



**New York State
Office of
Children & Family
Services**

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A Medical Guide for Youth in Foster Care

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New York State Office of Children & Family Services

Foster Care Regulations

NYCRR is the official compilation of Codes, Rules, and Regulations of the State of New York

18 NYCRR § 441.22(a); 507.1(a) – Every child in foster care is entitled to comprehensive medical and health services.

18 NYCRR § 441.15 – Psychiatric, psychological, and other essential services must be available for children in foster care.

18 NYCRR § 441.22(b)(4)(i)(e) – A youth in foster care who has the capacity to consent to an HIV test cannot have an agency-supervised, confidential HIV test without the youth’s written permission.

18 NYCRR § 423.4(g)(2) – A foster care agency must provide services to keep an infant child and minor parent in foster care together, except when this arrangement would create an imminent risk of abuse or maltreatment.

18 NYCRR § 463.1 – Each social services district must provide reproductive health education and family planning services upon request to sexually active youth and youth of child-bearing age who are in foster care.

18 NYCRR § 507.1(c)(9) – The social services district must provide or arrange for family planning services within 30 days of the request.

A link to New York Codes, Rules, and Regulations can be found on the New York Department of State website at www.dos.ny.gov/info/nycrr.html.

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PHL § 2504(4) – Emergency medical services can be provided to any person without consent.

PHL § 2305 – A health care provider may treat or prescribe for a person under the age of 18 for a sexually transmitted disease without the consent or knowledge of the parent or guardian.

PHL § 17 – Records concerning the treatment of a minor for a sexually transmitted disease or the performance of an abortion upon the minor shall not be released or made available to the parent or guardian of the minor without the minor’s consent.

PHL § 2789(5) – Defines capacity to consent in regard to HIV testing.

PHL § 2782 – Lists who has the right to see confidential HIV-related information.

Mental Hygiene Law (MHL) § 22.11 – A minor may receive inpatient, residential, or outpatient substance abuse treatment without the consent of a parent or guardian in some cases.

MHL § 33.21 – A minor may receive mental health treatment without the consent of a parent or guardian in some cases.

Social Services Law (SSL) § 384-a(2)(c)(ii) – A parent cannot be pressured or forced to sign a voluntary placement agreement, nor can the parent be charged with neglect for refusing to sign a voluntary placement agreement as long as the parent has a safe and appropriate plan for the child.

SSL § 373-a – The medical histories of a child in foster care and the child’s parents must be provided to the foster parents, prospective adoptive parents, adoptive parents, and the former foster child upon request.

Family Court Act § 241 – Minors who are involved in family court proceedings will be represented by attorneys to protect their interests and to help them express their wishes to the court.

For the full text of New York State laws, visit <http://public.leginfo.state.ny.us/> and click on “Laws of New York.”

The guide was edited and designed by Welfare Research, Inc. (WRI), under a contract with the New York State Office of Children and Family Services.

Important Laws and Regulations

Laws and regulations affect your medical rights. If you have any questions about your specific situation, talk to your attorney. Knowing your rights can help you get the health services you need.

Federal Law

431 U.S. 678: The U.S. Supreme Court in *Carey vs. Population Services International* – established the right of a minor to consent to reproductive health services and family planning services.

HIPAA (Health Insurance Portability and Accountability Act) – gives people certain rights regarding their Protected Health Information (PHI), including the right to keep their PHI confidential. HIPAA gives youth the authority to have control over certain categories of their own PHI.

You can find more information at:

<http://www.nyhealth.gov/nysdoh/hipaa/hipaa.htm>

More information about HIPAA and the rights of minors (under 18 years of age): <http://www.cumc.columbia.edu/hipaa/policies/minors.html>

New York State Law

Public Health Law (PHL) § 2504(1) – A person who is 18 years of age or older, or is the parent of a child, or has married, can give consent for medical care.

PHL § 2504(2) – Any person who has borne a child may give consent for that child's medical care.

