Adolescent & Young Adult Health Care in New Mexico

A Guide to Understanding Consent & Confidentiality Laws

Abigail English, JD, Center for Adolescent Health & the Law

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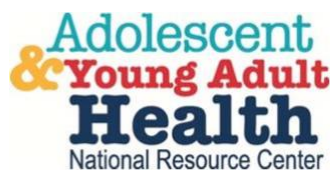
& the Law



Contributors

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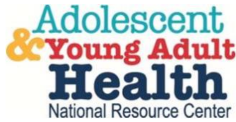

Adolescent & Young Adult Health National Resource Center

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Center for Adolescent Health & the Law
PO Box 3795 | Chapel Hill, NC 27515-3795
ph. 919.968.8850 |e-mail: info@cahl.org
http://www.cahl.org

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Table of Contents

Introduction 1

Importance of Protecting Confidentiality 1
- Rationale for confidentiality 2
- Research findings about privacy concerns 2
- Health care professional organizations 2
- Confidentiality is not absolute 3

Emerging Confidentiality Challenges 3

New Mexico Health Care Consent Laws 3
Minor Consent Laws in New Mexico 3
- Linkage of consent & confidentiality 3

Minors in Special Situations 4

New Mexico Confidentiality Laws 4
Confidentiality Laws for Minors in New Mexico 4

Federal Confidentiality Laws 5
HIPAA Privacy Rule 6
FERPA 6
Title X Family Planning 7
Medicaid 7
Drug and Alcohol Programs 8
Ryan White HIV/AIDS Program 8
Federally Qualified Health Centers 8

Confidentiality and Preventive Services 8
- Recommended preventive services for adolescents & young adults 9

Conclusion 9

Table 1: New Mexico Health Care Consent Laws for Minors 10

Table 2: New Mexico & Federal Confidentiality Laws for Minors 11

Table 3: New Mexico & Federal Confidentiality Laws for Young Adults 12

Appendix A: New Mexico Consent & Confidentiality Laws for Minors 13

Appendix B: Federal Confidentiality Laws 18

Appendix C: Key Questions for Confidentiality Protection 22

Appendix D: Legal Resources for Adolescent & Young Adult Health & the Law in New Mexico 23

Appendix E: Resources on Confidentiality, Health Insurance, and Electronic Health Records 24

Appendix F: 25 Years of AYAH Confidentiality Studies—A Bibliography 25
Adolescent and Young Adult Perspectives 25
Health Care Provider Perspectives and Availability of Confidential Services 27
Parent Perspectives 28

References 30

Adolescent & Young Adult Health Care in New Mexico
A Guide to Understanding Consent & Confidentiality Laws

Abigail English, JD
Center for Adolescent Health & the Law

This guide provides a summary of legal consent requirements and confidentiality protections for adolescents and young adults in New Mexico to inform health care providers and promote access to essential health care including preventive health services.

INTRODUCTION

Confidentiality protections encourage adolescents and young adults to seek the health care they need and safeguard their privacy when they receive services. The relationship between confidentiality of health information and consent for health care is important. The specific ways the law protects confidentiality depend on whether a patient is a minor or an adult and whether the patient can legally consent to their own care. Some adolescents are minors—under age 18—and some are young adults—age 18 or older.

Young adults almost always may consent to their own care; minors may consent sometimes, but not always. Young adults are entitled to the same confidentiality protections under state and federal laws as other adults.

"Minor consent laws" allow minors to consent for their own care in specific situations and for specific services. Laws authorizing minors to consent and laws protecting confidentiality are closely linked but they do not always match each other. Adolescent minors who consent for their own care are entitled to many confidentiality protections; but these may be qualified or limited in ways that allow for disclosure of some information to parents or others.

Numerous federal and state laws contain confidentiality protections for health information. The interplay of law and ethics also is important in understanding confidentiality in the health care of adolescents and young adults. Careful analysis of the relevant state and federal laws, informed by sound ethical principles, can clarify these issues in New Mexico as in other states.

IMPORTANCE OF PROTECTING CONFIDENTIALITY

There are numerous reasons to protect confidentiality for the health care communications and health information of adolescents and young adults. The most compelling is to encourage young people to seek necessary care on a timely basis and to provide a candid and complete health history when they do so. Additional reasons include supporting their developing sense of privacy and autonomy as well as protecting them from the humiliation and discrimination that can result from disclosure of confidential information. Offering confidential care can also help young people develop their capacity to engage independently with the health care system. Decades of research findings have documented the importance of privacy concerns for young people in the adolescent age group; additional research has found similar concerns among young adults. Overarching goals of confidentiality protection include promoting both the health of individual young people

and the public health. One key element of reaching these goals is ensuring that young people receive the health care services they need.

Privacy concerns influence use of health care in many ways. Many adolescents are concerned about disclosure to their parents of information related to sexual behaviors, substance use, and mental health. This is true even though many adolescents voluntarily share a lot of health information with their parents and other trusted adults. Voluntary communication can be very helpful in supporting adolescents' and young adults' health; mandated communication and disclosure can be counterproductive unless they are necessary to protect the health of a young person. Specifically, concerns about confidentiality and disclosure can affect whether adolescents seek care,[1],[2],[3] where they seek care,[4],[5] and how openly they talk with health care professionals.[6] Some young adults also hesitate to use certain services unless privacy can be maintained.[7] Concerns that confidentiality will not be protected can lead adolescents and young adults to forego or delay care or to be less than candid when they do see a health care provider. (See Appendix F)

Rationale for confidentiality

- Protect health of adolescents & young adults
- Protect public health
- Promote positive health behaviors & outcomes
- Avoid negative health outcomes
- Encourage adolescents & young adults to seek needed care
- Increase open communication with health care providers

The effect of privacy concerns has been especially well documented with respect to adolescents' use of sexual health services, including care related to contraception, pregnancy, and sexually transmitted diseases (STDs). For example, one study found that almost all adolescents would consent to STD testing if their parents would not know, but only about one third would agree if their parents would or might know.[8] According to another study, nearly one half of adolescents would stop using family planning clinic services if parental notification were mandatory.[9] Yet, a national survey found that only a very small minority of adolescents would stop having sex if parental notification were mandatory for contraceptives, and a significant percentage would have riskier sex.[10]

Research findings about privacy concerns

Privacy concerns affect behavior and influence:

- Whether young people seek care
- When young people seek care
- Where young people seek care
- How openly young people talk with health care providers

Health care professional organizations recognize the importance of confidentiality protections in health care. These organizations have adopted codes of ethics and issued policies that address privacy and confidentiality protections for patients generally, including young adults and adolescents.[11] They also have adopted policies related to adolescent health care that address confidentiality for particular health care settings, special populations, and specific services—preventive health care, testing & treatment for STDs & HIV, contraception, pregnancy-related care, and other reproductive health services. These policies often speak to the importance of informing patients, including adolescents and their parents, about confidentiality and its limits.

