

Mandatory Reporting Requirements, Law Enforcement, and Patient Confidentiality in Montana

Note: This resource is up to date as of August 2025.

Why use this fact sheet?

Confidentiality is central to the provider-patient relationship and a core part of medical ethics. In addition, violating patient confidentiality unnecessarily may carry professional or legal penalties. This fact sheet provides an overview of some of the major mandatory reporting requirements and where they intersect with patient privacy – with a specific focus on self-managed abortion. This fact sheet does not contain legal advice, and we recommend that providers who have further questions about their reporting requirements consult an in-state attorney for more information.

Who wrote this guide and why?

If/When/How: Lawyering for Reproductive Justice is a legal advocacy organization. We created this fact sheet in part because the most common cause of the criminalization of people who self-manage their own abortion care is unnecessary reports to law enforcement by medical providers. We also frequently field questions from providers who are concerned about what they may need to report. We know providers share our concern that risk to patients may be high when a report to law enforcement is triggered. In the case of reporting self-managed abortion, the consequences to patients might include jail time, losing custody of their children, a criminal record, or fines – all of which are unjust responses by an overzealous, racially biased system and frequently violate people's rights. Failure to report when it is necessary also carries risk of liability, so we want providers to feel confident in their ability to discern when reporting is legally required, and what must be included.

Providers can also help protect their patients from unjust criminalization.

Know your mandatory reporting obligations, and where they intersect with patient privacy.

This fact sheet covers most mandatory reporting requirements in Montana law. Your hospital, clinic, or practice may have additional reporting requirements that you should be familiar with. Providers can help patients maintain their agency and confidentiality while fulfilling their mandatory reporting obligations by:

- Not reporting patients if not legally required
- Not asking patients for information that is not necessary to patient care
- Informing patients of what the provider may have to report prior to taking patient history or treating the patient
- Carefully considering what information is necessary to document in a medical chart

Providers can also help protect their patients from unjust criminalization by ensuring that their hospital or clinic reporting policies do not conflict with HIPAA or state laws on medical privacy.

Major Mandatory Reporting¹ Requirements in Montana²

Crime: Self-managed abortion is not a crime for abortion seekers³ in Montana.

Montana health care providers are not required to report crimes other than (1) child abuse or neglect, (2) vulnerable adult abuse, neglect, or exploitation, and (3) certain results of crimes (such as serious injuries as described elsewhere in this fact sheet).

Child and vulnerable adult abuse: A minor or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse.

Legal requirements for child abuse reporting are fraught with bias, in particular toward families of color and families struggling to make ends meet. However, all health care providers in Montana who diagnose, examine, treat, or provide counseling are mandatory reporters for suspected child⁴ abuse and neglect.⁵ Health care providers are also mandatory reporters for suspected vulnerable adult⁶ abuse, neglect, or exploitation.⁷ Because suspicion is subjective and can often stem from bias, health care providers should thoroughly examine any potential bias at play when deciding whether or not a report is required under the law. Health care providers should inform adolescent patients about what constitutes reportable child abuse prior to talking to them about care. Even if a provider decides to make an abuse report, the fact that a minor or vulnerable adult self-managed their own abortion would not ordinarily need to be included in a report.

**Have more
questions?
Reach out to
request
technical
assistance.**

Providers are not required to report domestic violence or sexual assault in Montana unless it qualifies as child or vulnerable adult abuse.

- The state abuse/neglect reporting requirement states that providers have to report *anyone*⁸ who abuses or neglects a child. However, the state defines physical/psychological harm and abandonment as acts (or omissions) that specifically only a parent or someone else responsible⁹ for the child's well being commits. Courts have recently confirmed that sexual abuse is defined more broadly (see the section on statutory rape below for more information). Providers may want to consult an attorney in their state about what circumstances trigger the abuse/neglect reporting requirement.