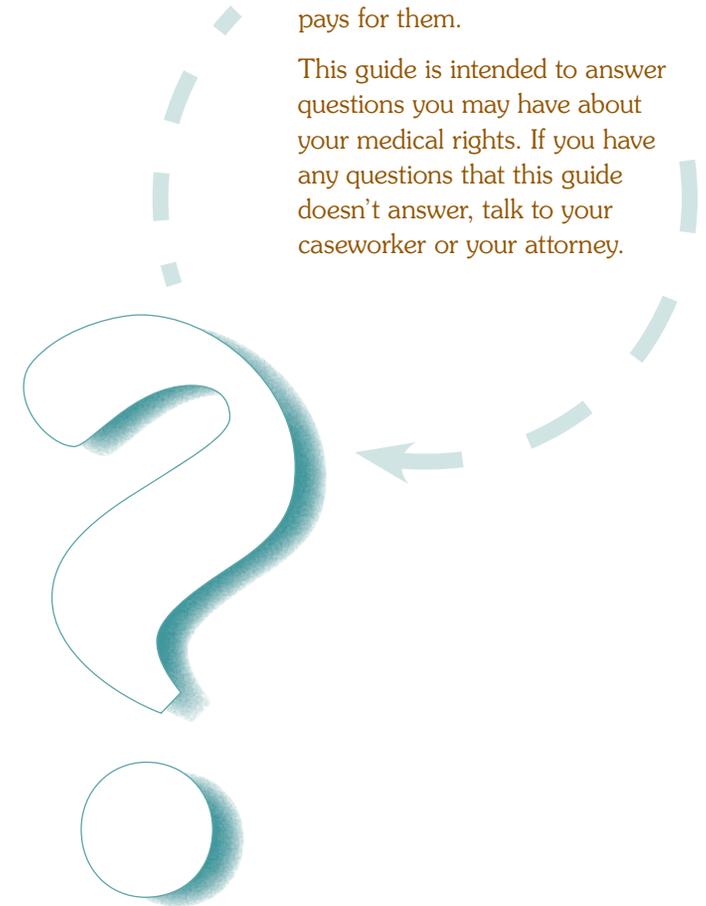
PHL § 2504(3) – Any person who is pregnant may give consent for their own medical, dental, and hospital services relating to prenatal care.

Introduction

Dealing with the healthcare system can be a challenge for anyone.

It can be really challenging when you're in foster care, because there are laws and regulations that apply specifically to you. They affect who can give permission for your health care, the services and treatments you receive, and who pays for them.

This guide is intended to answer questions you may have about your medical rights. If you have any questions that this guide doesn't answer, talk to your caseworker or your attorney.



What Is medical consent?

Usually, parents give consent for their children to be treated. When you are in foster care, other people (including yourself) can sometimes give consent for your medical treatment.

Consent means giving permission for a doctor or other healthcare professional to provide medical treatment.

Routine consent

When you come into foster care, your parent or guardian is asked to sign a form that permits the county or the foster care agency to obtain routine health care for you.

Routine care includes services such as:

- * Regular checkups by your doctor
- * Visits to the doctor when you're sick
- * Immunizations (shots)
- * Dental treatment
- * Talking with a counselor

Copies of the form signed by your parent or guardian are given to healthcare providers so they know it's okay to treat you. The same form can be used for multiple appointments and different doctors.

If your parent or guardian can't be located or doesn't sign the consent form, the county social services commissioner, the director of the foster care agency, or the family court judge will give consent for your medical care.

The **Family Planning Benefit Program (FPBP)** provides family planning services to prevent or reduce unwanted pregnancies. You may be eligible for FPBP even if you're not eligible for Medicaid or Family Health Plus. You can also apply just for the Family Planning Benefit Program.

To contact the Family Planning Benefit Program, call 1-800-541-2831.

The **Prenatal Care Assistance Program (PCAP)** helps pregnant women get the care they need.

You can apply for PCAP at many clinics and hospitals. Call your local department of social services to find out where you can get PCAP services.

You can also visit the New York State Department of Health website at www.health.state.ny.us and click on "Medicaid," "Child Health Plus," or "Family Health Plus."

When to go to the emergency room

If you are very sick and have no money or insurance, go to the emergency room.

Don't take chances with your health!



