

MY Access Act: Model Legislation Minors & Youth Access to Sensitive Health Services Act

Minors and young adults need access and the ability to consent to a full range of confidential health care services to ensure they are able to take responsibility for their health and lead healthy lives. This model legislation is drafted to guarantee that minors and young adults who are dependents on their parents' insurance plans may independently consent to a range of sensitive health care services and to receive those services in a manner that is confidential from the moment they seek services through any billing or communications that follow. – Sensitive health care services are defined as sexual and reproductive health services (including, but not limited to, STI and HIV testing, prevention including Pre-Exposure Prophylaxis, and treatment, family planning services, and abortion care), mental health services, transgender-related health care, services for survivors of sexual assault, and substance abuse care.

This model legislation has been designed for use in any state with minor changes. It is written using federal terminology regulating medical care and health insurance coverage to be as widely applicable as possible, however is advisable to review the terminology used in your state's policies, as this varies from state to state.

Of course, ensuring that young people are legally empowered to take responsibility for their health is only the first step; we must also ensure that this legislation is implemented, enforced, and publicized, so that young people can be secure in the knowledge that their healthcare choices are in their hands. It is for these reasons that this model legislation includes provisions for implementation and enforcement. We also encourage further efforts to encourage effective implementation.

When reading the model bill that follows, keep in mind the following points:

- Bracketed fields need to be adapted for your particular state. Footnotes provide useful background information, and should be eliminated entirely before introduction.
- You may need to modify language throughout the document to be consistent with any existing statutes, regulations, or curriculum guidelines governing the provision of medical care.
- If it is politically feasible in your state, we suggest working with legislators to secure appropriations for implementation and enforcement of this bill when enacted.

A BILL

To ensure confidential access to sensitive health care services, including reproductive, sexual, and mental health services and substance abuse services, for all people, including young people

SECTION 1. SHORT TITLE.

This Act may be cited as the “Minors & Youth Access to Sensitive Health Services Act”, or “MY Access” Act.

[NOTE: Alternate Titles include CHA (Confidential Health Act), YCMA (Youth Consent to Medical Care Act), Real Access to Confidential Healthcare Act (RACHA), Confidential Access to Sensitive Healthcare Act (CASH Act).]

SECTION 1. FINDINGS AND PURPOSE.

NOTE: Consider whether a findings section is standard in your legislature, and whether to use statistics that will likely change in the future. It may be that the following text is better suited for testimony in your state.

- 1) FINDINGS. The Legislature finds as follows:
 - (a) All people deserve the right to choose the health services that are right for them, and the right to confidential access to those health services. When young people can consent and refuse consent to health services for themselves, and are assured of confidentiality in the provision of those services and any related communications, they are more likely to seek health services, disclose health risk behaviors to a clinician, and return for follow-up care. This is particularly true for sensitive health care services that carry societal stigmas, such as sexual, reproductive, and mental health and substance abuse services, and transgender-related health care services. When denied confidential access to needed care, people may delay or forgo care, leading to higher rates of unprotected sex, unintended pregnancy, untreated STIs, and mental health issues, or they may turn to public health safety net funds or free clinics – important resources that should be reserved for people who do not have insurance coverage – to receive confidential care.¹
 - (b) In recognition of the importance of access to confidential care, the Society of Adolescent Medicine recommends that adolescents be legally allowed to give their own consent for all or some types of health care and to have their confidentiality protected the adolescents’ health care in the provision of that care.² However, current law does not ensure that young people who are developmentally able to consent to care for themselves have to the ability to consent to health care services for themselves, and therefore to access care confidentially.
 - (c) Federal and state law creates a piecemeal system that permits minors to consent to some to some types of care, but not others. Federal law sometimes fails to protect the ability of minors and other people who are dependents on another’s health insurance

¹ Kashif Syed, *Youth confidentiality in the affordable care act: approaches for ensuring greater privacy protections for vital health care*, Advocates for Youth (2014), available at

<http://www.advocatesforyouth.org/component/content/article/2324-youth-confidentiality-in-the-affordable-care-act>.

