

Know Your Patients' Rights: Pennsylvania Healthcare Providers Screening or Testing Adult Patients for Substance Use During Pregnancy and the Postpartum Period

Before screening or testing a pregnant or postpartum adult patient for substances, healthcare providers should **consider patients' legal rights**.

(1) In all settings:

Adult patients have a right to direct their medical treatment. This means patients generally have the **right to refuse** diagnosis, testing, and substance use treatment. Providers should also **assess their procedure** for identifying patients in need of substance use support.

- Discretionary tests or screens may surface **implicit bias** and cause harm to routinely tested populations.
- Where patients' substance use history is medically necessary, universal patient screening (self-reporting via questionnaire) with consent—rather than testing—is recommended. For more information, see Mishka Terplan & Howard Minkoff, *Neonatal Abstinence Syndrome and Ethical Approaches to the Identification of Pregnant Women Who Use Drugs*, 129 *OBSTET. & GYNECOL.* 164, 166 (2017).

(2) In government-run settings, such as public hospitals, universities, and schools:

Patients hold a constitutionally protected **privacy interest** in the collection and composition of their blood and urine.

This means patients in public settings are **protected against unknowing and nonconsensual substance testing** when the specific purpose is to provide the information to law enforcement.



The information in this fact sheet is not intended to serve as legal advice nor should it substitute for legal counsel. The fact sheet is not exhaustive, and the law is subject to change. Healthcare providers and their patients are encouraged to seek additional technical guidance to supplement the information provided. The information in this fact sheet is not a substitute for professional medical standards, practices, or care.

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After screening or testing an adult pregnant or postpartum patient for substances, healthcare providers should **consider patients' legal rights** related to the **confidentiality and dissemination** of patient information or positive toxicology reports.

In Pennsylvania, an adult pregnant or parenting patient's positive substance test alone is **not** enough to create a legal obligation to report the patient to "ChildLine" for the purpose of either reporting child abuse or initiating a plan of safe care.

In Pennsylvania, healthcare providers are "**mandated reporters**" to the Department of Human Services and, **in limited circumstances**, are required by law to notify the Department of cases in which an infant's family may need further support due to substance use during pregnancy. Providers must report substance use in a postpartum setting **only if**:

(1) The adult patient has already **given birth to a child**;

AND

(2) The child was born **affected by** either **substance use or withdrawal symptoms** from prenatal exposure; **OR**

The child was born **affected by a fetal alcohol syndrome disorder (FASD)**; **OR**

There is reasonable cause to suspect that the substance use is related to **actual child abuse** (e.g., injury or neglect to the child).

If there are no actual effects on the child and if there is no reasonable cause to suspect that the substance use is related to actual child abuse, then there is no requirement to report a positive substance test.

Under federal and Pennsylvania law, patients have a right to medical confidentiality of records and information. **A program** that holds itself out as providing diagnosis, treatment, or referral for substance use disorders **is generally prohibited from disclosing information** that would identify a person as having a substance use disorder (SUD).

Pennsylvania law generally requires **patients to consent before records related to drug and alcohol abuse may be disclosed**.



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