Health care professional organizations

Codes of ethics and policies support:

- Rationale for confidentiality
- Scope of confidentiality and its limits
- Confidentiality in particular health care settings
- Confidentiality for specific populations of adolescents
- Confidential access to specific health services

Confidentiality is not absolute. To understand the scope and limits of legal and ethical confidentiality protections, it is important to clarify: what *may not* be disclosed because it is confidential and none of the exceptions to confidentiality apply; what *may* be disclosed based on the discretion of the health care professional; and what *must* be disclosed because there is another requirement, such as a reporting requirement, that overrides confidentiality.

Confidentiality is not absolute
Confidential information must be disclosed:

- To comply with reporting mandates
  - Child abuse
  - Communicable disease
  - Assaults such as knife or gunshot wounds
  - Domestic violence
- When a patient is dangerous to self or others

Emerging Confidentiality Challenges

Two sets of issues represent increasing challenges for protecting confidentiality in adolescent and young adult health care. The first set comprises the issues associated with billing and health insurance claims, particularly the use of explanations of benefits (EOBs) to communicate with health insurance policyholders. [12,13] The second relates to the complex questions associated with use of and access to electronic health records (EHRs) and web portals.[14,15,16] In these arenas, laws and policies as well as best practices are evolving rapidly. Thorough discussion of these issues is beyond the scope of this guide, but considering them is essential in any effort to protect confidentiality for adolescents and young adults. (See Appendix E)

New Mexico Health Care Consent Laws

The age of majority in New Mexico is 18; anyone younger than age 18 is legally a minor. Young adults age 18 or older are allowed to consent for their own health care; their right to consent may be limited if they are cognitively impaired and unable to give informed consent. For adolescents who are minors, the consent of a parent or another authorized adult is generally required; even when parent consent is legally required, obtaining the assent of the minor is desirable for ethical and clinical reasons. There are many exceptions to this requirement contained in New Mexico's "minor consent laws." (See Table 1 and Appendix A)

Minor Consent Laws in New Mexico

New Mexico has laws authorizing some minors to consent for health care based on their status. These laws allow emancipated minors to consent for their own care;[17] minors who are on active military service are considered emancipated.[18] Married minors and minor parents may consent to their own care.[19] New Mexico also allows minors who are living apart from their parents to consent for health care.[20] Minors who are not explicitly authorized to consent for all of their own care based on their status may nevertheless be able to do so for specific services. (See Table 1 and Appendix A)

Linkage of consent & confidentiality
"Consent" & "confidentiality" are not perfectly matched but are closely linked in:

- Clinical practice
- Ethical standards
- Professional policies
- State & federal laws

New Mexico has several laws either allowing minors to receive certain services without prior parental consent or authorizing them to consent for specific health care services, including some preventive services. In particular

these laws cover emergency care; contraception and family planning services; prenatal, delivery, and postnatal care; STD care; HIV testing; substance abuse treatment; and mental health services, other than aversive interventions, but including psychotropic medications.[21] Minors may also access emergency contraception without parental consent.[22] Parental consent or notification is not required for minors seeking abortion.[23] New Mexico law also provides for "expedited partner therapy" or EPT that allows STD prescription to a patient's partner.[24] (See Table 1 and Appendix A)

Physicians are not liable for relying on the representations of minors that they are eligible to give consent because they are emancipated, married, or the parents of a child.[25] Parents are not financially liable for services for which the minor consented unless the parent also consented.[26] (See Table 1 and Appendix A)

Minors in Special Situations

Some adolescent minors are in special situations or have health care needs that are not clearly addressed by the New Mexico minor consent laws. These include, for example, adolescents who are victims of sexual assault or human trafficking, or LGBTQ youth. Even though the state's minor consent laws do not explicitly provide for these adolescents to consent for specific services such as care for sexual assault or transgender services, they are able to consent—on the same basis as any other minor—for other services that are covered by the minor consent laws or other laws, such as care for STDs and HIV, contraception, substance abuse services, and mental health treatment. Often these services are relevant to their special situations.

When adolescents are in foster care, special rules may determine who can give consent for their health care—their parents, the court, their social worker, or another adult.[27] In New Mexico, these rules vary depending on specific circumstances. For example, in certain situations, caregivers other than parents may be able to execute a "caregiver's authorization affidavit" that allows them to secure medical care for the minor child.[28] However, foster children also should be able to consent for their own health care on the same basis as other youth.

NEW MEXICO CONFIDENTIALITY LAWS

New Mexico laws include protections for the health care information of individuals of all ages, including minor adolescents and young adults. New Mexico laws generally provide confidentiality protection for medical records and patients' health information and usually require consent for release of the records or disclosure of the information subject to certain exceptions. New Mexico law incorporates the federal HIPAA Privacy Rule for disclosure of protected health information, but also includes stronger protections. New Mexico laws also contain provisions that are specific to the confidentiality of minors' health information, particularly with respect to parents' access to that information. (See Tables 1, 2, & 3, and Appendix A)

Confidentiality Laws for Minors in New Mexico

Confidentiality protections and consent requirements for minors are closely linked but not perfectly matched. Generally, when minors may consent for their own health care they can expect confidentiality protection, but there are exceptions. The New Mexico laws that allow minors to consent for their own health care also grant them rights with respect to access and disclosure of the information and records pertaining to that care. New Mexico law specifies that although parents are generally the personal representatives of their minor children with respect to protected health information, they do not have that status if the minor has not requested that

they be the personal representative. (See Table 1 and Appendix A) However, confidentiality may be compromised via billing and health insurance claims and by practices such as telephone notification from pharmacies for prescription medication pick-up, as well as through access to electronic health records via web portals. (See Appendix E)

One of the main exceptions to confidentiality is the requirement to report child abuse. In New Mexico, every person who knows or reasonably suspects that a child has been abused is required to make a report. The New Mexico definition of reportable abuse includes a broad range of physical, emotional, and sexual harms due to the action or inaction of a parent. (See Table 2 and Appendix A)

A question that often arises for health care professionals is whether voluntary sexual activity of minor adolescents must be reported as child abuse. This complex question has been carefully addressed elsewhere and is beyond the scope of this guide,[29] but careful attention to the requirements of state reporting laws is always essential. A related concern of health care professionals is the age at which minors can participate in sexual activity without risk of criminal prosecution—sometimes referred to as "age of consent." This issue is legally separate from the requirement to report child abuse and a detailed discussion also is beyond the scope of this guide.[30]

These New Mexico laws must be interpreted and applied in the context of the full range of federal laws that protect confidentiality and sometimes supersede state laws. (See Tables 2 and 3 and Appendix B) Important federal confidentiality laws include the HIPAA Privacy Rule, as well as legal requirements for numerous federally funded health programs. Because the HIPAA Privacy Rule defers to state laws and other applicable laws on the question of when parents have access to their adolescent minor children's health information, understanding the relationship between state and federal laws is essential.

