

MINOR CONSENT & CONFIDENTIALITY IN MISSISSIPPI



This guide is dedicated to addressing teen concerns about **confidentiality laws**, **minor consent laws**, and **reporting responsibilities** for healthcare providers in an effort to increase access to and use of youth-friendly healthcare in Mississippi.

Version 2.0
March 2016

www.teenhealthms.org

TABLE OF CONTENTS

By clarifying minors' consent and confidentiality rights, this guide helps health center staff take this first critical step to ensure access to youth-friendly healthcare in **MISSISSIPPI**.

A Resource for ALL Health Center Staff.....	1
Age of Consent for Healthcare.....	3
Minor Consent Laws: Sexual & Reproductive Health Services.....	4
Minor Consent Laws: Mental Health & Substance Abuse Services.....	5
Title X Services.....	6
Tips to Ensure Confidentiality.....	7
Youth-Friendly Best Practice: No- or Low-Cost Services.....	8
References.....	9



A Resource for **ALL** Health Center Staff

Studies have shown that teens usually trust their doctors to maintain their confidentiality, **but many worry that receptionists, technicians, and nurse assistants might break their confidentiality.**^{1,2} These statistics may be a contributing factor to Mississippi's low rates of contraceptive use and, in turn, high rates of teen pregnancy and teen births, including repeat births to teens.

3rd

In 2014, Mississippi ranked third in the nation for teen childbearing, with a rate of 38 births per 1,000 teen girls aged 15-19.³

54%

In 2013, among those surveyed for the Youth Risk Behavior survey, 54% of Mississippi high school students reported ever having sex. 40% of Mississippi high school students reported being currently sexually active.⁴

78%

78% of Mississippi high school students that reported being currently sexually active did not use birth control pills; an IUD or implant; or a shot, patch, or birth control ring before last sexual intercourse; and 39% did not use a condom.⁴



It is widely known **that teens' concern about confidentiality is the #1 reason they might not seek medical care.**⁵ The various confidentiality laws, minor consent laws, and reporting responsibilities can be overwhelming and confusing to healthcare providers, teens, and parents. **This resource is meant to simplify these issues.**

Fewer than 1% of girls aged 15-19 years in Mississippi seeking contraceptive services at Title X service sites in 2013 used long-acting reversible contraception (LARC)—the lowest LARC use rate in the nation.⁶ The importance of confidentiality for teens when accessing contraceptive services, including LARC services, is illustrated by the following statistics from a study on adolescent female family planning clients:⁷

86%

86% of adolescent female family planning clients would be willing to use all of the **confidential** sexual health services offered at local clinics.

29%

29% would have unprotected sex if their parents were to be notified.

83%

83% would stop using some or all sexual health services if their parents were to be notified.

6%

6% would delay testing or treatment for HIV and other STDs if their parents were to be notified.

57%

57% would stop using prescription contraceptives and begin using condoms instead if their parents were to be notified.

1%

Only 1% would stop having sex if their parents were to be notified.



AGE OF CONSENT FOR HEALTHCARE IN MISSISSIPPI

The general age of consent for healthcare in Mississippi is 18 years old.⁸

MISSISSIPPI STATE LAW requires parental consent or notification before a minor may obtain contraceptive services unless they are married or are a parent, or if they have been referred by a physician, clergyman, family planning clinic, school, or state or local agency.⁹ **HOWEVER**, if a minor is seeking services at a **TITLE X** funded site, Title X providers must allow minors to obtain Title X services on their own consent, even if state law explicitly requires parental consent or notification for such services.¹⁰ (See page 6 for more information about Title X.)

MEDICAID

Minors are allowed to receive family planning services that are paid for by Medicaid based on their own consent and on a confidential basis. Federal Medicaid law contains safeguards against disclosure of confidential information.¹¹ 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.”¹² **This applies in any setting that provides Medicaid-funded services, not just Title X-funded sites.**

Emancipated minors may consent for healthcare in Mississippi.

