

**Minor Consent, Confidentiality, and Child Abuse Reporting
In Title X Funded Family Planning Settings**

ILLINOIS

**Rebecca Gudeman, J.D., M.P.A.
National Center for Youth Law
405 14th St., Suite 1500
Oakland, CA 94612
www.youthlaw.org**

for

**Region V / Title X Family Planning Training Program
MPRES, Inc.
316 N. Milwaukee St.
Suite 440
Milwaukee, WI 53202**

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I. MINOR CONSENT

What is the age of majority/minority?

The age of majority in Illinois is eighteen years. 755 ILCS 5/11-1.

For the purposes of the Abuse and Neglect Reporting Act, a child means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. 325 ILCS 5/3.

What is the age of consent for sexual activity?

While no statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for consensual sexual activity with a minor 16 years of age or younger. 720 ILCS 12-15(b). There also can be criminal penalties for consensual sexual activity with a minor under 18 years old when certain circumstances exist. For example, it is criminal sexual assault for a person 17 years of age or older and in a position of trust, authority or supervision to sexually penetrate a minor 13-17 years old, irrespective of consent. 720 ILCS 5/12-13.

Who generally consents for health care for minors?

Generally, a parent, guardian or other person *in loco parentis* must consent for health care on behalf of a minor. 410 ILCS 210/2.

What exceptions allow minors or others to consent for health care?

Emancipated Minors:

Minors 16 years and older who meet statutory criteria may be emancipated by court order. Emancipated minors may enter valid legal contracts. Arguably, this gives minors the authority to enter contracts for health care. 750 ILCS 30/3-1, 3-3, 3-5.

Homeless Minors:

Minors 16 years and older who are homeless and seeking assistance may seek full or partial emancipation. Homeless minors who do not qualify for full emancipation may be “partially emancipated” by the court “for the sole purpose of allowing the homeless minor to consent to the receipt of services and shelter or housing provided by the youth transitional housing program named in the petition and to other services that the youth transitional housing program may arrange by referral.” 750 ILCS 30/3-9.

Minor who is Parent/Married/Pregnant:

“The consent to the performance of a medical or surgical procedure ... by a married person who is a minor, by a parent who is a minor, [or] by a pregnant woman who is a minor ... is not voidable because of such minority, and, for such purpose, a married person who is a minor, a parent who is a minor, [or] a pregnant woman who is a minor ... is deemed to have the same legal capacity to act and has the same powers and obligations

as has a person of legal age.” 410 ILCS 210/1.

Family Planning, including Pregnancy Testing, Contraception:

Federal regulations establish special access rules for family planning services funded through Title X. Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. 42 C.F.R. 59.5(a)(4); see Does 1-4 v. Utah Dept. of Health, 776 F.2d 253 (10th Cir. 1985).

Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations. Thus, minors of any age may consent to family planning services when those services are funded in full or in part by Title X monies.

For family planning services not funded in full or in part by Title X, state consent law applies. Illinois state law says that “[b]irth control services and information may be rendered by doctors licensed in Illinois to practice medicine in all of its branches to any minor:

- 1) who is married; or
- 2) who is a parent; or
- 3) who is pregnant; or
- 4) who has the consent of his parent or legal guardian; or
- 5) as to whom the failure to provide such services would create a serious health hazard; or
- 6) who is referred for such services by a physician, clergyman or a planned parenthood agency.

325 ILCS 10/1.

Sexually Transmitted Diseases:

“[A] minor 12 years of age or older who may have come into contact with any sexually transmitted disease, ... may give consent to the furnishing of medical care or counseling related to the diagnosis or treatment of the disease. The consent of the parent, parents, or legal guardian of a minor shall not be necessary to authorize medical care or counseling related to the diagnosis or treatment of sexually transmitted diseaseThe consent of the minor shall be valid and binding as if the minor had achieved his or her majority. The consent shall not be voidable nor subject to later disaffirmance because of minority.” 410 ILCS 210/4.

HIV/AIDS Related Care:

Because HIV and AIDS are both deemed “sexually transmitted diseases” under Illinois law, minors 12 and older may consent to their own “medical care or counseling related to diagnosis or treatment” of HIV/AIDS. 77 Ill. Admin. 693.20; see “Sexually Transmitted Diseases” above.

In general, no person may order an HIV test without first receiving the written informed consent of the subject of the test or the subject's legally authorized representative. 410 ILCS 305/4; but see 410 ILCS 305/7 (exceptions).

Abortion:

Pregnant minors may consent for general medical or surgical care under Illinois law. Thus, they may consent for abortion. 410 ILCS 210/1.