Federal Confidentiality Laws

Numerous federal laws contain confidentiality protections. These laws protect patients' privacy in the health care system and the confidentiality of their health information. Federal confidentiality laws that are of particular importance for adolescent and young adult health care include the HIPAA Privacy Rule and FERPA, as well as statutes and regulations for the Title X Family Planning Program and Medicaid, and the rules for drug and alcohol—"substance use disorder"—programs. Confidentiality protections can also be found in requirements for other programs such as the Ryan White HIV/AIDS Program and federally qualified health centers (FQHCs). (See Tables 2 and 3 and Appendix B)

Legal sources of confidentiality protection

- Constitutional right of privacy
- HIPAA Privacy Rule
- Federal education privacy laws
- Federal & state funded health program requirements
- State minor consent laws
- State medical confidentiality & medical records laws
- Evidentiary privileges
- Professional licensing laws

HIPAA Privacy Rule

The HIPAA Privacy Rule—the federal medical confidentiality regulations issued in 2002 under the Health Insurance Portability and Accountability Act—protects the health care information of adolescents and young adults.[31] The HIPAA privacy protections for young adults are the same as for other adults: they are entitled to access their protected health information and to control the disclosure of that information in some circumstances. Additional specific requirements apply to the information of adolescents who are minors.

When minors are authorized to consent for their own health care and do so, the HIPAA Privacy Rule treats them as "individuals" who are able to exercise rights over their own protected health information (PHI).[32] Also, when parents have acceded to a confidentiality agreement between a minor and a health professional, the minor is considered an "individual" under the Rule.[33]

Generally, the HIPAA Privacy Rule treats parents as the "authorized representative" and gives them access to the health information of their unemancipated minor children, including adolescents. Parents' access is limited in situations that involve abuse or endangerment or when it would not be in the minor's best interest.[34] However, when minors are considered "individuals," their parents are not necessarily their authorized representative. On the issue of when parents may have access to protected health information for minors who are considered "individuals" and who have consented to their own care, the Rule defers to other laws. Parents' access to their adolescent minor child's information in these circumstances depends on "state or other law."[35]

Thus, a health care provider must look to state laws or other laws to determine whether they specifically address the confidentiality or disclosure of a minor's health information. State or other laws that explicitly require, permit, or prohibit disclosure of information to a parent are controlling.[36] If state or other laws are silent on the question of parents' access, a health care professional exercising professional judgment has discretion to determine whether or not to grant access.[37] The relevant sources of state or other law that a health care provider must consider include all of the state and federal laws that contain confidentiality protections.

Additional provisions of the HIPAA Privacy Rule that are important for both adolescents and young adults are those that allow individuals to request restrictions on the disclosure of their PHI and to request that communications regarding their PHI occur in a confidential manner.[38] Other protections address situations in which disclosure may be restricted to protect individuals who may be at risk for domestic violence or child abuse.[39]

FERPA

When health care services are provided in a school setting, the legal framework for consent to treatment for adolescents remains generally the same as in other settings; however, different confidentiality rules may apply. In a school setting, the HIPAA Privacy Rule requirements must be understood in relation to the requirements of the Family Educational Rights and Privacy Act (FERPA), a federal statute that, with its implementing regulations, controls the disclosure of the educational records of students at most primary, secondary, and post-secondary schools.[40] Health care professionals who provide services in schools often are uncertain whether they must follow the HIPAA Privacy Rule or FERPA. Two federal agencies—the Department of Health & Human Services and the Department of Education—have issued joint guidance that provides some clarification.[41]

While the HIPAA Privacy Rule typically controls release of health information created by health care professionals, the HIPAA Privacy rule explicitly *excludes* from its purview health records that are part of an "education record" as that is defined under FERPA.[42] FERPA defines "education record" in a way that sometimes can include health records created by a health care provider—such as a school nurse—employed by or acting on behalf of a school or university.

Thus, health records created by medical professionals employed by a school or university may be part of an "education record" and subject to FERPA rather than HIPAA. The most important implication of this is that parents have access to the education records of their minor children. Young adults, beginning at age 18, control access to their own education records under FERPA, including any health information. Health records created by medical professionals working in a school setting such as a school-based health center (SBHC) but employed by a health entity would usually be covered by HIPAA, not FERPA. Nevertheless, the issues involving education records, school health records, and the medical records of SBHCs are complex in terms of who has access and who controls disclosure; determinations in individual situations depend on a careful analysis of interaction of FERPA and HIPAA as well as other federal and state laws.[43]

Title X Family Planning

The confidentiality regulations for the federal Title X Family Planning Program[44] are exceptionally strong and have protected adolescents as well as adults for nearly five decades. Federal Title X confidentiality protections take precedence over state requirements for parental consent or notification, allowing minors to receive family planning services at Title X sites without parental involvement.[45] The regulations require that all information about individuals receiving services must be confidential and must not be disclosed without the individual's documented consent, except as necessary to provide services to the patient or as required by law—and, even then, only with appropriate safeguards for confidentiality.[46] When information is shared by Title X providers with other health care providers, care must be taken to understand the extent to which those other providers are bound by similar confidentiality requirements. Examples of disclosures that are often required by law include mandatory reporting of child abuse to child welfare or law enforcement,[47] intimate partner violence to law enforcement,[48] and STDs to public health authorities.[49] In each of these situations, other specific confidentiality rules may apply.