Statutory rape: If a provider does need to report a statutory rape, the fact that the patient attempted to end the pregnancy is not relevant to the investigation.

Montana requires all health care providers to report suspected child abuse, which includes inflicting or allowing certain types of sexual abuse¹⁰ or sexual misconduct including statutory rape. This is subject to the same lack of clarity regarding who providers would need to report for sexual misconduct against a child as the "child abuse" and "child neglect" applications above. In Montana, "sexual intercourse without consent" is the legal term for statutory rape for sexual intercourse with a minor under 16, as they are not able to consent to sex under state law.¹¹ A provider could be required to report that a minor under 16 is having sex, unless the sex is with their spouse.¹² Consensual sexual contact¹³ (distinct from sexual intercourse) between a person younger than 14 and someone who is less than three years older is not reportable as child or sexual abuse.¹⁴ There is no similar close-in-age exception for sexual intercourse between minors. In general, unless providers know the age of the patient's partner, they lack the information required to make a report. The age of a minor's sexual partner is rarely clinically significant to care provision. If a minor who is 16 or 17 is pregnant or has an STD, these by themselves, are not grounds for reasonable suspicion of abuse.¹⁵ Health care providers should inform adolescent patients about what constitutes reportable sexual conduct prior to talking to them about care where possible.

Certain traumas and injuries: Self-managed abortion is not a reportable injury.

Health care providers in Montana providing treatment to a patient who has been shot or stabbed must report the injury to law enforcement.¹⁶ However, allowing law enforcement into a patient's room is often a patient privacy violation, and any patient consent to police presence while suffering from a gunshot wound is likely not true informed consent.¹⁷

Though most people self-manage with medication, sometimes people without access to medication or other safe abortion care may utilize more physical methods, such as asking someone to punch them in the stomach in order to induce a miscarriage. Providers in Montana would not need to report such an injury. If a provider reports a gunshot or stab wound that was an attempt to induce a miscarriage, it is a violation of patient confidentiality to divulge the reason behind the injury.

Overdoses and drug use during pregnancy: There are limited circumstances requiring a report following substance use during pregnancy.¹⁸

Health care providers in Montana are not required to report overdoses. In Montana, the child abuse reporting statute does include prenatal drug exposure when an infant “is affected by a dangerous drug.”¹⁹ Montana’s definition of “dangerous drug”²⁰ includes marijuana, even when used as prescribed.²¹

Self-harm: Montana does not require health care providers to report threats of self-harm.

Under Montana law, there is a duty to warn a third party when a patient makes “an actual threat of physical violence”²² including mentioning means and a clear victim. The duty to report is met by telling or making efforts to tell the victim about the threat, as well as contacting the police nearest to the patient or the victim. The provider must also provide police with any additional information about the threat upon request. Revealing an intention to self-manage an abortion is not a threat of violent behavior or serious harm, and in this context, a fetus is not a “third party” or separate person under Montana law. If a patient indicates they may engage in an unsafe method of self-managed abortion, there are clinical interventions that support patient safety without a report.²³

Abortion:²⁴ It is never necessary to report a patient’s intention to self-manage an abortion.

Under Montana law, physicians and hospitals²⁵ who perform abortions must report each abortion to the Montana Department of Public Health and Human Services (DPHHS) within 30 days after the abortion is performed.²⁶ In Montana, providers are also required to report to DPHHS any complications or adverse events due to the use of abortion-inducing drugs. This applies both when the provider is the one who prescribed the medication, and also to providers treating a patient who experiences complications or an adverse event anytime after taking the medication. The intent to self-manage – or the event of self-managing – is not information a physician is required to provide under state law.