Drug and Alcohol Abuse Treatment:

“[A] minor 12 years of age or older who may be determined to be an addict, an alcoholic or an intoxicated person, as defined in the Alcoholism and Other Drug Abuse and Dependency Act, or who may have a family member who abuses drugs or alcohol, may give consent to the furnishing of medical care or counseling related to the diagnosis or treatment of the disease. The consent of the parent, parents, or legal guardian of a minor shall not be necessary to authorize medical care or counseling related to the diagnosis or treatment of drug use or alcohol consumption by the minor or the effects on the minor of drug or alcohol abuse by a member of the minor's family. The consent of the minor shall be valid and binding as if the minor had achieved his or her majority. The consent shall not be voidable nor subject to later disaffirmance because of minority.” 410 ILCS 210/4.

Outpatient Mental Health Counseling:

“Any minor 12 years of age or older may request and receive counseling services or psychotherapy on an outpatient basis. The consent of his parent, guardian or person *in loco parentis* shall not be necessary to authorize outpatient counseling or psychotherapy.... [O]utpatient counseling or psychotherapy provided to a minor under the age of 17 [without parent consent] shall be limited to not more than 5 sessions, a session lasting not more than 45 minutes.” 405 ILCS 5/3-501.

Voluntary Admission for Inpatient Mental Health Care:

“Any minor 16 years of age or older may be admitted to a mental health facility as a voluntary recipient under Article IV of this Chapter if the minor himself executes the application. A minor so admitted shall be treated as an adult under Article IV and shall be subject to all of the provisions of that Article....” 405 ILCS 5/3-502.

Photographs/X-Rays of Suspected Abuse/Violence:

“Any person required to investigate cases of suspected child abuse or neglect may take or cause to be taken, at Department expense, color photographs and x-rays of the child who is the subject of a report, and color photographs of the physical environment in which the alleged abuse or neglect has taken place.” 325 ILCS 5/6.

Diagnosis and Treatment of Sexual Assault:

“Where a minor is the victim of a predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse or criminal sexual abuse, as provided in Sections 12-13 through 12-16 of the Criminal Code of 1961, as now or hereafter amended, the consent of the minor's parent or legal guardian need not be obtained to authorize a hospital, physician, advanced practice nurse, physician assistant, or other medical personnel to furnish medical care or counseling related to the diagnosis or treatment of any disease or injury arising from such offense. The minor may consent to such counseling, diagnosis or treatment as if the minor had reached his or her age of majority. Such consent shall not be voidable, nor subject to later

disaffirmance, because of minority.” 410 ILCS 210/3(b).

Emergency:

“Where a hospital, a physician licensed to practice medicine or surgery, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes provision of services for minors, or a physician assistant who has been delegated authority to provide services for minors renders emergency treatment or first aid or a licensed dentist renders emergency dental treatment to a minor, consent of the minor's parent or legal guardian need not be obtained if, in the sole opinion of the physician, advanced practice nurse, physician assistant, dentist, or hospital, the obtaining of consent is not reasonably feasible under the circumstances without adversely affecting the condition of such minor's health.” 410 ILCS 210/3.

II. CONFIDENTIALITY

Who controls access to medical information?

The Illinois Medical Patient Rights Act grants patients a right to privacy in their medical information and requires that in most cases a provider receive a signed release from the patient before sharing information. 410 ILCS 50/3. One exception allows providers to share information with the party making treatment decisions if the patient is incapable of making decisions regarding the health services provided.

Federal HIPAA regulations also grant patients a right to privacy. Federal HIPAA regulations establish that when a parent consents for an unemancipated minor's health care, that parent generally has a right to control access to the minor's medical information. In such cases, providers may not use or disclose health information without the parents' consent, and, health care providers must give the parents access to the minor's medical information. 45 C.F.R. 164.502(a)(1),(a)(2),(g)(3), (g)(1).

Different rules apply under federal and state law when minors consent for their own treatment.

What exceptions limit parent access to medical information about minors?

Risk of domestic violence/abuse/neglect:

Under federal HIPAA regulations, providers may refuse to provide parents access to a minor's medical records if:

1. The providers have a "reasonable belief" that:
 - a) The minor has been or may be subjected to domestic violence, abuse or neglect by the parent, guardian or other giving consent; or
 - b) Treating such person as the personal representative could endanger the minor;

And:

2. The provider, in the exercise of professional judgment, decides that it is not in the best interest of the minor to give the parent, guardian or other such access.

45 C.F.R. § 164.502(g)(5).

Emancipation:

Under federal HIPAA regulations, emancipated minors have a right to control access to their medical information. See 45 C.F.R. § 502(g).

Minor who is Parent/Married/Pregnant:

For the purposes of consenting to medical care, "a married person who is a minor, a parent who is a minor, [or] a pregnant woman who is a minor... is deemed to have the same legal capacity to act and has the same powers and obligations as has a person of legal age." 410 ILCS 210/1. The Illinois Medical Patient Rights Act grants patients [of legal age] a right to control access to their medical information. 410 ILCS 50/3.

Title X funded “Family Planning,” including Pregnancy Testing/Contraception:

Federal regulations establish special protections for family planning information and records. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll 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.” 42 C.F.R. 59.11.

Sexually Transmitted Disease:

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll 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.” 42 C.F.R. 59.11.

