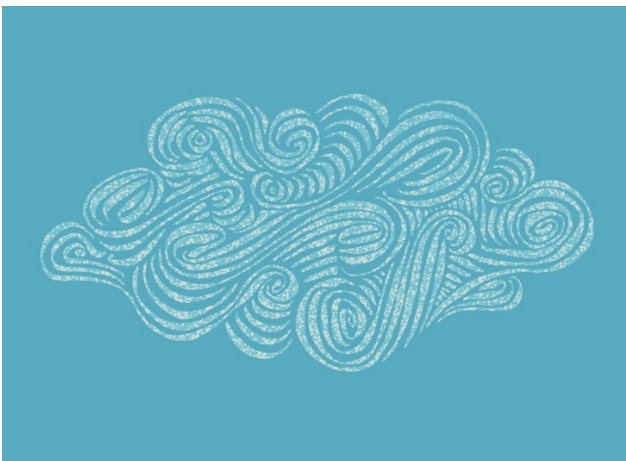
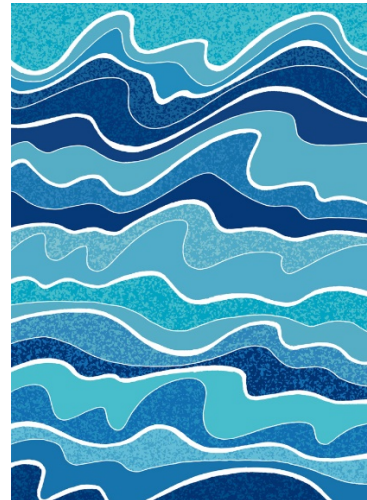


# UNDERSTANDING CONFIDENTIALITY AND MINOR CONSENT IN HAWAII



Hina Mauka  
Teen CARE

## Informed Consent for Minors

Informed consent is a fundamental right of a person being offered medical or behavioral health services. It is the responsibility of the health professional to provide information about the benefits, risks, and alternatives to any recommended treatment. This process ensures that patients can make an informed decision about their care.

For some services, minors of a certain age are deemed to have the legal capacity to make those health decisions on their own, once they have been informed of the risks and benefits of the recommended treatment.

Confidentiality refers to a set rules or ethics limiting access to the information a patient has revealed to their healthcare provider. Generally, confidentiality means that the provider must obtain permission from the patient to make a disclosure to a third party. Though a minor may have the right to consent to a treatment or service, it doesn't necessarily mean that the service is confidential or cannot be redisclosed to the patient's parents or guardians.

<b>Hawai'i Minor Consent Condensed</b>		
<b>Services youth can receive without permission from a parent or guardian</b>		<b>Can the provider inform the youth's parent or guardian?</b>
<b>Drug and Alcohol Treatment</b>	Minors of any age	<b>NO</b> – Not without the minor's written consent.
<b>Emergency Shelter</b>	Minors of any age	<b>YES</b> – Providers will attempt to contact parents or guardians unless they believe minor will be in danger.
<b>Home Pregnancy Tests, Emergency Contraception, and Condoms</b>	Minors of any age	<b>YES</b> – Though there are no confidentiality protections, these products are available to be purchased at a drugstore anonymously.
<b>Family Planning Services</b>	14 years and older	<b>MAYBE</b> – Providers may tell parents or guardians, but they are not required to.  When a minor makes an appointment for health care, they can ask about the provider's practices around confidentiality. <ul style="list-style-type: none"> <li>• <i>Can I get services at your office without my parent's permission?</i></li> <li>• <i>If I make an appointment and receive services at your clinic, will you tell my parents or anyone else?</i></li> <li>• <i>Do my parents have access to my records?</i></li> <li>• <i>Will my parents see the bill?</i></li> </ul>
<b>Pregnancy Services</b>	14 years and older	
<b>Abortion</b>	14 years and older	
<b>STI/HIV Testing &amp; Treatment</b>	14 years and older	
<b>Primary Medical Care</b>	14 years and older	<b>YES</b> – Providers may offer services if a minor is not under the care or supervision of a parent or guardian.
<b>Mental Health Services</b>	14 years and older	<b>YES</b> – Providers may tell parents or guardians, but are not required if a qualified clinician deems appropriate.

