



BIRTH RIGHTS BAR ASSOCIATION

www.birthrightsbar.org
info@birthrightsbar.org

3218 Valjeo Street
Denver, Colorado 80211

Board of Directors

Indra Wood Lusero
Deborah Fisch
Jacqueline Kay Hammack
Theresa Morris
Maria Laura Jeanrenaud

KNOW YOUR RIGHTS

You have the right to decide how, where, and with whom you give birth.

It is an internationally recognized basic human right to determine the circumstances of how and where you give birth. This right is not necessarily enshrined in U.S. law, but is a right that many advocates--and women--are working to see recognized.

What does this look like? This means that it is completely up to you whether you give birth at home, in a birth center, in a hospital, or any other place you wish—and you should not feel pressured about any one of those choices. You may choose who is in the room and what you do during labor—including, but not limited to, walking around, eating and drinking, and positioning yourself however you feel comfortable. You may find that family and medical staff have strong opinions which differ from your preferences, meaning that you may have to speak up loudly and assert this right in the face of opposition. You may find it necessary to have legal counsel to help you to effectively assert this right.

But there's more ... Your provider of choice may not be available to you, sometimes because they are not on-call when you go into labor or, possibly, because they are not licensed in your jurisdiction. Your birthing preferences may be harshly judged by family, friends, or providers, who may employ coercive tactics to get you to change your mind. Providers may threaten to involve child protective services based on choices you make during labor and delivery. Often such threats are simply coercive tactics, but sometimes authorities do in fact get involved.

You have the right to informed consent.

Your provider must explain to you the risks, benefits, and alternatives for any and all medical procedures. In the U.S., if you are not aware, do not understand, or do not agree, the provider may not perform a procedure on you. No one can legally do anything to your body, or your baby, without your consent. If they do, they are violating their ethical duties and standard of care, and may be committing battery on you.

What does this look like? The “consent” forms provided by most hospitals are not equal to “informed consent”—they are merely meant to *document* that you have received informed consent, which is usually considered to be a conversation with your treating medical provider(s). Signing consent forms doesn't prove that you “consented” if you later expressed a lack of consent. But it can be used against you if you need to prove lack of consent later. You are entitled to full, accurate information about the risk, benefits, and alternatives for each procedure, and you can demand this information before a procedure is performed. We often hear from women who were given drugs or advised to have procedures without being given full information about risks, benefits, and alternatives. These women are motivated to report these violations because they experienced adverse effects, felt misled, or did not feel involved in the decision-making process.

But there's more ... Sometimes providers will indicate that you do not have time to ask questions because there is a medical emergency. But even in an emergency, if you are competent, you have the right to full information about risks, benefits, and alternatives for any and all suggested procedures. We have noticed that families of color, those on state assistance, and those who do not speak fluent English tend to be at greater risk of having their rights to informed consent violated. As mentioned above, you may encounter coercion or consequences when you insist that providers respect your right to informed consent, or when you try to refuse a suggested procedure. This is especially true for procedures recommended for your baby after birth, because providers are required to contact state child protective services if they believe your refusal of recommended procedures puts your baby's health at risk.



You have the right to refuse surgery or medical treatment.

U.S. courts have repeatedly held that people should not be forced to undergo medical procedures, even for the sake of someone else (including their own children). You may refuse any procedure before it begins even if you previously provided consent, and you may do so verbally or in writing.

What does this look like? You can always say “No” to any procedure or drug. You do not have to give a reason, and you do not have to sign a form if you don't want to. The vast majority of labor-related procedures are non-emergency, and often saying “No” can buy time to get better information so that you can make a thoughtful decision, without feeling pressure to immediately respond to suggestions medical providers or family members. Labor-related interventions carry a heightened significance due to the potential impact to both mom and baby. The U.S. Supreme Court has consistently recognized the right of parents to make parenting decisions.

But there's more ... Your right to make decisions in labor and delivery can be qualified by application and interpretation of local laws. Yet again, you may encounter coercion or consequences when you refuse a suggested procedure. This is especially true for procedures recommended for your baby after birth, because while parents have the right to make medical decisions for their children, that right is qualified by a governmental interest in the health and safety of its citizens, which includes children. This means that healthcare providers are required to contact state child protective services if they believe that your refusal of recommended procedures puts your baby's health at risk such that it would constitute neglect. In spite of the lack of state jurisdiction over children who are not yet born, many providers and state courts do believe they may force a pregnant person to receive treatment for their fetus.

You have the right to receive treatment when you are in labor or experiencing a medical emergency.

U.S. federal law requires most hospitals to admit and treat people who arrive in active labor or are experiencing any kind of medical emergency.* Under this protection, you cannot be turned away because they have never seen you before, because of a disagreement with the provider about your care, or because you cannot pay. The medical facility has the obligation to stabilize a patient, and not necessarily to offer comprehensive on-going care.

What does this look like? If you are fearful about laboring at a particular facility for any reason, you have the option to leave and go elsewhere at any time. Even if you have never been to that other facility (or if you simply return to the same one in active labor), they must admit you for treatment if it is determined that you are having a medical emergency or are in active labor.

But there's more ... You may encounter resistance when you try to leave a facility, but it is nevertheless your right to do so. Even if you leave against medical advice (AMA), the law does not permit your insurance company to automatically refuse to pay for covered care you have already received. If you leave a facility and go to a new facility, there may be limits on what care is available to you under these circumstances, but your right to informed consent still applies. Your right to receive treatment does not mean that you can receive care without financial obligation to the facility; just because you cannot be turned away does not mean you will receive care free of charge, and it does not mean you can receive any kind of care. You are entitled to receive the care needed for you to become “stable” which in the case of labor generally means giving birth.

* *The federal Emergency Medical Treatment and Labor Act (EMTALA) applies to hospitals that take Medicare payments and have dedicated emergency rooms, which is about 80% of hospitals. More information on EMTALA [here](#).*

If you encounter or expect difficulty exercising these rights, consider contacting an attorney in your area who can advise you based on your specific situation. If you have an attorney already willing to help but unfamiliar with the law surrounding rights in childbirth, please refer them to Birth Rights Bar Association for subject matter expertise. If you do not have an attorney, visit BRBA online (birthrightsbar.org) and contact us to see if there is a member attorney in your location, or contact your state bar association for a list of attorneys in your area.