Who is considered emancipated?¹³

- Under 18 years of age but is or has been married.
- Under 18 years of age but has a court-issued emancipation order.
- 18 years of age or older.

Who can consent for an unemancipated minor?¹⁴

- The minor’s guardian or custodian (a custodian is a judicially appointed guardian or conservator having authority to make healthcare decisions for an individual).
- The minor’s parent.
- An adult brother or sister of the minor (an adult is a person 18 years of age or older).
- The minor’s grandparent.
- An adult who has exhibited special care and concern for the minor and who is reasonably available may act; the adult shall communicate the assumption of authority as promptly as practicable to the individuals specified in the above list.
- Any female, regardless of age or marital status, is empowered to give consent for herself in connection with pregnancy or childbirth.
- If a parent under age 18 requests vaccinations for his/her child, he/she can sign the parental consent form for vaccinations for the child. If he/she requests vaccines for himself/herself, consent will need to be obtained from a parent/legal guardian/representative/or other authorized adult.

MISSISSIPPI MINOR CONSENT LAWS

SEXUAL AND REPRODUCTIVE HEALTH SERVICES

This chart describes the sexual and reproductive health services that minors in Mississippi may obtain on their own consent. All Title X-funded sites MUST follow Title X requirements.

How do your clinic's policies line up?

TYPE OF SERVICE	MISSISSIPPI STATE LAW	TITLE X LAW (ALWAYS TRUMPS STATE LAW)
Contraceptive Services	Minors of any age may consent for contraceptive services if they are married or are a parent, or if they have been referred by a physician, clergyman, family planning clinic, school, or state or local agency. ¹⁵	Adolescents may consent to contraceptive services covered by Title X, regardless of age. This includes the pill, patch, ring, and LARC devices (e.g., implant, IUD). ²⁴
STD Testing & Treatment (not including HIV)	<ul style="list-style-type: none"> Minors of any age may consent for STD testing and treatment.¹⁶ Providers are not required to disclose information to parents when minors are treated for STDs.¹⁶ 	Adolescents may consent to STD testing and treatment covered by Title X, regardless of age. ²⁴
HIV Testing & Treatment	Minors of any age may consent for HIV testing. Minors do not have the right to consent to HIV treatment. ^{17,18}	Adolescents may consent to HIV testing, regardless of age. Title X does not cover HIV treatment. ²⁴
Emergency Contraception (EC)	<ul style="list-style-type: none"> Minors may purchase Plan B One-Step over the counter without parental consent at any age.¹⁹ Three generic forms of EC (labeled for use by individuals age 17 or older) are available over the counter, but proof of age is not required for purchase.¹⁹ Ella is available by prescription¹⁹ to minors at any age subject to the general consent requirements for contraception in Mississippi law.²⁰ Mississippi law allows pharmacists and pharmacies to refuse to dispense EC.²¹ Mississippi law does not require emergency rooms to dispense EC or provide information concerning it.²¹ 	Adolescents may consent to contraceptive services covered by Title X (including EC services), regardless of age. ²⁴
Prenatal Care, Childbirth, and Adoption Services	<ul style="list-style-type: none"> Minors of any age may consent to prenatal care and childbirth services.²² Minor parents may consent to putting their children up for adoption without third-party involvement.²³ Minors may consent to medical care for their child.²³ 	Title X provides confidential pregnancy options counseling and referral to pregnancy care and adoption services, if desired. However, such services are <u>not</u> Title X services. ²⁴



MISSISSIPPI MINOR CONSENT LAWS

MENTAL HEALTH & SUBSTANCE ABUSE SERVICES

CONTEXT

Research shows that there are strong relationships between mental and sexual health.²⁵ Many young people experience mental health challenges and/or substance abuse that may not only influence their sexual risk behaviors and sexual health needs, but impact their overall health and well-being.^{26,27} Access to youth-friendly services for substance abuse and mental health concerns is just as important as for sexual and reproductive healthcare. By promoting access to and use of youth-friendly mental health and substance abuse treatment, healthcare providers can help adolescents cope with the complex realities associated with adolescence.