Minors of <u>ANY AGE</u> may consent	Law	Confidentiality and/or Informing Obligation of the Provider in Relation to the Parents
<p style="text-align: center;"><b>Drug and Alcohol Treatment by a federally assisted program</b></p>	<p>A minor who is or professes to suffer from alcohol or drug abuse may consent to substance abuse counseling services, without consent or authorization of another person (including but not limited to a spouse, parent, custodian, or guardian). <a href="#">HRS § 577-26</a></p> <p>If a minor consents to substance abuse counseling, the spouse, parent, custodian, or guardian of the minor shall not be liable for legal obligations resulting from the counseling services. The minor shall assume financial responsibility for the costs of such services, if any. <a href="#">HRS § 577-26</a></p> <p>If a minor patient has the legal capacity under the applicable state law to apply for and obtain substance use disorder treatment, any written consent for disclosure may be given only by the minor patient, including any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. <a href="#">42 C.F.R. § 2.14</a></p>	<p><b>FEDERAL:</b> Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:</p> <ol style="list-style-type: none"> <li>1) The individual, program, or facility is federally assisted. (Federally assisted means authorized, certified, licensed or funded in whole or in part by any department of the federal government, including being tax exempt or registering with Medicare.) <b>42 C.F.R. § 2.12</b>; AND</li> <li>2) The individual or program <ol style="list-style-type: none"> <li>a. Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR</li> <li>b. Is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR</li> <li>c. Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral. <b>42 C.F.R. § 2.11; 42 C.F.R. § 2.12</b></li> </ol> </li> </ol> <p>For federally assisted entities, federal law prohibits disclosing any information to parents without a minor’s written consent.</p> <p>They may share with parents if the individual or program director judges that:</p> <ol style="list-style-type: none"> <li>1) A minor lacks the capacity because of extreme youth or a mental or physical condition to make a rational decision on whether to disclose to her parents; AND</li> <li>2) The minor applicant's situation poses a substantial threat to the life or physical well-being of the minor or another which may be reduced by communicating relevant facts to the minor's parent. <b>42 C.F.R. § 2.14</b></li> </ol>
<p style="text-align: center;"><b>Emergency Shelter</b></p>	<p>A minor may consent to emergency shelter and related services if:</p> <ol style="list-style-type: none"> <li>1) The provider is unable to contact the minor’s parents/guardians</li> <li>2) The provider reasonably believes the minor would be subject to harm or danger if returned home, or</li> <li>3) If the minor refuses to give contact information for parents/guardians and the provider believe the minor risk harm if returned home immediately. <a href="#">HRS § 346-17.6</a></li> </ol>	<p>The emergency shelter agency will attempt to contact the minor’s parents/guardians to determine whether the minor may consent to receive emergency shelter and related services. A minor may consent and receive services if the provider determines that going home immediately would be harmful or have the potential to cause harm to the minor. <b>HRS § 346-17.6</b></p>