Fetal death: Under the current definition of “fetal death,” providers do not have to report abortions.²⁸

Providers must document fetal deaths after a stillbirth when the fetus is 350 grams or more, or if the weight is unknown, at or after 20 weeks of pregnancy.²⁹ When a fetus is delivered outside of an institution, the provider assisting in the delivery must report a fetal death to the coroner of the county where the death occurred.³⁰ The local registrar must fill out a fetal death certificate for a medically unattended fetal death. The registrar must notify the coroner and the state medical examiner if it appears the death did not occur as a result of natural causes.³¹ The coroner may investigate the cause of a fetal death depending on the circumstances of the death.³²

HIPAA:

HIPAA generally prevents health care providers and entities from disclosing patient information without patient consent, and the state reporting laws discussed in this fact sheet are exceptions to that rule.³³ This means that when a provider is legally required to make a report, HIPAA allows them to share patient information that is specifically required or permitted by the applicable state reporting law. Providing any additional patient information beyond what is specifically required or permitted by state law would likely violate HIPAA.

Accordingly, providers should carefully consider what patient information is necessary for making a report. For example, if a provider treats a minor patient for an injury that gives them cause to suspect physical abuse, the provider could share the records that are relevant to the suspected abuse, but they likely could not share the patient's *entire* medical record without violating HIPAA.

Providers with questions about medical privacy laws in relation to reproductive health care can request technical assistance from If/When/How: <https://ifwhenhow.org/learn/technical-assistance/>.

Citations

1. Note on Montana Parental Medical Consent: In 2023, Montana passed a law establishing a list of "fundamental parental rights," including the rights of parents to "make and consent to all physical and mental health care decisions for the child" and "access and review all health and medical records of the child." The bill implemented updated requirements for obtaining parental consent and notifying parents before providers can administer certain types of non-emergency medical care to unemancipated minors. While certain parts of the notification requirements leave little discretion for the provider, some parts do allow some discretion when it comes to assessing what might be best for the well-being of the minor in their care. Providers should consult an attorney on how these new notification requirements may interact with existing rules about patient confidentiality. While this law does not create new mandatory reporting requirements, providers might need to explain to minor patients when a parent has to be notified about medical treatment. Mont. Code Ann. §40-6-701.
2. This fact sheet focuses on mandatory reporting requirements that involve law enforcement or an analogous health authority. It does not include mandatory reporting requirements concerning communicable diseases, childhood blood lead levels, etc. The fact sheet intends to cover reporting requirements for physicians, nurses, physician assistants, midwives, social workers, mental health professionals, and emergency medical technicians. If you know of a mandatory reporting requirement for these professionals in Montana involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
3. The right to access abortion before fetal viability is protected by a state Constitutional amendment. The amendment also protects the pregnant person from criminal liability related to a pregnancy outcome. Ballot initiative CI-128 (2024).
4. Someone under 18 years old. Mont. Code Ann. §41-3-102(6).
5. Mont. Code Ann. §41-3-20. See also Mont. Code Ann. §41-3-102(7)(a), for definitions of child abuse.
6. Montana defines "vulnerable adult" as someone 60 years or older, or someone 18 years or older and has an impairment or disability that prevents them from providing for their own care or protection. Mont. Code Ann. §52-3-803(11).
7. Mont. Code Ann. §52-3-811.
8. Analysis done by The National Center for Youth Law showed the requirement to report "anyone" was added to the statute in 2011 by legislators who intended to broaden mandatory requirements so health care providers would be required to report child abuse/neglect regardless of who is responsible. See R. Gudeman, *Minor Consent, Confidentiality, and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Montana* 30-31, National Center for Youth Law (2022).