On March 4, 2019 the U.S. Department of Health and Human Services published a final rule, "Compliance with Statutory Program Integrity Requirements," that would significantly alter the federal regulations for the Title X Program.[50] This guide does not discuss the changes that would result from implementation of the new rule. Detailed analysis of the rule and updates on its status are available elsewhere.[51] The new rule has been challenged in numerous lawsuits.[52]

Medicaid

Federal Medicaid law contains safeguards against disclosure of confidential information.[53] It also requires that Medicaid cover family planning "services and supplies" for all Medicaid enrollees of childbearing age, including "minors who can be considered to be sexually active.[54] These protections have been interpreted to provide significant protection for confidential access to family planning services for minors.[55] State laws and policies also contain varied provisions that help to protect the privacy of Medicaid beneficiaries and their confidential health information. These provisions include both general confidentiality requirements and specific confidentiality

protections for information related to family planning services, such as through states' Medicaid family planning expansions that include coverage for minors as well as young adults.[56]

Drug and Alcohol Programs

Federal regulations—contained in 42 CFR Part 2 and often referred to as "Part 2" establish special confidentiality protections for substance use records;[57,58] they apply to "substance use disorder programs" that meet certain very broad criteria of being "federally assisted."[59] The regulations protect both adolescent minors and young adults. When minors are allowed to consent for treatment under state law, they have independent rights under the federal regulations.[60] For those providers and programs that must comply with the federal rules, the regulations impose strict confidentiality requirements that do not allow disclosure without the consent of the patient except in specific circumstances that pose a substantial threat to the life or physical wellbeing of the patient or another person.[61] To the extent that these federal regulations are more protective of confidentiality, they take precedence over state law; if they are less protective, state law controls.[62]

Ryan White HIV/AIDS Program

The Ryan White HIV/AIDS Program (Ryan White) supports some medical services for patients with HIV.[63] Ryan White generally is a payer of last resort and fills the gaps for individuals with HIV who have no other source of coverage or face coverage limits. Ryan White service providers and patients have significant concerns about confidentiality, but like other federal funding programs such as Title X, the Ryan White law includes strong and explicit confidentiality protections.[64]

Federally Qualified Health Centers

Federally qualified health centers (FQHCs) funded under Section 330 of the Public Health Service Act,[65] also frequently referred to as "community health centers," often provide services for adolescents and young adults. For example, some FQHCs operate school-based health centers. FQHCs also are required to provide preventive health services, including voluntary family planning services and many of the preventive services recommended for adolescents and young adults;[66] and some FQHCs receive Title X funds to help provide family planning services. FQHCs are required to maintain the confidentiality of patient records[67] and, if they receive Title X Family Planning funds, to comply with Title X confidentiality regulations. The confidentiality regulation for FQHCs[68] contains language almost identical to the Title X confidentiality regulations.[69]

Confidentiality and Preventive Services

The U.S. Preventive Services Task Force (USPSTF) and Bright Futures have issued recommendations for preventive services for adolescents and young adults. In each category, the specific services recommended by the USPSTF vary for adolescents and for young adults; in Bright Futures the recommendations are for ages 11-21. The AYAH National Resource Center has issued a fact sheet on "Evidence-Based Clinical Preventive Services for Adolescents and Young Adults" that sets out the specific services recommended for the different age groups in each category.[70]

Recommended preventive services for adolescents & young adults
The U.S. Preventive Services Task Force (USPSTF) and Bright Futures have recommended clinical preventive services for adolescents and young adults in each of these categories:
- substance use
- sexual and reproductive health
- mental health
- nutrition and exercise
- immunizations
- safety and violence

Many of the preventive services recommended for adolescents and young adults fall into categories about which young people have privacy concerns. These include at least some services in all recommended areas of prevention. Sometimes the privacy concerns are associated with a visit for a specific purpose, such as family planning; on other occasions concerns about confidentiality arise when sensitive issues, such as STDs, HIV, or substance use, are addressed during a well visit.

Not all preventive services raise heightened privacy concerns for adolescents and young adults; but when they do, it is important to understand when confidentiality can—and when it cannot—be assured. For young adults, who are able to consent to their own care and are entitled to the same confidentiality protections as other adults, any preventive health service they receive should be treated as confidential, meaning that information usually should not be disclosed to parents or others without their permission. For minor adolescents, if they are allowed to consent for their own care under the New Mexico minor consent laws, they can usually expect confidentiality, subject to any disclosures that are specifically permitted or required by law. For both adolescents and young adults, other legal and ethical disclosure obligations, such as when a patient is dangerous to self or others, must be considered. There are no specific confidentiality requirements for preventive services; the extent of confidentiality protection depends on the service as well as the age and other characteristics of the young person.

CONCLUSION

Confidentiality in adolescent and young adult health care is an important element in protecting the health of individual young people and the public health. Decades of research have found that privacy protection encourages young people to seek essential health care and speak openly with their health care providers. Many state and federal laws as well as ethical guidelines require confidentiality protection and support the rights of adolescents and young adults to receive confidential health care including many preventive health services.

TABLE 1: NEW MEXICO HEALTH CARE CONSENT LAWS FOR MINORS[*]

New Mexico Minor Consent Laws Based on Status			
Status	**Minor Consent**	**Scope/Limitations**	**Citations**
Age of majority[†]	< 18 – No ≥ 18 – Yes	Age of majority is 18	N.M. Stat. Ann. § 28-6-1
Emancipated minor	Yes	Emancipated minor may consent for hospital, medical, surgical, dental, or psychiatric care	N.M. Stat. Ann. § 24-10-1; N.M. Stat. Ann. § 32A-21-5
Minor Living Apart	Yes	Unemancipated minor age 14 or older with capacity to consent living apart from parent or legal guardian may consent to medically necessary health care	N.M. Stat. Ann. § 24-7A-6.2
Married minor	Yes	Minor age 16 or older who is or has been married may consent for hospital, medical, or surgical care	N.M. Stat. Ann. § 24-10-1
Minor parent	Yes	Minor age 14 or older with capacity to consent who is a parent may consent to medically necessary health care	N.M. Stat. Ann. § 24-7A-6.2
Minor in military	Yes	Minor age 16 or older on active military duty is emancipated	N.M. Stat. Ann. § 32A-21-3
New Mexico Minor Consent Laws Based on Services			
Service	**Minor Consent**	**Scope/Limitations**	**Citations**
Emergency services	Consent by person other than parent	When minor needs immediate emergency hospitalization, medical attention, or surgery & parents cannot be located after reasonable efforts, any person standing in lieu of parents may consent	N.M. Stat. Ann. § 24-10-2
Contraceptives/ family planning	Yes	State or local government or any health facility furnishing family planning services shall nor subject any person to any standard or requirement as a prerequisite to the receipt of family planning service except in specified circumstances not related to age (Note: See Table 2 re Title X Family Planning)	N.M. Stat. Ann. § 24-8-5
Pregnancy care	Yes	Minor may consent for examination and diagnosis for pregnancy and for prenatal, delivery, and postnatal care	N.M. Stat. Ann. § 24-1-13; N.M. Stat. Ann. § 24-1-13.1
STI care	yes	Minor may consent for examination & treatment for any STI; counseling & referral must be provided to individuals with positive test result	N.M. Stat. Ann. § 24-1-9; N.M Stat. Ann. § 24-1-9.3
HIV testing	yes	Minor may give informed consent for an HIV test; counseling & referral must be provided to individuals with positive test result	N.M. Stat. Ann. §§ 24-2B-2, 24-2B-3, 24-2B-4
Mental health & substance abuse services ≥ age 14	Yes	Minor age 14 or older with capacity to consent may consent to treatment including psychotropic drugs but not including aversive interventions or special ed services; capacity is presumed & determination of lack of capacity must be made by two clinicians	N.M. Stat. Ann. § 32A-6A-15; N.M. Stat. Ann. § 32A-6A-16
Mental health & substance abuse services < age 14	Yes, with limitations	Minor under age 14 may consent to initial assessment & verbal therapy for 2 weeks	N.M. Stat. Ann. § 32A-6A-14
Residential mental health & substance abuse treatment	Yes, with limitations	Specific consent rules govern voluntary & involuntary placement of minors in residential treatment facilities; separate rules apply to minors under age 14 & minors age 14 or older	N.M. Stat. Ann. § 32A-6A-20 N.M. Stat. Ann. § 32A-6A-21 N.M. Stat. Ann. § 32A-6A-22