Minors <u>14 YEARS AND OLDER</u> may Consent	Law	Confidentiality and/or Informing Obligation of the Provider in Relation to the Parents
<p style="text-align: center;"><b>Family Planning &amp; Contraception</b></p>	<p>A minor, 14 years or older, may access <b>family planning services</b> without parental consent. <a href="#">HRS § 577A-1</a>; <a href="#">HRS § 577A-2</a></p> <p>A minor may access <b>emergency contraception</b> (EC) at a pharmacy, family planning center, or online without parental permission.</p> <ul style="list-style-type: none"> <li>➤ Plan B One Step emergency contraception is available over-the-counter (OTC) with no age restriction.</li> <li>➤ Other EC pills are available OTC, such as My Way or Next Choice One Dose, but unless they have a prescription the minor needs to be at least 17.</li> <li>➤ Some EC pills, like Ella, require a prescription by a pharmacist or other medical provider. <a href="#">HRS § 461-1</a>; <b><i>Tummino, et al. v. von Eschenbach</i></b></li> </ul> <p>A person of any age may buy <b>condoms</b> at a pharmacy, drugstore, vending machine, family planning clinic, or online without a prescription or parental permission.</p>	<p>Doctors or health care providers <b>may</b> inform a minor’s parent or guardian about services provided, but they are not required to.</p> <p>The consent to services is valid if a minor is or professes to be pregnant or afflicted with a venereal disease; or is seeking family planning services. Services shall be valid and binding as if the minor had achieved his or her majority. <b>HRS § 577A-2</b></p> <p>Reporting or disclosure to a parent/guardian of a minor patient is up to the discretion of the treating provider after consulting with the minor patient. <b>HRS § 577A-3</b></p> <p>Minors don’t need parental consent to get birth control, emergency contraception, or STI/HIV testing and treatment. However, medical professionals are not required to keep the minor’s information confidential from a parent or guardian, unless they are a clinic that receives Title X federal funding (<b>42 C.F.R. § Part 59</b>).</p>
<p style="text-align: center;"><b>Pregnancy Services</b></p>	<p>A minor, 14 years or older, may consent to receive medical care for a pregnancy. <a href="#">HRS § 577A-1</a>; <a href="#">HRS § 577A-2</a></p> <ul style="list-style-type: none"> <li>➤ There is no age requirement for buying a pregnancy test. A minor does not need a prescription from a health care provider or permission from a parent to get a pregnancy test. A minor may purchase a test from a pharmacy, store, or online.</li> </ul>	<p>Providers are not required to notify parents or guardians and can provide confidential services. Entities that provide confidential services to youth 14 and older include:</p> <ul style="list-style-type: none"> <li>• <a href="#">Planned Parenthood</a> provides access to contraception, abortion, and STI testing.</li> <li>• DOH funded <a href="#">Family Planning Health Clinics</a> provide access to contraception, and STI testing.</li> <li>• <a href="#">Diamond Head Clinic</a>, and other DOH testing sites, offer HIV/STI testing and treatment. Hawai'i offers both anonymous and confidential HIV testing services.</li> </ul>
<p style="text-align: center;"><b>STI/HIV Testing &amp; Treatment</b></p>	<p>A minor, 14 years or older, does not need permission or consent from a parent or guardian to get tested or treated for HIV or a sexually transmitted infection (STI). <a href="#">HRS § 577A-1</a>; <a href="#">HRS § 577A-2</a></p>	
<p style="text-align: center;"><b>Abortion</b></p>	<p>A minor, 14 years or older, does not need to get permission or consent from a parent or guardian to have an abortion. <a href="#">HRS § 453-16</a>; <b>The Abortion Decision and Evolving Limits on State Intervention. 11 HBJ 51</b></p>	

Minors <b>14 YEARS AND OLDER</b> may Consent	Law	Confidentiality and/or Informing Obligation of the Provider in Relation to the Parents
<p align="center"><b>Primary Medical Care &amp; Services</b></p>	<p>A minor may consent to receive primary medical care if the physician reasonably believes that: (1) The minor understands the benefits and risks of the proposed primary medical care and can communicate informed consent; (2) The primary medical care and services are for the minor’s benefit; and (3) The minor is “without support”, that is, not under the care, supervision, or control of a parent, custodian, or legal guardian. <a href="#">HRS § 577D-1</a>; <a href="#">HRS § 577D-2</a></p>	<p>The law is intended to provide access to outpatient medical services to minors whose circumstances prevent parental consents, including those who are homeless, those running away from abuse or parents with addiction, or Pacific Islander minors who move to Hawaii on their own.</p> <p>If the minor does not want the managed care or health insurance plan to disclose information regarding medical services to a spouse, parent, custodian, or guardian, the licensed health care must notify the plan prior to submitting a claim. The plan may require the request for confidential communication be made in writing and contain a statement that disclosure of the information could endanger the minor. <b>HRS § 577D-2</b></p>
<p align="center"><b>Mental Health Services</b></p>	<p>A minor, 14 years or older, may consent to outpatient mental health services without the consent, knowledge or participation of their parents or legal guardians, upon consultation and agreement of their licensed therapist.</p> <p>Neither the minor nor their parents or legal guardian may be held liable for payment for these services. Upon receiving notification from the therapist, the health plan cannot disclose to the minor's parents or legal guardians that minor-initiated mental health services were rendered. <a href="#">HRS § 577-29</a></p> <p>Hawaii State licensed mental health counselors, marriage &amp; family therapists, clinical social workers, psychologists, psychiatrists, and advanced practice registered nurses specializing in psychiatry may supervise mental health professionals to provide minor-initiated mental health counseling without parental or legal guardian consent. <a href="#">HRS § 577-29</a></p>	<ol style="list-style-type: none"> <li>a. Parent or guardian consent is required for medication prescription and for placement into out-of-home or residential mental health services.</li> <li>b. The mental health professional shall ensure that the insurance company has been notified that minor-initiated mental health services should not be disclosed.</li> <li>c. Insurance companies should have policies and procedures established to maintain nondisclosure of the minor-initiated mental health services to the parent or guardian.</li> <li>d. The mental health professional can submit an insurance claim for minor-initiated mental health services, but shall not bill for out-of-pocket payments, copayments, coinsurance, or deductibles.</li> <li>e. A minor cannot cancel a parent's or legal guardian's consent given on the minor's behalf, nor can parents/legal guardians cancel the minor's consent. <b>HRS § 577-29</b></li> </ol>