² *Confidential Health Care for Adolescents: Position Paper of the*

Society for Adolescent Medicine, Journal of Adolescent Health (2004), available at

[https://www.adolescenthealth.org/SAHM_Main/media/Advocacy/Positions/Aug-04-](https://www.adolescenthealth.org/SAHM_Main/media/Advocacy/Positions/Aug-04-Confidential_Health_Care_for_Adolescents.pdf)

[Confidential_Health_Care_for_Adolescents.pdf](https://www.adolescenthealth.org/SAHM_Main/media/Advocacy/Positions/Aug-04-Confidential_Health_Care_for_Adolescents.pdf)

- policy to obtain confidential healthcare outside of safety net programs. For minors, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), defers to state law granting minors the ability to consent to certain medical treatment without parental consent, but otherwise grants a minor's personal representative – presumptively, a parent – control over the disclosure of the minor's personal health information to a third party, unless the personal representative consents to a confidential relationship between the minor and physician.³ In contrast, the Title X Family Planning Program and Medicaid require the confidential provision of family planning services to minors even where state law mandates otherwise.⁴
- (d) Under common law, parental consent is required for almost all medical treatment of minors.⁵ In recognition of the government's interest in the health and welfare of young people, and the deterrent effect parental consent requirements has on minor's access to sensitive health care services, the common law has been altered in **[state]**, allowing **[summary of state's law allowing minors to consent to certain types of care]**. Yet, compromising the same goals of ensuring access to needed health services, **[summary of state law preventing minors from consenting to certain sensitive health services, including abortion]**

[NOTE: Please fill in the brackets with appropriate summaries for your state. If you need assistance or support in identifying these laws and/or drafting language, contact Abbey Marr at abbey@advocatesforyouth.org]

- (e) This current patchwork of laws governing the ability of all people to consent on their own sensitive health care services and to access those services confidentially burdens some more than others. For example, under **[State law citation]**, which requires minors to have parental **[consent/notification]** before obtaining abortion care, youth in the foster care system and other minors whose parents are unavailable may be denied care entirely, or forced to travel out of state to access care.

[NOTE: If your state does not have a parental consent or notification law currently, this last sentence can be cut.]

- (f) The Patient Protection and Affordable Care Act (ACA) has been responsible for lowering the number of uninsured individuals across the United States significantly. It has achieved this laudable goal in several ways, including raising the age young adults may remain dependent's on their parent's health insurance plans to 26. However, this expansion has also expanded the population of young people for whom confidential access to healthcare services may be compromised. For example, under

³ Abigail English & Carol Ford, *The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges*, Perspectives on Sexual and Reproductive Health 36:2 (March/April 2004), available at <https://www.guttmacher.org/pubs/journals/3608004.html>.

⁴ Abigail English, *Memo to Interested Parties: Adolescent Confidentiality Protections in Title X*, National Family Planning & Reproductive Health Association (June 2014), available at <http://www.nationalfamilyplanning.org/document.doc?id=1559>

⁵ 1 Leg. Rts. Child. Rev. 2D § 14:13 (2d ed.).

the ACA, explanations of benefits (EOBs) for healthcare services provided to any person on a health insurance policy are sent to the policy holder. EOBs may contain information about the type of services provided, compromising the dependent's confidentiality. They can be used to track someone's address and preferred health care provider/location, and thus are a potential safety threat, particularly in cases of domestic violence.⁶

- 2) **PURPOSE.** The purpose of this Act is - To ensure that all people in [state], including young people, have the ability to consent to the sensitive health care services that are right for them, and are assured confidentiality in the provision of those services and any related communications.

SECTION 3. DEFINITIONS

- 1) **Minors** – Individuals under [**legal age of majority in your state**]
- 2) **Qualified Dependents** – Individuals who are covered as dependents on a parent's, guardian's or spouse's health insurance.
- 3) **Sensitive Healthcare Services** – Healthcare services (including preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, treatment, procedures or counseling, that affects an individual's physical, mental or behavioral condition), including, but not limited to, sexual, and reproductive health services (including, but not limited to, STI and HIV testing, prevention including Pre-exposure Prophylaxis, and treatment, family planning services, abortion, and), services for survivors of sexual assault, mental health and substance use treatment services, and transgender-related health care services,
 - (a) excluding any mental health services provided to an individual as part of that individual's involuntary commitment pursuant to [**citation for state law outlining the process for involuntary commitment**]
- 4) **Healthcare provider** – Any provider of sensitive health care services, as defined in Section 3.c., or any staff or assistant that is employed to provide such services.
- 5) **Health Insurance Issuer** – Consistent with 42 U.S.C.S. § 300gg-91, an insurance company, insurance service, or insurance organization (including a health maintenance organization), which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance.
- 6) **Confidential** – The assurance that all individually identifiable Protected Health Information as defined in the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (1996), is not disclosed to any entity other than the patient, the healthcare provider, and insurer, without the patient's documented consent, unless the disclosure is otherwise required by law and appropriate safeguards to protect a patient's privacy are in place.