For services not funded by Title X, the following state laws apply:

Medical Care and Counseling: “Anyone involved in the furnishing of medical care to the minor or counseling related to the diagnosis or treatment of the minor's disease ... shall, upon the minor's consent, make reasonable efforts, to involve the family of the minor in his or her treatment, if the person furnishing treatment believes that the involvement of the family will not be detrimental to the progress and care of the minor. Reasonable effort shall be extended to assist the minor in accepting the involvement of his or her family in the care and treatment being given.” 410 ILCS 210/4.

Counseling: “ Any physician, advanced practice nurse, or physician assistant, who provides diagnosis or treatment or any licensed clinical psychologist or professionally trained social worker with a master's degree or any qualified person employed (i) by an organization licensed or funded by the Department of Human Services, (ii) by units of local government, or (iii) by agencies or organizations operating drug abuse programs funded or licensed by the Federal Government or the State of Illinois or any qualified person employed by or associated with any public or private alcoholism or drug abuse program licensed by the State of Illinois who provides counseling to a minor patient who has come into contact with any sexually transmitted disease referred to in Section 4 of this Act may, but shall not be obligated to, inform the parent, parents, or guardian of the minor as to the treatment given or needed....” 410 ILCS 210/5.

HIV/AIDS Test Results:

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll 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." 42 C.F.R. 59.11.

For services not funded by Title X, the following state law applies:

"No person may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:...

(k) In the case of a minor under 18 years of age whose test result is positive and has been confirmed pursuant to rules adopted by the Department, the health care provider who ordered the test shall make a reasonable effort to notify the minor's parent or legal guardian if, in the professional judgment of the health care provider, notification would be in the best interest of the child and the health care provider has first sought unsuccessfully to persuade the minor to notify the parent or legal guardian or a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care provider has reason to believe that the minor has not made the notification. This subsection shall not create a duty or obligation under which a health care provider must notify the minor's parent or legal guardian of the test results, nor shall a duty or obligation be implied." 410 ILCS 305/9.

Outpatient Mental Health Counseling:

"Any minor 12 years of age or older may request and receive counseling services or psychotherapy on an outpatient basis. The minor's parent, guardian or person in *loco parentis* shall not be informed of such counseling or psychotherapy without the consent of the minor unless the facility director believes such disclosure is necessary. If the facility director intends to disclose the fact of counseling or psychotherapy, the minor shall be so informed." 405 ILCS 5/3-501

Voluntary Admission for Inpatient Mental Health Care:

"Any minor 16 years of age or older may be admitted to a mental health facility as a voluntary recipient under Article IV of this Chapter if the minor himself executes the application. A minor so admitted shall be treated as an adult under Article IV and shall be subject to all of the provisions of that Article. The minor's parent, guardian or person *in loco parentis* shall be immediately informed of the admission." 405 ILCS 5/3-502.

When a recipient of mental health care is 12 years of age or older but less than 18, parents may receive information about their child's current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any. However, parents only may inspect and copy the minor's mental health records when the minor is informed and does not object to the release of records, or the therapist does not find that there are compelling reasons for denying the access. 740 ILCS 110/4.

Abortion:

Illinois passed a parental notification statute in 1995; however, the United States District Court for the Northern District of Illinois barred its implementation with a permanent injunction. Thus, minors do not need parental consent for an abortion, and providers do

not need to notify parents. Zbarav v. Ryan, No. 84 CV771 (N.D. Ill. 1996)(unpublished opinion).

Drug or Alcohol Abuse Counseling:

Federal regulations establish special protections for substance abuse treatment records. Providers that meet certain criteria must follow the federal rule.

Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:

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. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare.) 42 C.F.R. §2.12;

And:

2. The individual or program:
 - 1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR
 - 2) 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
 - 3) Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral. 42 C.F.R. §2.11; 42 C.F.R. §2.12.

For individuals or programs meeting these criteria, federal law prohibits disclosing any information to parents without a minor’s written consent if the minor acting alone under applicable state law has the legal capacity to apply for and obtain alcohol or drug abuse treatment. 42 C.F.R. 2.14.

For programs that don’t meet the above criteria, state law applies. Two state laws address access to a minor’s treatment records:

“Any physician, advanced practice nurse, or physician assistant, who provides diagnosis or treatment or any licensed clinical psychologist or professionally trained social worker with a master's degree or any qualified person employed (i) by an organization licensed or funded by the Department of Human Services, (ii) by units of local government, or (iii) by agencies or organizations operating drug abuse programs funded or licensed by the Federal Government or the State of Illinois or any qualified person employed by or associated with any public or private alcoholism or drug abuse program licensed by the State of Illinois who provides counseling to a minor patient who ... abuses drugs or alcohol or has a family member who abuses drugs or alcohol shall not inform the parent, parents, guardian, or other responsible adult of the minor's condition or treatment without the minor's consent unless that action is, in the person's judgment, necessary to protect the safety of the minor, a family member, or another individual.