## Other issues related to minors and consent

### Hawai'i Age of Sexual Consent

The age of sexual consent refers to the age when a person is considered legally capable of consenting to sex. **This type of consent is different than informed consent.**

- At 16 years of age, a person may legally consent to sexual activity with another person who has also reached the age of consent (at least 16).
- Hawai'i law has an age gap provision that intends to avoid penalizing sexual activity among certain teens. Persons at least 14 and 15 years old can consent to sexual activity with a person who is less than five years older. This part of Hawaii law recognizes that teens can be in a consensual sexual relationship with one another. **HRS § 707-732**
  - For example, under Hawai'i law someone who just turned 15 years old cannot consent to sexual activity with a person who is about to turn 21 years old. However, it would not be prohibited for a person who just turned 15 years old engaged in consensual sexual activity with a 17-year-old.
- Persons under the age of 14 cannot consent to sexual activity under any circumstances. **HRS § 707-730**

Age of Patient/Client	Age of Partner								
	≤12	13	14	15	16	17	18	19	20+
≤12	SA	SA	SA	SA	SA	SA	SA	SA	SA
13	SA	SA	SA	SA	SA	SA	SA	SA	SA
14	SA	SA	C	C	C	C	C	SA	SA
15	SA	SA	C	C	C	C	C	C	SA
16	SA	SA	C	C	C	C	C	C	C
17	SA	SA	C	C	C	C	C	C	C
18	SA	SA	C	C	C	C	C	C	C
19	SA	SA	SA	C	C	C	C	C	C
20+	SA	SA	SA	SA	C	C	C	C	C

**SA= Sexual Assault**

**C= Consensual** (Does not refer to non-consensual sex such as forced sex, transactional sex, unwanted touch, and molestation.)

Note: This grid is generalized. To accurately gauge age difference, birth dates of both parties must be considered.

### Sexting

Sexting is the sending of sexually explicit images via SMS message or other means via mobile phone, computer, or any other device capable of electronic data transmission or distribution. Sexting falls under child pornography laws, which state that pictures of a person under 18 engaged in sexually explicit conduct is a crime. It is a felony for adults to sext with a minor. [HRS §712-1215.5](#) It is a petty misdemeanor for minors to sext with other minors. [HRS §712-1215.6](#)

### Exception to federal restrictions on nondisclosure (SUD treatment)

Counselors, working in a federally assisted substance use disorder treatment program, cannot disclose sexual activity or sexual assault without written consent from the client, unless the sexual activity constitutes child abuse.

- Federal restrictions on nondisclosure within substance use disorder treatment does not apply to reporting of suspected child abuse or neglect. Therefore, if the sexual activity meets the standard of child abuse substance abuse counselors must then report it.
  - Child abuse and neglect is defined as:
    1. "The acts or omissions of any person who, or legal entity which, **is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care**, that have resulted

- in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed.” **HRS § 350-1**
2. “The acts or omissions of any person that have resulted in **sex trafficking** or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 or section 712-1202.” The term "sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. **HRS § 350-1**
- “(6) **Reports of suspected child abuse and neglect.** The restrictions on disclosure and use in the regulations in this part do not apply to the reporting under state law of incidents of suspected child abuse and neglect to the appropriate state or local authorities. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.” **42 C.F.R. § 2.12**

## Helpful Websites & Information:

[ACLU Youth Rights Guide Hawaii](#)

[An Overview of Consent to Reproductive Health Services by Young People](#)

[Center for Adolescent Health & the Law](#)

[Fundamentals of 42 CFR Part 2](#)

[Hawaii State Legislature](#)

[National Center for Youth Law](#)

[Rainn – Laws about Private Communication, Hawaii](#)

[sex, etc. – Sex in the States, Hawaii](#)

[Teen Link Hawaii](#)

The information in this document does not, and it not intended to, constitute legal advice; instead, all information, content, and links are for general informational purposes only. It may not include the most up-to-date information.

This document was modeled after sections of *Understanding Confidentiality and Minor Consent in California* (2010) by the Adolescent Health Working Group and the California Adolescent Health Collaborative. The Hawaii guide was developed by Colleen Fox, PhD and Karissa DeWeerd, MSW. Special thanks to Dina Shek, J.D. and Rebecca Grennon, MS for reviewing the document and providing feedback.