You may be eligible for these medical assistance programs if you meet certain income, resource, age, disability, or other requirements. You may need to bring documents (such as your birth certificate, proof of immigration status, and paycheck stubs) when you apply for medical assistance.

Programs

Medicaid is for New Yorkers who can't afford to pay for medical care. It provides complete health care coverage, including:

- * Doctor visits for regular check-ups and when you're sick
- * Hospitalization
- * Prescription medications
- * Other health services

To apply for Medicaid, call or go to your county department of social services office. In New York City, contact the Human Resources Administration at 718-557-1399 or 1-877-472-8411.

Family Health Plus is for adults from 19 to 62 years of age who do not have health insurance – either on their own or through their employers – but have income or resources too high to qualify for Medicaid. Family Health Plus:

- * Provides complete healthcare coverage.
- * May require a small amount (co-payment) for some services.
- * Provides health care through participating managed care plans in your area.

To apply for Family Health Plus, call 1-877-9FH-PLUS (1-877-934-7587).

Child Health Plus is similar to Family Health Plus, except it is for children. If your child has no health insurance, apply for Medicaid or Child Health Plus for your child.

To apply for Child Health Plus, call 1-800-698-4KIDS (1-800-698-4543).

Informed consent

For some kinds of medical treatment, such as surgery or certain medications, “informed consent” is needed. Informed consent is different from routine consent because it is for a specific treatment or procedure. The person signing the consent form is making a careful decision based on information from a healthcare provider.

Before signing the consent form, the person must:

- * Understand what the treatment is and why it is recommended
- * Know the benefits and the dangers of the treatment
- * Be told about any other treatments that could be used instead
- * Have an opportunity to ask questions

The doctor or healthcare provider also should clearly explain the treatment or procedure to you in a way that you can understand and answer all of your questions. Tell the doctor and talk to your caseworker, foster parent, or attorney if you don't think the treatment is right for you.

If your parent or guardian can't be located or refuses to sign the informed consent form, it may be necessary for a judge to decide whether or not you will receive the treatment.

Emergency care

Consent for treatment is not necessary when:

- * there is a true medical emergency and
- * waiting to get consent would increase the risk to your life or health.



Capacity to consent means that you:

- * have the ability to understand a proposed healthcare service, treatment, or procedure;
- * can appreciate the nature and consequence of the service, treatment, or procedure; and
- * can make an informed decision about whether to receive it.

Capacity to consent

In some situations, the law allows you to consent to specific health care services even if you are under age 18. In those situations, your healthcare provider will determine whether you have the “capacity to consent.”

For example, you can give consent to receive reproductive health care services when you are under 18, as long as your healthcare provider determines that you have the ability (or capacity) to make an informed decision. You don’t have to ask your parents, foster parents, or caseworker for their consent when you need these services. You have the right to these services, even if your foster care agency has a religious affiliation.

If you consent to receive reproductive health services on your own, your healthcare provider cannot give your health information to anyone without your permission. See page 12 for more information about these services.

When you turn 18

At 18 years of age, you can consent to all of your own health services, whether or not you are in foster care.

Your parents or the foster care agency cannot legally consent to your health services on your behalf after you turn 18, unless a judge finds that you are not able to make decisions for yourself.

Who will pay for my medical care?

Finding out about health insurance can be challenging and frustrating at times. This information should help you get the services you need.

When you’re in foster care

You must be provided with health services while you are in foster care. If you are a citizen or have satisfactory immigration status, you are automatically eligible for Medicaid.

If you consent to your own health care, such as reproductive health services, be sure to get your Medicaid information from your foster care agency before going for your appointment. Bring the information with you to give to the doctor or the clinic for billing purposes.

When you leave foster care

If you were receiving Medicaid while you were in foster care, you are eligible to continue receiving Medicaid for up to 12 months after you leave care. Your county caseworker will make a referral to Medicaid when you leave foster care. Talk to your caseworker about this.

When you begin receiving Medicaid on your own, be sure the Medicaid office has your correct address. The office sends out notices, such as renewal applications, to people on Medicaid.