[*] This table contains only brief summary information about the laws; more detailed information and selected excerpts of the laws are contained in Appendix A.

[†] Parent consent is generally required for minors under age 18 unless one of the exceptions in the minor consent laws apply; young adults age 18 or older generally may consent for themselves.

TABLE 2: NEW MEXICO & FEDERAL CONFIDENTIALITY LAWS FOR MINORS[*]

New Mexico Confidentiality Laws for Minors		
	Scope of Protection/Limitations	**Citations**
Mental health & substance abuse information – access	Minor may access own confidential mental health & substance abuse information unless treating professional believes disclosure would not be in minor's best interest	N.M. Stat. Ann. § 32A-6A-24
Mental health & substance abuse information – disclosure	Consent of minor age 14 or older required for disclosure of confidential mental health & substance abuse information; minor age 14 or older authorized to consent for disclosure; custodian of minor younger than age 14 authorized to consent for disclosure on behalf of minor; specific exceptions allow disclosure without consent of minor or custodian	N.M. Stat. Ann. § 32A-6A-24
Parent as personal representative	Consistent with HIPAA, if minor authorized to consent for health care the minor has a right to determine whether parent is personal representative with access to minor's protected health information	N.M. Admin. Code § 8.8.5.12
Disclosure – STI & HIV test results	Identity of person tested for STI or HIV & test results shall only be disclosed to subject of test or legally authorized representative, guardian, or custodian (which could include parent);	N.M. Stat. Ann. § 24-1-9.4 N.M. Stat. Ann. § 24-2B-6
Disclosure - psychotropic drugs	If minor age 14 or older gives consent for administration of psychotropic drugs clinician must inform legal custodian of minor	N.M. Stat. Ann. § 32A-6A-15
Child abuse reporting	Every person, including health care professionals, who knows or suspects that a child has been abused due to action or inaction of parent must report to law enforcement or department of children, youth, & families	N.M. Stat. Ann. § 32A-4-2 N.M. Stat. Ann. § 32A-4-3
Federal Confidentiality Laws for Minors		
	Scope of Protection/Limitations	**Citations**
HIPAA Privacy Rule – minor as individual	Minor who consents, or whose parent accedes to confidentiality, is an "individual" with control over their own protected health information (PHI)	45 C.F.R. § 164.502(g)(3)
HIPAA Privacy Rule – parent as personal representative	Parent not necessarily the personal representative when minors have consented to their own care; parent may not be personal representative if minor subject to domestic violence, abuse, neglect, or endangerment	45 C.F.R. § 164.502(g)(3) and (5)
HIPAA Privacy Rule – parents' access	Parents' access to PHI when minor is the "individual" depends on other state and federal laws; parent's access may be denied if health care professional determines It would cause substantial harm to minor or another individual	45 C.F.R. §§ 164.502(g)(3), 164.524(a)(3)(iii)
FERPA	Information about health services provided by a school may be included in a students' "education records" and subject to FERPA, not HIPAA; parents have access to minors' education records	20 U.S.C §1232g, 34 C.F.R. Part 99; 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential and may only be disclosed with the minor's permission or if required by law	42 C.F.R. § 59.11
Medicaid	Adolescent minors who are eligible for Medicaid may receive confidential family planning services funded by Medicaid	42 U.S.C. §§ 1396a(a)(7), 1396d(a)(4)(C)
Drug & alcohol—"substance use disorder"—programs	In federally assisted programs, consent for disclosure must be obtained from minor who is authorized under state law to consent for alcohol or drug abuse treatment; disclosure to parents may occur only if minor lacks capacity for rational choice due to extreme youth, physical incapacity, or substantial threat to minor or another	42 C.F.R. § 2.14

[*] This table includes information about selected state and federal confidentiality laws that pertain to minors' health information. It contains only brief summary information about the laws; more detailed information is included in Appendix A and Appendix B. This table includes laws that are specific to minors; additional laws that are relevant for adults and minors are included in Table 3.