28%

Approximately 28% of Mississippi high school students that were surveyed reported depression symptoms during the previous 12 months and 17% reported that they seriously considered attempting suicide.²⁸

50%

A 2013 study found that less than 50% of the adolescents with psychiatric disorders received any kind of treatment in the past year.²⁹

MISSISSIPPI STATE LAW allows a physician or psychologist to provide consultation or medication to a minor age 15 or older for mental or emotional problems related to alcohol or drugs without parental consent. Therefore, a minor age 15 or older may consent to these services. The law allows, but does not require, the provider to inform the parents of the minor about the treatment given or needed.³⁰

FEDERAL CONFIDENTIALITY RULES for drug and alcohol treatment programs contain protections that apply to minors as well as adults, particularly when minors may consent to their own drug- and alcohol-related care under state law.³¹ Careful analysis of the relationship of these rules to Mississippi law is required to determine when information may and may not be disclosed to parents in specific treatment settings.



TITLE X SERVICES MUST BE **CONFIDENTIAL**

Adolescents seeking contraceptive services in Mississippi may go to **any** Title X clinic for a wide range of confidential contraceptives and related preventive services **without parental consent**. Title X is a federal program enacted in 1970 as part of the *Public Health Service Act* and is devoted entirely to the delivery of contraceptive and other related preventive services. Title X staff members are specially trained to meet the contraceptive needs of their clients, including adolescents.

Title X regulations require that each Title X-funded project must provide “a broad range of acceptable and effective medically approved family planning methods . . . including services for adolescents...”³²

CONFIDENTIALITY PROTECTIONS IN TITLE X REGULATIONS:

Title X clinics must have written policies in place that protect confidentiality while also encouraging family participation in the decision of minors to seek family planning services. In addition, Title X providers must comply with any state law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.³³

Mississippi’s Title X-funded health centers provide a wide range of services:

- Pregnancy testing
- Contraceptive services
- Pelvic exams
- Screening for cervical and breast cancer
- Screening for high blood pressure, anemia, and diabetes
- Screening for STDs and HIV/AIDS
- Infertility services (Level 1 and 2)
- Health education
- Referrals for other health and social services
- Reproductive life plan counseling

TITLE X REGULATIONS REQUIRE THAT:

“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.”³⁴

For more information about Title X clinics, visit teenhealthms.org/find-healthcare.



TIPS TO ENSURE **CONFIDENTIALITY**

ADVOCATES FOR YOUTH provides the following recommendations to ensure confidentiality for teen clients:³⁵

Make sure that all clinic staff members have a clear understanding of Mississippi's state laws on informed consent and confidentiality with regards to

- Contraceptive services,
- STD testing and treatment,
- HIV testing and treatment,
- Substance abuse treatment, and
- Mental healthcare.

1

Emphasize the *protection* of confidentiality.

2

Train all clinic staff members about the importance of guarding teens' confidentiality. Ensure that all receptionists, medical assistants, technicians, and clinical providers understand the importance of maintaining confidentiality, especially for youth patients.

3

When a teenage client is accompanied to the clinic by a parent or guardian, make sure to always have counseling time alone with the teen client.

4

Be willing to treat unaccompanied teens.

5

HIPAA PRIVACY RULE

The HIPAA Privacy Rule contains detailed requirements for protecting the confidentiality of individuals' health information and includes specific requirements related to the health information of minors.³⁶ The Rule generally allows parents to have access to minors' protected health information, with some exceptions.

When minors are legally allowed to consent to their own care, and have consented to care, or when parents have agreed that the care can be confidential, parents' access depends on state law or other applicable law, such as Title X law. If state or other applicable law contains clear requirements prohibiting, requiring, or permitting disclosure of information to parents, those requirements are controlling. If state or other applicable laws are silent on the question of parents' access, health care providers exercising professional judgment have discretion to decide whether to disclose minors' information to parents.