When you’re on your own

If you are living on your own and don’t have any health insurance, there are many medical assistance programs you may be eligible for, such as:

- * Medicaid
- * Family Health Plus
- * Child Health Plus
- * Family Planning Benefit Program
- * Prenatal Care Assistance Program

- * Paternity is established through a lab test of you and the baby. The test can also prove that you are **not** the father.

If you are the father of the baby:

- * You can ask the family court judge to give you visitation rights.
- * You can ask the baby's mother or the family court judge to give you joint or sole custody of your child.
- * You may be required to pay child support.
- * You may give consent for your own medical care.

If you face obstacles or resistance to being a part of your child's life, talk to your attorney and caseworker.

For more information about your rights, visit the New York Civil Liberties Union website at www.nyclu.org and search for "Rights of Pregnant and Parenting Teens."

Will my medical records be kept private?

All medical information is considered to be confidential (private).

When you are in foster care, your foster parents or caseworker must make sure that you get the health care you need. Because the foster care agency is responsible for your health, it will maintain records of your medical care and share them with others as required by law. The agency must, however, keep your health records in a way that protects your confidentiality. In general, the agency may share your health information only with:

- * You, if you are discharged from foster care into your own care
- * You, if you leave foster care for adoption, upon your request
- * Your foster parents
- * Your adoptive parents, upon their request
- * A prospective adoptive parent (someone who is planning to adopt you)
- * A new foster care agency, if you are transferred

- * Your attorney
- * Your parents or another caregiver you live with when you leave foster care

Information about reproductive health services for which you have consented (see list on page 12) cannot be given to anyone without your permission.

Your parents' health histories

You have the right to receive your birth parents' health histories from the agency if:

- * You are discharged from foster care into your own care, or
- * You were in foster care and are now adopted, upon your request.

A health history includes both physical and mental health records. If you have been adopted, the agency will remove your birth parents' names from the records they send to you.

It is important to know about your parents' health because some health problems are hereditary (passed down from parent to child).

Why do I need to take medications?

We take medications for many reasons – to stay healthy, to feel better, or to get well when we're sick.

Some medications can be very helpful for problems such as anxiety, sadness, or difficulty concentrating. Medicines that can change your mood, behavior, thinking, and awareness are called **psychotropic** or **psychiatric** medications.

Your parent or guardian must give “informed consent” (see page 3) before you start taking one of these medications. The doctor prescribing it must:

- * Explain to you exactly what it is for
- * Describe how it will affect you
- * Answer all of your questions

Psychotropic medications can sometimes cause problems (side effects). You will see a doctor on a regular basis while you are taking a psychotropic medication. Let the doctor know about any side effects you are experiencing. If you don't like the way the medicine makes you feel, ask if you can take more or less of it, try a different medication, or try another type of treatment.

In general, you cannot be forced to take any medication, but be sure you know what will happen if you don't take it. Be sure to talk to your doctor before you stop taking any prescribed medicine so you know about any risks or side effects.

- * You are responsible for taking care of your baby's daily needs while he or she is in your custody.
- * You may give consent for your own and your child's medical care, regardless of your foster care status.

Voluntary placement agreements

Your foster care agency should make every effort to locate a place for you and your baby to be together. Sometimes it is difficult to find a foster care setting for both of you at the time the baby is born. If this happens, you may be asked to sign a voluntary placement agreement so your child can be placed in a different foster home. Signing the voluntary foster care agreement transfers custody of the baby from you to the commissioner of the local social services district.

Fathers in foster care

Fathers in foster care also have rights and responsibilities regarding their children. If you think you may be the father of a child:

- * Your attorney can ask the family court to establish paternity (prove you are the father).

Important facts to remember!



- * Make a plan with your caseworker **before the baby is born** to help prevent you from being separated from your child.
- * If the agency can't find a mother/child placement, try to find someone, such as a trusted relative, who can care for your child.
- * You do not have to sign a voluntary placement agreement putting your baby into foster care if you don't want to.
- * No legal action (such as a child abuse report) can be taken against you if you refuse to sign a voluntary placement agreement, as long as you have a safe alternative plan for the care of your baby.
- * Contact your attorney for advice and support if you're uncertain about your rights.