Any such person shall, upon the minor's consent, make reasonable efforts to involve the

family of the minor in his or her treatment, if the person furnishing the treatment believes that the involvement of the family will not be detrimental to the progress and care of the minor. Reasonable effort shall be extended to assist the minor in accepting the involvement of his or her family in the care and treatment being given.” 410 ILCS 210/5.

In all other cases, “[a]nyone involved in the furnishing of medical care to the minor or counseling related to the diagnosis or treatment of the minor's ... drug or alcohol use by the minor or a member of the minor's family shall, upon the minor's consent, make reasonable efforts, to involve the family of the minor in his or her treatment, if the person furnishing treatment believes that the involvement of the family will not be detrimental to the progress and care of the minor. Reasonable effort shall be extended to assist the minor in accepting the involvement of his or her family in the care and treatment being given.” 410 ILCS 210/4.

What other situations allow or require you to give others access to a minor’s medical information without requiring you to seek parent or minor consent?

Examples include:

Reporting Sexually Transmitted Diseases:

“A physician licensed under the provisions of the Medical Practice Act of 1987, an advanced practice nurse licensed under the provisions of the Nursing and Advanced Practice Nursing Act who has a written collaborative agreement with a collaborating physician that authorizes the provision of services for a sexually transmissible disease, or a physician assistant licensed under the provisions of the Physician Assistant Practice Act of 1987 who has been delegated authority to provide services for a sexually transmissible disease who makes a diagnosis of or treats a person with a sexually transmissible disease and each laboratory that performs a test for a sexually transmissible disease which concludes with a positive result shall report such facts as may be required by the Department by rule, within such time period as the Department may require by rule, but in no case to exceed 2 weeks.” 410 ILCS 325/4. (Reportable STDs defined at 410 ILCS 325/3.)

Sharing with those involved in Providing Treatment or Processing Payment:

“Each physician, health care provider, health services corporation and insurance company shall refrain from disclosing the nature or details of services provided to patients, except that such information may be disclosed to ... those parties directly involved with providing treatment to the patient or processing the payment for that treatment, ...” 410 ILCS 50/3.

Reporting Treatment of Firearm Injury

“It is the duty of any person conducting or operating a medical facility, or any physician or nurse as soon as treatment permits to notify the local law enforcement agency of that jurisdiction upon the application for treatment of a person who is not accompanied by a law enforcement officer, when it reasonably appears that the person requesting treatment

has received: (1) any injury resulting from discharge of a firearm; or (2) any injury sustained in the commission of or as a victim of a criminal offense.” 20 ILCS 2630/3.2.

Reporting Child Abuse:

Both the Illinois Medical Patient Rights Act and the Mental Health and Developmental Disabilities Confidentiality Act allow providers to share confidential medical information in order to make child abuse reports. 410 ILCS 50/3; 740 ILCS 110/11. Medical providers cannot claim provider-patient privilege as grounds to avoid reporting. 325 ILCS 5/4.

Can individuals be held liable for revealing confidential information outside the exceptions listed in federal or state law?

Providers can only share information without client authorization if an exception in state or federal law specifically allows the release. If no exception applies that would allow a provider to share information, providers who reveal confidential information may be held liable. The Illinois Medical Patient Rights Act provides for criminal sanctions for a breach, including a fine of \$1,000. 410 ILCS 50/4. The Illinois Mental Health and Developmental Disabilities Confidentiality Act also provides for criminal sanctions. Federal HIPAA regulations give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach these rules. 45 C.F.R. 160.

Beyond criminal sanction, professionals who violate confidentiality also may put their medical license at risk. For example, the Department may revoke or suspend the nursing license of a nurse who “willfully or negligently violat[es] the confidentiality between nurse and patient except as required by law.” 225 ILCS 65/10-45.

III. CHILD ABUSE REPORTING REQUIREMENTS

A. Am I a Mandated Reporter?

Who is a mandated reporter?

- Physician
- Resident
- Intern
- Hospital administrator and personnel engaged in examination, care and treatment of persons
- Surgeon
- Dentist
- Dentist hygienist
- Osteopath
- Chiropractor
- Podiatrist
- Physician assistant
- Substance abuse treatment personnel
- Funeral home director or employee
- Coroner
- Medical examiner
- Emergency medical technician
- Acupuncturist
- Crisis line or hotline personnel
- School personnel
- Educational advocate assigned to child pursuant to School Code
- Truant officers
- Social worker
- Social services administrator
- Domestic violence program personnel
- Registered nurse
- Licensed practical nurse
- Genetic counselor
- Respiratory care practitioner
- Advanced practice nurse
- Home health aide
- Director of staff assistant of a nursery school or a child day care center
- Recreational program or facility personnel
- Law enforcement officer
- Licensed professional counselor
- Licensed clinical professional counselor
- Registered psychologist and assistants working under the direct supervision of a psychologist, psychiatrist, or field personnel of the Illinois Department of

Public Aid, Public Health Human Services, Corrects, Human Rights, or Children and Family Services

- Supervisor and administrator of general assistance under the Illinois Public Aid Code
- Probation officer
- Foster parent
- Homemaker
- Child care worker

325 ILCS 5/4; 20 ILCS 520/1-20.

Clergy members are mandated reporters but only required to report sexual abuse. 325 ILCS 5/3-5/4.