Citations

9. As of August 14, 2024, court language arising from a case about abortion consent interprets the child abuse reporting statute as requiring sexual abuse reporting broadly. The court states that Montana's mandatory reporting law "requires medical providers to promptly report any sexual abuse they know or suspect to be occurring." The use of the word "any" coupled with the context of the court's argument that Montana already has laws protecting minors from sexual abuse by anyone (in this case, the state argues that it protects them from traffickers, which can be parents/guardians but may not be) indicates the court's understanding that this statute covers reporting sexual abuse by anyone, not just parents. *See Planned Parenthood v. State*, 554 P.3d 153, 168 ("This becomes more apparent when we assess the Consent Act within the context of other measures more specifically and aptly designed to enhance the protection of children. Montana has a mandatory reporting law that requires medical providers to promptly report any sexual abuse they know or suspect to be occurring. Mont. Code Ann. §41-3-201. A provider's violation of the mandatory reporting law can result in civil liability and criminal sanctions of up to five years in prison and \$10,000 in fines. Mont. Code Ann. §41-3-207(3). As noted by the District Court, whether the Consent Act is in effect or not, providers must report evidence of sexual abuse to the State. The record is devoid of any evidence that the Consent Act provides enhanced protection over mandatory reporting laws, especially given that (1) some minors are being abused by their parents, and (2) a judicial waiver under the Consent Act does not require reporting.")

10. For definition of sexual abuse, *see* Mont. Code Ann. §41-3-102(30).

11. Mont. Code Ann. §45-5-501(1)(b)(iv).

12. Mont. Code Ann. §45-5-503(1).

13. "Sexual contact means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely: (a) cause bodily injury to or humiliate, harass, or degrade another; or (b) arouse or gratify the sexual response or desire of either party, Mont. Code Ann. §45-2-101(67).

14. Mont. Code Ann. §45-5-502(6)(a)(ii).

15. *See* R. Gudeman, *Minor Consent, Confidentiality, and Child Abuse Reporting: A Guide for Title X Family Planning Providers in Montana* (National Center for Youth Law, Oakland, CA, 2022).

16. Mont. Code Ann. §37-2-302. The law states this should be reported "as soon as is practicable."

17. Working Group on Policing and Patient Rights, *Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy* (2021), <https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf> (last visited June 27, 2024).

Citations

18. Read more in If/When/How's Resource on prenatal and infant drug testing: *Prenatal Drug Exposure: CAPTA Reporting Requirements for Medical Professionals* (Feb. 2024).
19. The state does not further define "affected by." See Mont. Code Ann. §41-3-201(3).
20. The state's definition of dangerous drugs exempts drugs that are FDA-approved for use. So MOUD (medications for opioid use disorder) would not be considered dangerous drugs if used as prescribed. Mont. Code Ann. §50-32-101(7)(b).
21. Mont. Code Ann. §50-32-222(4)(x).
22. Mont. Code Ann. §27-1-1102.
23. Such clinical interventions could include informing the client about clinics where they can receive abortion care, or encouraging the client to call the [Repro Legal Helpline](#) if they are considering self-managing an abortion.
24. In Montana, abortion means "the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus." Mont. Code Ann. §50-20-104(1).
25. Montana has adopted new rules pertaining to the licensure of abortion clinics, expected to go into effect in November 2024. The new rules include novel requirements related to documentation of patient information and establishing mandatory reporting policies and procedures. See Mont. Admin. R. 37.106.3104.
26. Mont. Code Ann. §50-20-110(1).
27. *Id.* at (5).
28. Montana defines fetal death as "death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps." Mont. Code Ann. §50-15-101(6).
29. Mont. Code Ann. §50-15-403.
30. Mont. Code Ann. §46-4-114.
31. Mont. Code Ann. §50-15-404.
32. Mont. Code Ann. §46-4-122(1)(a).

Citations

33. *See, e.g.*, Dep’t of Health & Hum. Servs., *My state law authorizes health care providers to report suspected child abuse to the state department of health and social services. Does the HIPAA Privacy Rule preempt this state law?* (last reviewed Dec. 28, 2022), <https://perma.cc/4BUP-ZZDA> . “[I]f a provision of State law provided for [reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention] and was contrary to the [HIPAA] Privacy Rule, the State law would prevail.” Id. In other words, HIPAA protects all patient information from disclosure, except for what a state reporting law either requires or permits.