Many of the Mississippi laws that allow minors to receive health care without parental consent (and therefore to give their own consent for those services) are silent on the question of disclosure of the information to parents, but some do address the issue. For example, providers are not required to disclose information to parents when minors are treated for STDs³⁷ and providers are permitted but not required to inform parents when minors are treated for mental and emotional problems related to alcohol or drugs.³⁸

Federal laws, such as Title X,³⁹ Medicaid,^{40,41} and the federal confidentiality rules for drug and alcohol treatment programs⁴² contain specific protections that allow minors to receive care without disclosure of the information to their parents.

Health centers should have a clear clinic-wide policy.



YOUTH-FRIENDLY BEST PRACTICE: **NO- OR LOW-COST SERVICES**

Fear about costs is a major barrier to healthcare for youth. Advocates for Youth provides the following recommendations on costs to improve a health center's youth-friendliness:⁴³

1. Offer free or greatly reduced-fee services to adolescents. This can be especially important for STD testing and treatment.
2. Set-up private billing accounts for adolescents who seek confidential services. Arrange for laboratory fees for confidential tests to be billed directly to the clinic or practice. Establish a nominal payment plan with the adolescent. At the same time, bill the adolescent's insurance for provider time, using non-confidential codes, so that information forms sent to the parents will not betray youth's confidentiality.
3. Where permitted by state law, dispense no- or low-cost prescriptions to adolescents.
4. Stock exam rooms (not the waiting room) with baskets of condoms along with signs saying that youth are free to take as many as they feel they need, at no charge.

MEDICAID FAMILY PLANNING WAIVER

The Medicaid Family Planning Waiver allows the state of Mississippi to provide Medicaid benefits for family planning and family planning-related services. If your health center accepts Medicaid, clients should be educated as to the benefits of the Medicaid Family Planning Waiver program and the significance to its participants and the services provided.⁴⁴

WHO IS ELIGIBLE?	COVERED SERVICES
<ul style="list-style-type: none">• Women and men between the ages of 13-44.• Family income is at or below 194% of the federal poverty level.• Must not have Medicare, Children's Health Insurance Program (CHIP) coverage, or any other health insurance or third-party medical coverage.• Women cannot be pregnant.	<ul style="list-style-type: none">• Four (4) annual visits to a Medicaid-accepting provider.• Family planning and family planning-related services such as the Nexplanon Implant, IUD, depo, pills, patch, ring, diaphragm, and condoms.• Treatment of sexually transmitted diseases (STDs) and abnormal pap smears.• Covers Gardasil vaccine (note: minors ages 17 and under need a signed consent form).• Voluntary sterilization.

Beneficiaries enrolled in the Family Planning Waiver Program may have a prescription for contraceptives and/or medications to treat an STD written by any Medicaid-participating provider filled at their local Medicaid-participating pharmacy.

Health Center staff should assist clients with submitting applications for the Medicaid Family Planning Waiver Program. A Family Planning Waiver Application, a copy of the client's proof of income, a copy of the client's birth certificate or Electronic Verification of Vital Events printout, and a copy of the client's picture ID must be submitted to the Division of Medicaid.

For more information about the program, information for providers, and other resources, visit www.medicaid.ms.gov/medicaid-coverage/who-qualifies-for-coverage/family-planning.