May I report child abuse even if I am not a mandated reporter?

“Any other person may make a report if such person has reasonable cause to believe a child may be an abused child or a neglected child.” 325 ILCS 5/4.

B. When is a Mandated Reporter Required to Submit a Report?

When must you report abuse?

“Mandated reporters having reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child shall immediately report or cause a report to be made to the Department.” 325 ILCS 5/4.

What if I am not sure that abuse has occurred?

Confirmation of abuse is not required. Reporters must report whenever they have “reasonable cause to believe” that abuse has occurred. According to the Illinois Attorney General, ‘reasonable cause’ is equivalent to “suspect.” Ill. Atty Gen. Op. 173 (1977).

What else must I report?

Mandated reporters must make a report anytime they have “reasonable cause to suspect that a child has died as a result of abuse or neglect...” These reports shall be made to the appropriate medical examiner or coroner. 325 ILCS 5/4.1.

C. Is This a Type of Activity That Must be Reported?

What constitutes abuse or neglect?

“‘Abused child’ means a child whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent:

- (a) inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss of impairment of any bodily function;
- (b) creates a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;
- (c) commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 1961 as amended, and extending those definitions of sex offenses to include children under 18 years of age;
- (d) commits or allows to be committed an act or acts of torture upon such child;
- (e) inflicts excessive corporal punishment;
- (f) commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 1961; or
- (g) causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance...except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription.”

325 ILCS 5/3.

“‘Neglected child’ means any child who is not receiving the proper or necessary nourishment or medically indicated treatment...or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child’s well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child’s welfare without a proper plan of care; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 02 of the Illinois Controlled Substances Act..., with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant. A child shall not be considered neglected for the sole reason that the child’s parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time. A child shall not be considered neglected for the sole reason that the child has been relinquished in accordance with the Abandoned

Newborn Infant Protection Act. A child shall not be considered neglected or abused for the sole reason that such child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of this Act. A child shall not be considered neglected or abused solely because the child is not attending school in accordance with the requirements of Article 2 of The School Code, as amended." 325 ILCS 5/3.

What sexual activity am I mandated to report?

The Abuse and Neglect Reporting Act (ANCRA) only requires reports when (1) sexual abuse was committed by a person responsible for the child's welfare or (2) a person responsible for the child's welfare allowed sexual abuse to be committed against the minor.

Sexual Abuse by a Person Responsible for Child:

Reporters must report sexual activity when committed by a person responsible for the child's welfare. Specifically, a report is mandated if the following three criteria are met:

- (1) The activity involves a minor;
- (2) The minor's partner is:
 - a person responsible for the child's welfare;
 - an individual residing in the same home; or
 - a paramour of the child's parent: AND
- (3) Any of the following sexual activity occurred:
 - Infection with a sexually transmitted disease. ("Sexually transmitted diseases are by DCFS definition "diseases which were acquired originally as a result of sexual penetration or conduct with an individual who was afflicted.")
 - Any contact between the sex organ of one person and an object, or the sex organ, mouth, or anus of another person. Typical acts include vaginal, oral and anal sex.
 - The use of a child for sexual arousal, gratification, advantage or profit. This includes such acts as explicit verbal enticements, child pornography, self masturbation in the child's presence, and forcing a child to watch sex acts; or
 - Sexual conduct with a child when such contact, touching, or interaction is used for sexual arousal or gratification of sexual needs or desires. Sexual conduct means "any intentional or knowing touching or fondling either directly or through clothing of any part of the body for the purpose of sexual gratification." Examples include fondling a child or having the child touch the perpetrator sexually. 720 ILCS 5/12-12(e).

Children's Justice Task Force, "A Manual for Mandated Reporters," Illinois Department of Children and Family Services (October 2000); See also 89 Ill. Admin. Code 300, Appendix B.

Sexual Abuse that Person Responsible for Child Allows to be Committed:

Mandated reporters also must report sexual abuse if a person responsible for the child's welfare allows the sexual abuse to occur. Specifically, a report is mandated if the following three criteria are met:

- 1) The sexual activity involves a minor;
- 2) Any of the sexual activities described in (3) above occurred, irrespective of partner; and
- 3) Any of the following persons “allowed” the sexual activity to occur.
 - a person responsible for the child's welfare,
 - an individual residing in the same home, or
 - a paramour of the child's parent.

325 ILCS 5/3.

There has been great confusion as to what this third prong actually means. The confusion stems from the failure of the statute to specifically define the term “allows.” Some believe this third prong obligates mandated reporters to report any parents who know their child is in a sexual relationship and fail to actively stop it. Others argue it only obligates a report when a caretaker knowingly allows a child to engage in *harmful* sexual activity and either facilitates that behavior or fails to take steps to prevent that harm.