What if I become pregnant?

When you're in foster care, you have certain rights and privileges that relate to you, your pregnancy, and your baby.

Having a baby is a life-changing experience. You must plan for the future for both yourself and your child.

During your pregnancy

- * You can give consent for any medical, dental, and hospital services related to prenatal (pregnancy) care.
- * You should participate in a Service Plan Review (SPR) to plan where you and the baby will live if you are still in foster care after the baby is born. Your caseworker will review the current plan with you and tell you when the next SPR is scheduled.
- * You can decide to end your pregnancy (see Reproductive Health Services, page 12) even if your foster care agency has a religious affiliation or you are in a setting for pregnant youth.

After your baby is born

Your baby is not automatically in foster care – you have legal custody of your child. You will not lose custody unless you pose a danger or threat to your baby's well-being, or you request that the baby go into foster care.

- * You are entitled to a placement where you and your baby are together.

The law says you may be given medication against your will in an emergency when your behavior is an immediate threat to your safety or someone else's.

Taking your medication

Your foster parents or child care staff will store your medicine and will either give it to you or watch as you take it. They will also keep track of when the medicine is taken.

You may want to keep track of and take your own medication, such as an asthma inhaler or birth control pills. Talk to your caseworker about whether this makes sense in your situation. You may also want to discuss this with your attorney.



Remember

Talk to your doctor before you stop taking any prescribed medicine so you know about any risks or side effects.



What other services are available?

It's not unusual to need some extra help when you go into foster care.

You may be coming out of a tough family situation or be struggling with other personal problems. If so, you're entitled to services that promote your mental and physical health.

You will receive a mental health assessment when you enter foster care. You may also get a screening for abuse of substances such as tobacco, alcohol, or drugs.

Mental health and substance abuse services

You are entitled to certain services if the mental health and substance abuse assessments show that you need them. These may include educational programs, group therapy, or individual counseling.

Sometimes a hospital is the best place to get mental health or substance abuse treatment. If your parents or guardian object to your being hospitalized, but

you think it will help, the hospital can work with you and your caseworker to admit you.

Privacy is important

You may tell a counselor very important things that you have not talked about before and that you may not want others to know. Your counselor must respect your privacy, but also is required by law to report certain things, such as:

- * Abuse that has happened to you
- * A serious threat you make to harm yourself
- * A serious threat you make to harm someone else

A counselor will also give the foster care agency or Social Services some general information about your treatment. Counselors do not, however, need to provide details about everything that is said to them.

Be sure to spend some time talking with your counselor about how he or she will protect your safety and confidentiality. You need to trust that your counselor respects your privacy so you can talk freely.

Staying safe

Talk with your doctor or a family planning center, such as Planned Parenthood, about the risks involved in sexual activity. It's sometimes easier to talk to other youth about sex, but they may not have all the correct information.

There are many different kinds of physical intimacy, with different kinds of risk. Even if you are not having sexual intercourse with someone of the opposite sex, you or your partner may still be at risk of pregnancy or getting a sexually transmitted disease like HIV or herpes. Talk to a healthcare professional and get the facts.

Giving consent

You can give consent to receive reproductive health care services when you are under 18, as long as your healthcare provider determines that you have the ability (or capacity) to make an informed decision. You have the right to these services, even if your foster care agency has a religious affiliation.

If you consent to receive reproductive health services on your own, your healthcare provider cannot give your health information to anyone without your permission.

Ending a pregnancy

Any female in New York State can decide to end her pregnancy (have an abortion) without notifying anyone or getting her parents' or the agency's consent as long as her physician determines that she has the capacity to consent (see page 4).

- * If you are considering having an abortion, it may be helpful to discuss this decision with a trusted adult.
- * If you decide to get an abortion, be sure to follow the doctor's orders exactly.
- * If your doctor determined that you had the capacity to consent to have an abortion, your medical records regarding the abortion cannot be released without your written consent.

For more information about your rights, visit the New York Civil Liberties Union website at www.nyclu.org and search for "Rights of Pregnant and Parenting Teens."

Can I get services related to sex and birth control?