TABLE 3: NEW MEXICO & FEDERAL CONFIDENTIALITY LAWS FOR YOUNG ADULTS*

New Mexico Confidentiality Laws for Young Adults		
	Scope of Protection/Limitations	**Citation**
Health Information	All health information that relates to and identifies specific individuals as patients is strictly confidential	N.M. Stat. Ann. § 14-6-1
Electronic medical records	Consent of individual required for disclosure Information in individual's electronic medical record except as allowed by state or federal law	N.M. Stat. Ann. § 24-14B-6
Health maintenance organizations	Information pertaining to diagnosis, treatment or health of any enrollee or applicant shall be confidential and shall not be disclosed by HMO, subject to specific exceptions	N.M. Stat. Ann. § 59A-46-27
Medicaid providers	Medicaid providers are required to comply with HIPAA privacy regulations	N.M. Admin. Code § 8.302.1.18
STI & HIV test results	STI & HIV test results are confidential & may only be disclosed to patient, subject to specific exceptions	N.M. Stat. Ann. § 24-1-9.4 N.M. Stat. Ann. § 24-2B-6
Psychologists	Psychologists must safeguard confidential information & inform patients of limits to confidentiality; confidential information may only be disclosed without written consent to protect against substantial & imminent risk of serious harm by patient to self or others, subject to specific exceptions	N.M. Admin. Code § 16.22.2.12
Counselors & therapists	Counselors & therapists are required to safeguard confidential information	N.M. Admin. Code §§ 16.27.18.15, 16.27.18.17
Mental health/developmental disabilities information	Authorization of patient in a residential treatment facility is required for disclosure of confidential information, subject to specific exceptions	N.M. Stat. Ann. § 43-1-19
Health care information – advance directive	A person authorized to make health care decisions has access to and control over medical & health care information	N.M. Stat. Ann. § 24-7B-10
Federal Confidentiality Laws for Young Adults		
	Scope of Protection/Limitations	**Citation**
HIPAA Privacy Rule - generally	Individuals have access to and some control over disclosure of their own protected health information (PHI)	45 C.F.R. §§ 502, 524, 528
HIPAA Privacy Rule – special confidentiality protections	Individuals may request restrictions on the disclosure of their PHI and that communications regarding their PHI occur in a confidential manner	45 C.F.R. §§ 164.502(h), 164.522(a)(1), and 164.522(b)(1)
FERPA	Information about health services provided by a school may be included in a students' "education records" and subject to FERPA, not HIPAA; parents do not have access to education records of young adults age 18 and older	20 U.S.C §1232g, 34 C.F.R. Part 99; 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential and may only be disclosed with the patient's permission or if required by law	42 C.F.R. § 59.11
Medicaid	State Medicaid plans are required to include protections for confidentiality of applicants' and enrollees' information	42 U.S.C. § 1396a(a)(7)
Drug & alcohol—"substance use disorder"—programs	Consent for disclosure must be obtained from an individual who seeks treatment from a substance abuse disorder provider or program; disclosure without patient's consent may occur only in very limited circumstances such as bona fide medical emergencies or with a court order	42 C.F.R. Part 2

* This table includes information about selected state and federal confidentiality laws that pertain to young adults' health information. It contains only brief summary information about the laws; more detailed information is included in Appendix B.

Appendix A: New Mexico Consent & Confidentiality Laws for Minors

This appendix contains brief summaries of New Mexico consent and confidentiality laws that apply to health services received by minors.

Minor Consent Based on Status

Age of Majority

N.M. Stat. Ann. § 28-6-1
The age of majority in New Mexico is 18.

Emancipated Minor

N.M. Stat. Ann. § 24-10-1
Any emancipated minor may consent for hospital, medical, and surgical care.

N.M. Stat. Ann. § 32A-21-5
An emancipated minor may consent for medical, dental, or psychiatric care without parental consent, knowledge or liability.

N.M. Stat. Ann. §§ 32A-21-3 and 32A-21-4
These statutes contain the criteria for a minor age 16 or older to become emancipated.

Minor Living Apart from Parents

N.M. Stat. Ann. § 24-7A-6.2
An unemancipated minor age 14 or older with the capacity to consent who is living apart from his or her parent or legal guardian may consent to medically necessary health care, including clinical and rehabilitative, physical, mental or behavioral health services.

Married Minor

N.M. Stat. Ann. § 24-10-1
A minor age 16 or older who is or has been married may consent for hospital, medical or surgical care.

Minor Parent

N.M. Stat. Ann. § 24-7A-6.2
An unemancipated minor age 14 or older who is a parent may consent to medically necessary health care, including clinical and rehabilitative, physical, mental or behavioral health services.

Minor in the Military

N.M. Stat. Ann. § 32A-21-3
A minor age 16 or older who is on active duty with the U.S. Armed Forces is emancipated and would therefore be able to consent for their medical care on the same basis as other emancipated minors.

Minor Consent Based on Services

Emergency Services

N.M. Stat. Ann. § 24-10-2
In cases of emergency when a minor needs immediate hospitalization, medical attention, or surgery and the parents cannot be located after reasonable efforts, any person standing in lieu of the parents may consent for the emergency attention.

Contraception/Family Planning

N.M. Stat. Ann. § 24-8-5
Neither the state nor local government nor any health facility furnishing family planning services shall subject any person to any standard or requirement as a prerequisite to the receipt of any requested family planning service except in specified circumstances not related to age.

Note: Under FDA rules for emergency contraception, Plan B and its generic equivalents are available "over the counter" without a prescription for individuals of any age; Ella is available with a prescription.[71]

Pregnancy Related Care

N.M. Stat. Ann. § 24-1-13
A may consent for an examination and diagnosis by a licensed physician for pregnancy.

N.M. Stat. Ann. § 24-1-13.1
A female minor may consent for prenatal, delivery and postnatal care by a licensed health care provider.

Note: As of March 2019, parental consent or notification is not required for a minor to receive an abortion in New Mexico. A prior law requiring parental consent was permanently enjoined by the court and subsequent bills that have been introduced have not been enacted.[72]

STI

N.M. Stat. Ann. § 24-1-9
A minor may consent for an examination and treatment by a licensed physician for any sexually transmitted infection.

N.M Stat. Ann. § 24-1-9.3
A positive test result for a sexually transmitted infection shall not be revealed to the person upon whom the test was performed without the person performing the test, or the health facility at which the test was performed, providing or referring that person for individual counseling. Counseling shall include information about the meaning of the test results, the possible need for additional testing, the availability of appropriate health care services, including mental health care, social and support services, and the benefits of locating and counseling any individual by whom the infected person may have been exposed to the sexually transmitted disease and any individual whom the infected person may have exposed to the sexually transmitted disease.

HIV and AIDS

N.M. Stat. Ann. § 24-2B-2
Informed consent of individual tested for HIV is required subject to specific exceptions.

N.M. Stat. Ann. § 24-2B-3
A minor may give informed consent for an HIV test.

N.M. Stat. Ann. § 24-2B-4
A positive test result shall not be revealed to the subject of the test without the health care provider referring the test subject for individual counseling about the meaning of the test results, the need for additional testing, the availability of health care services (including mental health care), and the benefits of informing other exposed parties.

Behavioral Health Services for Mental Health & Substance Abuse

N.M. Stat. Ann. § 32A-6A-14
A minor under age 14 may initiate and consent to an initial assessment with a clinician and for medically necessary early intervention verbal therapy services for two calendar weeks prior to obtaining parental consent.

N.M. Stat. Ann. § 32A-6A-15
A minor age 14 or older with the capacity to consent may consent, without the consent of a legal custodian, to individual psychotherapy, group psychotherapy, guidance counseling, case management, behavioral therapy, family therapy, counseling, substance abuse treatment or other forms of verbal treatment that do not include aversive interventions. The right to consent also does not include special education services under federal law. A minor age 14 or older with the capacity to consent may give informed consent for the administration of psychotropic drugs, but the clinician shall inform the legal custodian of the child 14 or older.