The lack of guidance from the Abuse and Neglect Reporting Act as to which interpretation is correct is not surprising. DCFS acknowledges that “[t]he definitions in ANCRA are not perfectly clear in helping mandated reporters...distinguish[] between inappropriate/undesirable parenting and those acts which constitute abuse and neglect.” *DCFS Manual* at 7. DCFS calls these situations “gray areas.” *Id.*

When the terminology of a statute is unclear, we often look to courts for guidance in how to apply and interpret a law. However, no court or other legal authority has interpreted the term “allows” in this context. So what do reporters do? Which interpretation should they follow?

In this kind of situation, the law effectively gives mandated reporters the discretion to make their own good faith judgment about what the statute actually requires. *Id.* at 2,7. To help reporters make that judgment call, DCFS recommends that reporters ask themselves: “Has the child been harmed or been at substantial risk of harm?” This question, DCFS says, “helps focus the issue and moves away from value judgments” about parenting styles. *Id.*

Because there is no one “right answer,” no matter what decision a reporter makes, a reporter who relies on a reasonable interpretation of this statute should not be found liable for failure to report. Even so, it is always advisable for providers to speak to their own legal counsel about how to address this “gray area” and even seek legal assistance in developing a reporting policy.

Am I ever required to report a minor's *consensual* sexual activity as child abuse?

The Abuse and Neglect Reporting Act does not distinguish between consensual and non-consensual activity when defining what activity constitutes abuse. If the criteria described above are met, a report is required – irrespective of claimed consent.

Do I have to report my client if s/he is the perpetrator of the sexual act?

Mandated reporters must report abuse of “a child known to them in their professional or official capacity.” 325 ILCS 5/4. In *Doe I ex rel. Tanya S. v. North Cent. Behavioral Health Systems, Inc.*, 816 N.E.2d 4 (3rd App. 2004), the court held that a clinic had no duty to report alleged sexual abuse by one of its patients where the clinic did not have direct contact with the abused children.

Do I have to report every criminal act of my client?

Both state and federal law protect the confidentiality of information received in the course of providing medical care. This information cannot be shared with the authorities unless a specific statutory requirement requires that sharing. The Abuse and Neglect Reporting Act requires mandated reporters to share information about child abuse. It does not require mandated reporters to report information about any other crimes. No state or federal law requires medical practitioners to report every criminal act of their patients.

Thus, even though Illinois law makes some consensual sexual activity between minors illegal, this cannot be reported under ANCRA unless it meets the definition of sexual abuse as described above.

What sexual activity by a minor does not require reporting?

Because information about sexual activity received during a medical exam is protected by confidentiality statutes, mandated reporters bound by confidentiality laws *may not* report consensual activity unless one of the following conditions is true:

- 1) The minor’s partner is a (a) a person responsible for the child’s welfare, (b) an individual residing in the same home, or (c) a paramour of the child’s parent;
OR
- 2) The minor’s caretakers “allowed” illegal sexual activity to occur.

This greatly limits what can be reported. In fact, mandated reporters may not even use ANCRA to report assaults by a stranger unless the caretaker somehow allowed it. This sounds strange, but in a case involving an adult who had molested children in his apartment building, an Illinois appeals court held that reporting obligations did not apply. The children did not meet the definition of “abused children” because there was no additional “allegation that a parent or anyone else responsible for the children’s welfare

allowed the abuse to occur.” *Doe I ex rel. Tanya S. v. North Cent. Behavioral Health Systems, Inc.*, 816 N.E.2d 4, 8 (3rd App. 2004).

For the purposes of child abuse reporting, does a mandated reporter have a duty to try to ascertain the ages of the minor's partners?

No statute or case obligates providers to ask their minor patients about the age of the minors’ sexual partners.

E. How Does Reporting Work?

To whom should reports be made?

“Whenever [a mandated reporter] is required to report under this Act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, or as a member of the clergy, he shall make report immediately to the Department ... and may also notify the person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent that such report has been made.” 325 ILCS 5/4.

How do I make a report?

“All reports of suspected child abuse or neglect made under this Act shall be made immediately by telephone to the central register ...on the single, State-wide, toll-free telephone number ...or in person or by telephone through the nearest Department office.” 325 ILCS 5/7. The current toll free number is 1-800-25A-BUSE.

“Mandated reporters shall confirm their telephone report in writing on a form prescribed by the Department within 48 hours of the oral report. The Department shall provide forms to mandated reporters- one for the exclusive use of medical professionals and another for use by all other mandated reporters.” 89 Ill. Admin. Code 300.30(b)(6).

