied access to the minor's health information. Delineation of minor authorization for disclosure and parental access of PHI for special care circumstances is outlined in the Chart: [Minor's Consent: Care and Treatment for Which Exceptions to General Rule Requiring Parental or Guardian Consent Apply and Do Not Apply](#).

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4. ADDITIONAL RESOURCES

4.1. References:

- Wisconsin and Federal Statutes as defined in the Chart: [Minor's Consent: Care and Treatment for Which Exceptions to General Rule Requiring parental or Guardian Consent Apply and Do Not Apply](#)
- [HIPAA COW Policy/Procedure Workgroup Minors' Privacy Rights Related to Access, Inspection & Copying of Protected Health Information](#)
- [Informed Consent Policy](#)

4.2. Supporting documents available:

- Chart: [Minor's Consent: Care and Treatment for Which Exceptions to General Rule Requiring Parental or Guardian Consent Apply and Do Not Apply](#)
- [Consent for Treatment of Minors - Limited \(One Time Use\)](#)
- [Consent for Treatment of Minors in Parent/Legal Guardian Absence](#)

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POLICY

5. DOCUMENT HISTORY

Version No.	Revision Description
1.0	Policy#3575.3 converted to new Document Control System
2.0	Updated Scope and MC to MCHS. Updated definitions for Emancipated Minor and Protected Health Information (PHI).
3.0	Updated Scope and logo.
4.0	Updated Scope, logo, and link to Minor's Consent Chart that was added to DCS. Updated formatting, metadata fields, header, removed logo, added abbreviations, updated author
5.0	Annual review. Updated link for Informed Consent policy
6.0	Annual review. No changes.
7-9	See version history
10.0	DCS checklist, AO to republish
11.0	Updated link

6. DOCUMENT PROPERTIES

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