N.M. Stat. Ann. §§ 32A-6A-1 – 32A-6A-30

Detailed rules govern voluntary and involuntary placement of minors in residential treatment facilities; separate rules apply to minors under age 14 & minors age 14 or older.

Confidentiality & Disclosure

Disclosure to Parents

N.M. Admin. Code § 8.8.5.7
Under regulations of the Department of Children, Youth, and Families, a parent, guardian, or other person acting in loco parentis is authorized as an unemancipated minor's personal representative regarding the inspection and copying of the minor's protected health information.

N.M. Admin. Code § 8.8.5.12
Under regulations of the Department of Children, Youth, and Families, if a patient is an unemancipated minor but is authorized to give lawful consent to health care without consent of the minor's personal representative, and the minor has not requested that the person be treated as the minor's personal representative, or the personal representative has assented to agreement of confidentiality between the Children, Youth, and Families Department and the minor, then the Department will not treat a parent, guardian, or other person acting in loco parentis as the minor's personal representative.

Note: N.M. Admin. Code § 8.8.5.6 provides that the objective of both of these regulations is to be in compliance with HIPAA.

N.M. Stat. Ann. § 32A-6A-15
A minor 14 or older may give informed consent for the administration of psychotropic drugs, but the clinician shall inform the legal custodian of the minor.

N.M. Stat. Ann. § 24-1-9.4
Except in situations of the testing of criminal sex offenders, the identity of a person tested for a sexually transmitted infection or the results of the test shall not be disclosed in a manner that permits identification of the subject of the test, except to the subject of the test or the subject's legally authorized representative, guardian or legal custodian. Note: Under the HIPAA Privacy Rule a parent is not necessarily the authorized representative of a minor when the minor has consented to the health care.

Medical Records

N.M. Stat. Ann. § 32A-6A-24
A minor has a right of access to his or her confidential mental health or developmental information unless the treating professional believes disclosure would not be in the child's best interest. The legal custodian of a child under 14 years of age who is receiving services in a mental health or developmental disabilities facility has a right to authorize disclosure of records on the minor's behalf.

N.M. Stat. Ann. § 32A-6A-24
A minor age 14 or older with the capacity to consent to disclosure of medical information shall have the right to authorize disclosure of mental health or habilitation records. The child's authorization is not required when disclosure to a primary caregiver is essential for treatment of the child, and the disclosure is only of information necessary for the continuation of the child's treatment.

Physician Liability

Good Faith Reliance

N.M. Stat. Ann. § 24-7A-6.2
A health care provider or institution shall not be held liable for reasonably relying on statements made by an unemancipated minor that he or she is eligible to give consent pursuant to N.M. Stat. Ann. § 24-7A-6.2(A) (i.e. that the minor is 14 or older and living apart from his or her parents or is the parent of a child).

Financial Responsibility

Parent Liability

N.M. Stat. Ann. § 24-7A-6.2
A parent or guardian of an unemancipated minor is not liable for payment for medically necessary health care services rendered to the minor for which the minor consented unless the parent or guardian consented to those services. A parent or legal guardian shall still be held liable for payment for emergency health care provided to a minor.

Child Abuse Reporting

Definitions

N.M. Stat. Ann. § 32A-4-2
Child abuse is defined to include serious harm because of the action or inaction of the child's parent, guardian or custodian; physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian; sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian; intentional or negligent endangerment of the child's life or health by the parent, guardian or custodian; and intentional torture or cruel confinement or punishment.

Required Reports

N.M. Stat. Ann. § 32A-4-3
Every person, including health care professionals, who knows or reasonably suspects that a child has been abused is required to report to law enforcement or the department of children, youth, and families.

Appendix B: Federal Confidentiality Laws

This appendix contains brief summaries and excerpts of the text of selected federal statutes and regulations that provide confidentiality protection for health information and services provided to adolescent minors and young adults.

HIPAA Privacy Rule

The HIPAA Privacy Rule contains protections for both minors and young adults. In 45 C.F.R. § 160.502(g)(3) the rule specifies when a minor is considered an individual who has rights with respect to their own protected health information PHI and whose parent is not necessarily their personal representative with access to their PHI. In 45 C.F.R. § 160.502(g)(5) the rule specifies when a parent is not necessarily the personal representative of a minor due to abuse, neglect, domestic violence, or endangerment, or if it would not be in the minor's best interest. In 45 C.F.R. §§ 160.502(h) and 160.522 the rule specifies special confidentiality protections for individuals: the right to request restrictions on disclosure of PHI; and the right to request confidential communications.

45 C.F. R. § 160.502. Uses and disclosures of protected health information: general rules.

". . . (g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with ß 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with ß 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under ß 164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

. . .

(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(h) Standard: Confidential communications. A covered health care provider or health plan must comply with the applicable requirements of ß 164.522(b) in communicating protected health information.

. . .”

45 C.F.R. § 164.522 Rights to request privacy protection for protected health information

“(a)(1) Standard: Right of an individual to request restriction of uses and disclosures. (i) A covered entity must permit an individual to request that the covered entity restrict:

(A) Uses or disclosures of protected health information about the individual to carry out treatment, payment, or health care operations; and

(B) Disclosures permitted under § 164.510(b).

(ii) Except as provided in paragraph (a)(1)(vi) of this section, a covered entity is not required to agree to a restriction.

(iii) A covered entity that agrees to a restriction under paragraph (a)(1)(i) of this section may not use or disclose protected health information in violation of such restriction, except that, if the individual who requested the restriction is in need of emergency treatment and the restricted protected health information is needed to provide the emergency treatment, the covered entity may use the restricted protected health information, or may disclose such information to a health care provider, to provide such treatment to the individual.

(iv) If restricted protected health information is disclosed to a health care provider for emergency treatment under paragraph (a)(1)(iii) of this section, the covered entity must request that such health care provider not further use or disclose the information.

(v) A restriction agreed to by a covered entity under paragraph (a) of this section, is not effective under this subpart to prevent uses or disclosures permitted or required under §§ 164.502(a)(2)(ii), 164.510(a) or 164.512.

(vi) A covered entity must agree to the request of an individual to restrict disclosure of protected health information about the individual to a health plan if:

(A) The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law; and

(B) The protected health information pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the covered entity in full.