REFERENCES

1. Michels, Tricia M. 2000. "Patients Like Us': Pregnant and Parenting Teens View the Health Care System." *Public Health Report* 115: 557-575. Accessed November 13, 2015. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1308627/pdf/pubhealthrep00019-0063.pdf>.
2. Lane, Margo, Karen Garrett, Susan Millstein, Gail Bolan, and Jonathan Ellen. 1999. "Features of Sexually Transmitted Disease Services Important to African American Adolescents." *Archives of Pediatrics & Adolescent Medicine* 153: 829-833.
3. National Campaign to Prevent Teen and Unplanned Pregnancy. 2016. "National & State Data: Mississippi." Washington, D.C. Accessed February 4, 2016. <https://thenationalcampaign.org/data/state/mississippi>.
4. Centers for Disease Control and Prevention. 2013. "Youth Risk Behavior Surveillance—United States, 2013." *Morbidity and Mortality Weekly Report Surveillance Summaries* 63(4): 1-128. Accessed November 13, 2015. <http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.
5. Simmons, Marlo, Janet Shalwitz, and S. Pollock. 2002. *Understanding Confidentiality and Minor Consent in California: An Adolescent Provider Toolkit*. San Francisco: Adolescent Health Working Group, San Francisco Health Plan. Accessed on November 13, 2015. http://lapublichealth.org/std/docs/Adolescent_Confidentiality_Toolkit.pdf.
6. Centers for Disease Control and Prevention. 2015. "Vital Signs: Trends in Use of Long-Acting Reversible Contraception Among Teens Aged 15–19 Years Seeking Contraceptive Services—United States, 2005–2013." *Morbidity and Mortality Weekly Report* 64(13): 363-369. Accessed November 13, 2015. http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6413a6.htm?z_cid=mm6413a6_w.
7. Reddy, Diane M, Raymond Fleming, and Carolyne Swain. 2002. "Effect of Mandatory Parental Notification on Adolescent Girls' Use of Sexual Health Care Services." *The Journal of American Medical Association* 288(6): 710-714. Accessed on November 15, 2015. doi:10.1001/jama.288.6.710.
8. Miss. Code Ann. § 41-41-203(a).
9. Miss. Code Ann. § 41-42-7.
10. Gudeman, Rebecca, and Sara Madge. 2011. "The Federal Title X Family Planning Program: Privacy and Access Rules for Adolescents." *National Center for Youth Law Newsletter XXX*. Accessed November 13, 2015. <http://youthlaw.org/publication/the-federal-title-x-family-planning-program-privacy-and-access-rules-for-adolescents1/>.
11. 42 U.S.C. § 1396a(a)(7).
12. 42 U.S.C. § 1396d(a)(4)(c).
13. Miss. Code Ann. § 41-41-203(e).
14. Miss. Code Ann. § 41-41-3.
15. Miss. Code Ann. § 41-42-7.
16. Miss. Code Ann. § 41-41-13.
17. Guttmacher Institute. 2015. *Minors' Access to STI Services*. State Policies in Brief. New York: Guttmacher Institute. Accessed on November 15, 2015. http://www.guttmacher.org/statecenter/spibs/spib_MASS.pdf.
18. Miss. Code Ann. § 41-41-16.
19. Henry J. Kaiser Family Foundation. 2014. "Emergency Contraception." Accessed on November 13, 2015. <http://kff.org/womens-health-policy/fact-sheet/emergency-contraception/>.
20. Miss. Code Ann. § 41-42-7.
21. Guttmacher Institute. 2015. *Emergency Contraception*. State Policies in Brief. New York: Guttmacher Institute. Accessed on November 15, 2015. http://www.guttmacher.org/statecenter/spibs/spib_EC.pdf.
22. Miss. Code Ann. § 41-41-3.
23. Guttmacher Institute. 2015. *Minors' Rights as Parents*. State Policies in Brief. New York: Guttmacher Institute. Accessed on November 15, 2015. http://www.guttmacher.org/statecenter/spibs/spib_MRP.pdf.
24. Gudeman, Rebecca, and Sara Madge. 2011. "The Federal Title X Family Planning Program: Privacy and Access Rules for Adolescents." *National Center for Youth Law Newsletter XXX*. Accessed November 13, 2015. <http://youthlaw.org/publication/the-federal-title-x-family-planning-program-privacy-and-access-rules-for-adolescents1/>.