“Initial written reports from the reporting source shall contain the following information to the extent known at the time the report is made: (1) the names and addresses of the child and his parents or other persons responsible for his welfare; (1.5) the name and address of the school that the child attends (or the school that the child last attended, if the report is written during the summer when school is not in session), and the name of the school district in which the school is located, if applicable; (2) the child's age, sex, and race; (3) the nature and extent of the child's abuse or neglect, including any evidence of prior injuries, abuse, or neglect of the child or his siblings; (4) the names of the persons apparently responsible for the abuse or neglect; (5) family composition, including names, ages, sexes, and races of other children in the home; (6) the name of the person making the report, his occupation, and where he can be reached; (7) the actions taken by the reporting source, including the taking of photographs and x-rays, placing the child in temporary protective custody, or notifying the medical examiner or coroner; and (8) any

other information the person making the report believes might be helpful in the furtherance of the purposes of this Act.” 325 ILCS 5/7.9.

F. What are the Consequences of My Reporting Decision?

What will the Department of Children and Family Services do after I make my report?

It depends on the type of abuse, age of the child, and the level of risk. In all cases, the Department of Children and Family Services will evaluate your report to see if investigation is warranted. In some cases, the agency may decide that investigation is not warranted. In others, the agency will immediately initiate an investigation – for example if the child is believed to be in immediate danger of physical harm. 89 Ill. Admin. Code 300.90.

When an investigation is initiated, the Child Protective Service Unit generally has 60 days to determine whether the report is "indicated" or "unfounded" and report it to the central register. 325 ILCS 5/7.12.

Although the Department is in charge of all investigations, other agencies or persons may actually perform the investigative function. “The Department shall be the sole agency responsible for receiving and investigating reports of child abuse or neglect made under this Act, except ... that the Department may delegate the performance of the investigation to the Department of State Police, a law enforcement agency and to those private social service agencies which have been designated for this purpose by the Department prior to July 1, 1980.” 325 ILCS 5/7.3.

On a practical level, the Department’s response may depend in part on location. Each local agency and investigator has some discretion in how they assess reports. Different local agencies may have different policies and protocols for this reason. It is always advisable to know your local agency and their practice.

Will I receive any further information about my report and client?

A mandated reporter will be told whether a report is being investigated. If a report is investigated, “[the] mandated reporter may receive appropriate information about the findings and actions taken by the Child Protective Service Unit in response to its report. The information shall include the actions taken by the Child Protective Service Unit to ensure a child’s safety.” 325 ILCS 5/11.2. Mandated reporters may request further limited information from the State Central Register. 89 Ill. Admin. Code 300.130.

Will my report be confidential?

Illinois law protects the names of mandated reporters. 325 ILCS 5/11. While the subject of a report generally has a right to all information pertaining to his or her case, the

Department will withhold the name of the reporting source. *See* 325 ILCS 5/7.19. Some families have gone to court to try to get access to that information, but the courts make it very difficult to access. In one typical case, a family went to court to force the Department to release the name of their reporter. The court held that it would not even consider divulging the name of the reporter until the family could provide some evidence that the reporter made the mandated child abuse report in bad faith. Darryl H. v. Coler, 585 F.Supp. 383 (1984).

Can individuals be held liable for making reports?

There are two kinds of liability mandated reporters worry about: liability for filing a false report and liability for breaching medical confidentiality.

While there is no guarantee that a mandated reporter will never be sued for making a false report, mandated reporters are protected from liability if a report is made in good faith. *See* 325 ILCS 5/9. However, if it can be proved that the reporter *knowingly* transmitted a false report, the reporter can be prosecuted. “Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 1961. Any person who violates this provision a second or subsequent time shall be guilty of a Class 3 felony.” 325 ILCS 5/4.

Reporters also are protected from liability in breach of confidentiality suits if a report is made in good faith. However, reporters may be found liable for breach if it can be proved the reporter knew the report was not required and not appropriate.

Can individuals be held liable for not making reports?

There are various consequences for a knowing failure to report. First, there are criminal sanctions: “Any person who knowingly and willfully violates any provision of this Section...is guilty of a Class A misdemeanor for a first violation and a Class 4 felony for a second or subsequent violation; except that if the person acted as part of a plan or scheme having as its object the prevention of discovery of an abused or neglected child by lawful authorities for the purpose of protecting or insulating any person or entity from arrest or prosecution, the person is guilty of a Class 4 felony for a first offense and a Class 3 felony for a second or subsequent offense....” 325 ILCS 5/4.

“Any physician who willfully fails to report suspected child abuse or neglect as required by this Act shall be referred to the Illinois State Medical Disciplinary Board for action in accordance with...the Medical Practice Act of 1987. Any dentist or dental hygienist who willfully fails to report suspected child abuse or neglect as required by this Act shall be referred to the Department of Professional Regulation for action in accordance with paragraph 19 of Section 23 of the Illinois Dental Practice Act. Any other person required by this Act to report suspected child abuse and neglect who willfully fails to report such is guilty of a Class A misdemeanor for a first violation and a Class 4 felony for a second or subsequent violation.” 325 ILCS 5/4.02.