(2) Implementation specifications: Terminating a restriction. A covered entity may terminate a restriction, if:

(i) The individual agrees to or requests the termination in writing;

(ii) The individual orally agrees to the termination and the oral agreement is documented; or

(iii) The covered entity informs the individual that it is terminating its agreement to a restriction, except that such termination is:

(A) Not effective for protected health information restricted under paragraph (a)(1)(vi) of this section; and

(B) Only effective with respect to protected health information created or received after it has so informed the individual.

(3) Implementation specification: Documentation. A covered entity must document a restriction in accordance with § 160.530(j) of this subchapter.

(b)(1) Standard: Confidential communications requirements. (i) A covered health care provider must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the covered health care provider by alternative means or at alternative locations.

(ii) A health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

(2) Implementation specifications: Conditions on providing confidential communications.

(i) A covered entity may require the individual to make a request for a confidential communication described in paragraph (b)(1) of this section in writing.

(ii) A covered entity may condition the provision of a reasonable accommodation on:

(A) When appropriate, information as to how payment, if any, will be handled; and

(B) Specification of an alternative address or other method of contact.

(iii) A covered health care provider may not require an explanation from the individual as to the basis for the request as a condition of providing communications on a confidential basis.

(iv) A health plan may require that a request contain a statement that disclosure of all or part of the information to which the request pertains could endanger the individual."

Title X Family Planning Services

42 C.F.R. § 59.11 – Confidentiality

"All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals."[*]

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[*] On March 4, 2019 the U.S. Department of Health and Human Services published a final rule, "Compliance with Statutory Program Integrity Requirements," that would significantly alter the federal regulations for the Title X Program.[*] This guide does not discuss the changes that would result from implementation of the new rule. Detailed analysis of the rule and updates on its status are available elsewhere. The new rule has been challenged in numerous lawsuits.

Medicaid

42 U.S.C. § 1396a(a)(7)
State Medicaid plans are required to provide "safeguards for confidentiality for information concerning applicants and recipients." [Note: The section contains additional specific requirements and exceptions.]

42 U.S.C. § 1396d(a)(4)(C)
For purposes of the Medicaid program, this title [42 USCS §§ 1396 et seq.]--
"(a) Medical assistance. The term "medical assistance" means payment of part or all of the cost of the following care and services . . .(4) . . . (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of childbearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies[.]"

Drug & Alcohol Programs

42 C.F.R. § 2.14. Minor patients
"(a) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable state law to apply for and obtain substance use disorder treatment, any written consent for disclosure authorized under subpart C of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a part 2 program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a state or local law requiring the program to furnish the service irrespective of ability to pay.
(b) State law requiring parental consent to treatment.

> (1) Where state law requires consent of a parent, guardian, or other individual for a minor to obtain treatment for a substance use disorder, any written consent for disclosure authorized under subpart C of this part must be given by both the minor and their parent, guardian, or other individual authorized under state law to act in the minor's behalf.
> (2) Where state law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf only if:
>
> > (i) The minor has given written consent to the disclosure in accordance with subpart C of this part; or
> > (ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the part 2 program director under paragraph (c) of this section.

(c) Minor applicant for services lacks capacity for rational choice. Facts relevant to reducing a substantial threat to the life or physical well-being of the minor applicant or any other individual may be disclosed to the parent, guardian, or other individual authorized under state law to act in the minor's behalf if the part 2 program director judges that:

> (1) A minor applicant for services lacks capacity because of extreme youthor mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of this part to their parent, guardian, or other individual authorized under state law to act in the minor's behalf; and
> (2) The minor applicant's situation poses a substantial threat to the life or physical well-being of the minor applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf."

Appendix C: Key Questions for Confidentiality Protection

This appendix contains questions that are important to consider in order to determine whether an individual young person in New Mexico can obtain a particular service confidentially. These questions are based on the New Mexico and federal laws that establish consent requirements and confidentiality protections for adolescent and young adult health services. Depending on the specific situation additional considerations, and laws not discussed in this guide, may affect whether the young person may receive confidential services.

- Is the youth an adult or a minor?
  - Young adults are generally able to consent for their own care and are entitled to the same confidentiality protections as other adults.
  - Minor adolescents may be able to consent for their own care based their status or the services they are seeking; confidentiality protection may depend on whether they can consent for their own care, the specific service they receive, where they receive the service, and the source of the payment.

- If the young person is a minor, what is their status?
  - Emancipated
  - Living apart from parents
  - Married
  - A parent
  - Serving in military

- What service is the young person seeking?
  - Emergency services
  - Contraception
  - STD services
  - HIV/AIDS services
  - Pregnancy care
  - Mental health services
  - Substance use/abuse services
  - Immunizations

- Where is the service being provided?
  - General medical office, health center, or hospital outpatient clinic
  - Title X family planning health center
  - Drug or alcohol—"substance use disorder"—treatment program

- What is the source of the payment?
  - Private/commercial health insurance
  - Self-pay
  - Parent payment
  - Medicaid
  - Title X Family Planning Program
  - New Mexico state funding

Appendix D: Legal Resources for Adolescent & Young Adult Health & the Law in New Mexico

Corinne Wolf Children's Law Center. New Mexico Child Welfare Handbook: A Legal Manual on Child Abuse and Neglect. New Mexico Judicial Education Center, Institute of Public Law, UNM School of Law, 2014. http://childlaw.unm.edu/resources/common/docs/2014-child-welfare-handbook.pdf.

English A, Ford C. The HIPAA Privacy Rule and adolescents: Legal and ethical questions multiply. Persp on Sexual Reprod Health 2004; 36(2):80-86. https://www.guttmacher.org/journals/psrh/2004/hipaa-privacy-rule-and-adolescents-legal-questions-and-clinical-challenges.

George Washington University, Hirsh Health Law and Policy Program. Health Information and the Law: Privacy & Confidentiality in New Mexico. http://www.healthinfolaw.org/state-topics/32,63/f_states.

Legal Action Center. Substance Use: Confidentiality Resources. https://lac.org/resources/substance-use-resources/confidentiality-resources/.

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Appendix E: Resources on Confidentiality, Health Insurance, and Electronic Health Records

Confidentiality & Insurance

Extensive resources on confidentiality and insurance were developed by the National Family Planning & Reproductive Health Association as part of a three-year research project, Confidential & Covered. These resources are available on the project's website at https://www.confidentialandcovered.com/. The following publications on that website specifically address legal and policy issues related to confidentiality and insurance:

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>
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Appendix F: 25 Years of AYAH Confidentiality Studies—A Bibliography

This appendix lists selected articles from the past 25 years that form an important part of the evidence base of research findings supporting confidentiality in adolescent and young adult health care.*

Adolescent and Young Adult Perspectives

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