25. Gowen, L. Kris. 2011. "How Mental Health Challenges Impact the Sexual and Relational Health of Young Adults." *Sexual Health Disparities Among Disenfranchised Youth* 28-30. Accessed on November 19, 2015. <https://public.health.oregon.gov/HealthyPeopleFamilies/Youth/YouthSexualHealth/Documents/SexualHealthDisparities-MH.pdf>.
26. Shrier, L. A., S.K. Harris, M. Sternberg, and W.R. Beardslee. 2001. "Associations of Depression, Self-Esteem, and Substance Use with Sexual Risk Among Adolescents." *Preventive Medicine* 33: 179-189.
27. Ramrakha, S., A. Caspi, N. Dickson, T.E. Moffitt, and C. Paul. 2000. "Psychiatric Disorders and Risky Sexual Behavior in Young Adulthood: Cross Sectional Study in Birth Cohort." *British Medical Journal* 321: 263-266.
28. Centers for Disease Control and Prevention. 2013. "Youth Risk Behavior Surveillance—United States, 2013." *Morbidity and Mortality Weekly Report Surveillance Summaries* 63(4): 1-128. Accessed November 13, 2015. <http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.
29. Costello, E. Jane, Jian-ping He, Nancy A. Sampson, Ronald C. Kessler, and Kathleen Ries Merikangas. 2014. "Services for Adolescents with Psychiatric Disorders: 12-Month Data from the National Comorbidity Survey-Adolescent." *Psychiatric Services* 65(3): 359-366. Accessed on November 19, 2015. doi:10.1176/appi.ps.201100518.
30. Miss. Code Ann. § 41-41-14.
31. 42 C.F.R. § 2.14.
32. 42 C.F.R. § 59.5(a)(1).
33. Office of Population Affairs, U.S. Department of Health and Human Services. 2014. "Program Requirements for Title X Funded Family Planning Projects." Accessed November 21, 2015. <http://www.hhs.gov/opa/program-guidelines/program-requirements/>.
34. 42 C.F.R. § 59.11.
35. Advocates for Youth. *Best Practices for Youth Friendly Clinical Services*. From Research to Practice. Accessed on November 13, 2015. <http://www.advocatesforyouth.org/publications/publications-a-z/1347--best-practices-for-youth-friendly-clinical-services>.
36. English, Abigail, and Carol A. Ford. 2004. "The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges, Perspectives on Sexual and Reproductive Health." *Perspectives on Sexual and Reproductive Health* 36(2). Accessed on November 13, 2015. <https://www.guttmacher.org/pubs/journals/3608004.html>.
37. Miss. Code Ann. § 41-41-13.
38. Miss. Code Ann. § 41-41-14.
39. 42 CFR § 59.11.
40. 42 U.S.C. § 1396a(a)(7).
41. 42 U.S.C. § 1396d(a)(4)(C).
42. 42 CFR § 2.14.
43. Advocates for Youth. *Best Practices for Youth Friendly Clinical Services*. From Research to Practice. Accessed on November 13, 2015. <http://www.advocatesforyouth.org/publications/publications-a-z/1347--best-practices-for-youth-friendly-clinical-services>.
44. Mississippi Division of Medicaid. 2015. "Division of Medicaid's Family Planning Waiver." Webinar presented by the Division of Medicaid, Office of the Governor, Jackson, MS, January 2015. Accessed on November 17, 2015. https://www.medicaid.ms.gov/wp-content/uploads/2015/01/012915_Family-Planning-Waiver-Webinar.pdf.

ABOUT US

TEEN HEALTH MISSISSIPPI

We envision a Mississippi built on a foundation of healthy communities where all teens have access to effective comprehensive sex education and youth-friendly healthcare services.

Teen Health Mississippi coordinates the **Youth Action Council (YAC)**, a group of Mississippi youth that provide feedback on the most important elements of a youth-friendly clinic. In addition, in partnership with trained adults, YAC offers in-person youth-friendliness trainings and resources for health centers. YAC envisions: "Healthier teens, a positive environment, and providers who are more effective, more open-minded, and who dismiss the stereotypes."

Teen Health Mississippi is a project of *Mississippi First*

125 S. Congress St., Suite 1510

Jackson, MS 39201

t 601-398-9008

w teenhealthms.org

e contact@teenhealthms.org

Visit teenhealthms.org to download copies of this resource along with an additional resource supplement with expanded statutes of the state and federal laws cited in this guide.