The decision whether or not to have sex is a personal choice. Whichever way you decide, it is important to know what services are available to you and how to keep yourself safe.

Reproductive health services

Reproductive health services, sometimes called family planning services, help you to manage your sexual health and safety. These services include:

- * Contraceptives to prevent pregnancy, such as birth control pills and condoms
- * Counseling on safe sex and sexual decisions
- * Treatment for vaginal infections
- * Testing and treatment for HIV and sexually transmitted diseases (STDs)
- * Pregnancy testing
- * Emergency contraception

(morning-after pill)

- * Pregnancy termination (abortion)
- * Special examinations and tests for sexually active girls (pelvic exams and Pap tests)

If you are 12 years old or older, your caseworker sends your caregiver a “family planning notice” each year you are in foster care. This letter says you have the right to information and counseling about sexuality, as well as medical services if you ask for them. Some agencies will also send a letter directly to you.

Ask your caseworker about the family planning notice letter if you have not received one. Even if you are not sexually active, these services can help you to understand your body, answer your questions, and plan for the time when you choose to have sex.

Why should I be tested for HIV/AIDS?

HIV (Human Immunodeficiency Virus) is a serious health problem and one of the biggest threats to today's youth.

HIV attacks the body's immune system, making it less able to fight off germs. If you are infected with HIV, you have the virus in your body and can pass it to other people.

Without treatment, people with HIV get life-threatening infections and cancers and are likely to develop AIDS (Acquired Immune Deficiency Syndrome), a debilitating and often fatal disease. Treatment can slow this process so people with HIV can live longer, healthier lives.

If you're HIV-infected, you may have no symptoms for ten years or more. You may not even know you're infected. An HIV test is the **only** way to find out if you have HIV. There are certain rights and requirements related to HIV/AIDS testing that apply to you when you're in foster care.

HIV risk assessment

Within 30 days of your entry into foster care, the foster care agency is required to do an “HIV risk assessment” to find out if you are at risk for HIV infection. A caseworker or nurse will ask you questions about your sexual activity, drug use, and other risk factors. The assessment does **not** determine whether you have the virus. It will help find out if you should be tested for the virus.





If the results of your anonymous HIV test show you have the virus, think seriously about telling someone.

Consent for HIV testing

If HIV testing is recommended for you, informed consent is required (see page 3).

You cannot be given an HIV test without your consent, unless you do not have the capacity to consent. If you don't have the capacity to consent, an HIV test may be authorized by your parent, the local DSS commissioner, or a judge.

If you do have the capacity to consent, it is up to you to decide if you want to be tested. A caseworker or nurse will help to answer your questions about HIV/AIDS and the testing. You may choose to take a confidential test, an anonymous test, or not to be tested.

Confidential testing

When you agree to a confidential HIV test,

- * Results will be shared with your foster care agency.
- * Results will be included in your confidential health record.

Anonymous testing

If you don't want anyone to know you are taking an HIV test, you can call 1-800-542-AIDS to ask how to get an anonymous test. Your caseworker will help you with arrangements for the test and transportation to the test site.

You will be given the test results but, because no personal information appears with the test results, there will be no record kept after you are told the results.

These results will not be included in your confidential health record, and they cannot be disclosed to anyone else unless you choose to do so.

If the results of your anonymous HIV test show you have the virus, think seriously about telling someone. There is no cure for HIV or AIDS, but the treatments available now will help you to feel better and be healthier in the future.

If you choose not to be tested, your caseworker or nurse will continue to talk to you about HIV. You can change your mind and get a test at any time.

Disclosure of HIV/AIDS information

If your foster care agency receives HIV/AIDS information regarding you, such as the results of a confidential test, the agency **must** disclose it, with or without your consent, to:

- * Your foster parents
- * Prospective adoptive parents
- * Another foster care agency, if you are transferred
- * Your attorney, for the purposes of representing you

If you did not have the capacity to consent to the test, you must be told of your HIV status if:

- * You are discharged into your own care, or
- * You are a former foster child who has since been adopted and you have requested this information.

If you have the capacity to consent, the foster care agency **cannot** give your parents your HIV/AIDS information without your permission.