In addition, mandated reporters who willfully fail to report suspected child abuse or neglect are subject to license suspension or revocation in accordance with the following statutes:

- 1) Nursing and Advanced Practice Nursing Act [225 ILCS 65];
- 2) Medical Practice Act of 1987 [225 ILCS 60];
- 3) Podiatric Medical Practice Act of 1987 [225 ILCS 100];
- 4) Clinical Psychologist Licensing Act [225 ILCS 15];
- 5) Clinical Social Work and Social Work Practice Act [225 ILCS 20];
- 6) The School Code [105 ILCS 5];
- 7) The Illinois Dental Practice Act [225 ILCS 25];
- 8) Physician Assistant Practice Act of 1987 [225 ILCS 95];
- 9) Illinois Optometric Practice Act of 1987 [225 ILCS 80];
- 10) Illinois Physical Therapy Act [225 ILCS 90]; and
- 11) Illinois Athletic Trainers Act [225 ILCS 5].

89 Ill. Admin. Code 300.30.

G. Do Medical Records Remain Confidential in Cases of Alleged Abuse?

Is information in the medical chart and provider notes confidential?

A child abuse report must contain information about the “nature and extent of the child’s abuse or neglect” and any “other information that the person making the report believes might be helpful in the furtherance of the purposes of this Act.” 325 ILCS 5/7.9. This requirement to share relevant information supersedes medical confidentiality rules.

Persons who in good faith believe a child abuse report is warranted and release medical information for that purpose are protected from liability. “Any person, institution or agency... participating in good faith in ...making a disclosure of information concerning reports of child abuse and neglect ... shall have immunity from any liability, civil, criminal or that otherwise might result by reason of such actions.” 325 ILCS 5/9.

How should a subpoena or other legal request for confidential information be handled?

While both federal and state law allow providers to release information when subpoenaed in some circumstances, there are many restrictions. A subpoena will not necessarily withstand challenge. For this reason, when presented with a subpoena, it is always advisable to seek legal counsel before releasing any information. The following case provides a good example.

In *Nat’l Abortion Fed’n v. Ashcroft*, 2004 W.L. 292079 (N.D. Ill.), the National Abortion Federation challenged the constitutionality of the federal Partial Birth Abortion Ban Act. As part of that lawsuit, the federal government served Northwestern Hospital with a

subpoena for medical records. Accompanying the subpoena was a court order authorizing Northwestern to disclose the records. Northwestern went to court to quash the subpoena. The court held that Illinois statutes provide medical information great protection. Confidential information can only be disclosed if one of 11 conditions is met. Otherwise, confidential records cannot be disclosed, even in the face of a subpoena and court order. The court found that in this case, none of the 11 conditions was met, and so the court quashed the subpoena. Northwestern did not have to turn over any records. 2004 W.L. 292079 (N.D. Ill.)

H. What are the Potential Criminal Charges Arising Out of Abuse Reports?

Will the police be informed of any child abuse reports I make?

The Department of Children and Family Services must refer several kinds of abuse and neglect reports to local law enforcement for consideration for criminal investigation. Reports that must be referred include “reports in which the injury to the child suspected to be abused or neglected is severe...,” reports of multiple abuse, and “reports in which a child is the alleged victim of sexual abuse.” 89 Ill. Admin. Code 300.70.

In addition to being used as indicators of abuse or neglect for child welfare purposes, will evidence of sexual activity uncovered during an abuse/neglect investigation be prosecuted?

It might. The police and prosecutor will decide how best to investigate and possibly prosecute criminal incidents.

In a case involving consensual sexual activity between minors uncovered during an abuse/neglect investigation, who if anyone might be prosecuted?

The minor’s partner may be prosecuted for sexual assault or criminal sexual abuse. In some cases, both minors may be prosecuted if they each can be charged with a sexual crime against the other. In addition, depending on the situation, a parent or other caretaker also may be prosecuted for permitting the sexual abuse of a child.

The police and prosecutor’s office will decide who to charge and with what. Because the prosecutor has some discretion, if you have questions about how such charges are handled in your jurisdiction, it is best to speak to your local welfare, police and prosecutor’s office.

In a criminal case involving sexual acts, will the offender be required to register as a sex offender?

Persons convicted* of certain offenses must register as sex offenders or sexual predators. 730 ILCS 150/3. Qualifying offenses include, but are not limited to: Criminal Sexual

Assault; Aggravated Sexual Assault; Criminal Sexual Abuse; Aggravated Criminal Sexual Abuse; Soliciting a Juvenile Prostitute; and Sexual Exploitation. 730 ILCS 150/3.

Minors convicted of these crimes also must register as sex offenders. Depending on the charge, they may have to register for life – even if convicted at a very young age. In the case *In re J.W.*, 787 N.E.2d 747 (2003), a 12 year old was adjudicated delinquent after admitting to two counts of aggravated criminal sexual assault. He was put on probation and ordered to register as sex offender for rest of life.

*In this context, “persons convicted” include, among other things, those who have been found guilty by reason of insanity, and those adjudicated a juvenile delinquent. *See* 730 ILCS 150/3 for complete definition of “convicted”.