⁶ Kashif Syed, *Youth confidentiality in the affordable care act: approaches for ensuring greater privacy protections for vital health care*, Advocates for Youth (2014), available at <http://www.advocatesforyouth.org/component/content/article/2324-youth-confidentiality-in-the-affordable-care-act>.

SECTION 4. GRANTING YOUNG PEOPLE THE RIGHT TO CONSENT TO CONFIDENTIAL PROVISION OF SENSITIVE HEALTH CARE SERVICES

- 1) **MINOR PATIENT RIGHT TO CONSENT.** A minor who is 12 years of age or older may consent to sensitive health care services if, in the opinion of the attending healthcare provider, the minor is mature enough to participate intelligently in the services.
- 2) **ENSURING MINOR PATIENTS' ACCESS.** To the extent permitted by existing state and federal law, healthcare providers who provide sensitive health care services as a regular practice may not refuse to deliver such services on the basis of a lack of parental consent.
- 3) **REPEALING CONTRARY REQUIREMENTS.** Any and all laws requiring, including but not limited to **[insert citation for state law requiring parental involvement for abortion, if applicable]** that providers of sensitive health care services obtain parental consent for minors over the age of twelve are repealed.

SECTION 5. REQUIRING CONFIDENTIAL COMMUNICATIONS RELATING TO THE PROVISION OF SENSITIVE HEALTH CARE SERVICES

- 1) **ENSURING PATIENT CONFIDENTIALITY IN HEALTH CARE PROVIDER COMMUNICATIONS.** For the protection of patient confidentiality, any communication from a healthcare provider to a patient relating to the provision of sensitive health care services, if the communications disclose protected health information, including medical information or provider name and address, relating to receipt of sensitive services, or if disclosure of all or part of the medical information or provider name and address could endanger the individual patient, shall be provided in the form and format requested by the individual patient.
- 2) **ENSURING PATIENT CONFIDENTIALITY IN HEALTH INSURANCE COMMUNICATIONS.** Any healthcare insurance issuer that provides coverage for the provision of sensitive health care services to any individual in **[state]** who has consented to the services in accordance with the laws of this State, including qualified minor and adult dependents, must take reasonable steps to ensure that the protected health information of that individual, including ensuring that any communications between the insurance issuer and a covered qualified dependent relating to the provision of sensitive health care services remain confidential and private, as required under the federal Health Insurance Portability and Accountability Act (HIPAA).
 - a. The **[Name of State department or agency which is empowered to regulate the provision of health insurance and medical services]** shall develop a common summary of payments form to be used by all health insurance issuers in the state that is provided to health care consumers with respect to provider claims submitted to a payer and written in an easily readable and understandable format showing the consumer's responsibility, if any, for payment of any portion of a health care provider claim; provided that the **[Name of State department or agency which is empowered to regulate the provision of health insurance and medical services]** shall allow the development of forms to be exchanged securely through electronic means; and further provided that carriers shall not be obligated to issue a summary of payments form for provider claims that consist solely of requests for co-payment. The **[Name of State department or agency which is**

empowered to regulate the provision of health insurance and medical services] shall consult with stakeholders to develop these forms.

- b. Health insurance issuers shall issue common summary of payments forms consistent with Section 5(2)a at the member level for all insured individuals. Issuers may establish a standard method of delivery of summary of payments forms. Issuers shall not identify the descriptions for sensitive health care services in a common summary of payments form.
- c. Notwithstanding any other law, and to the extent permitted by federal law, all health insurance issuers shall permit an insured individual who is legally authorized to consent to care, including qualified minors and adult dependents, or a party legally authorized to consent to care for the insured individual, to choose an alternative method of receiving the common summary of payments form, which shall include, but not be limited to, the following: (1) sending a paper form to the address of the subscriber; (2) sending a paper form to the address of the qualified minor or adult insured dependent; (3) sending a paper form to any alternate address upon request of the insured individual; or (4) allowing only the insured individual to access said form through electronic means whenever available, provided that such access is provided in compliance with any applicable state and federal laws and regulations pertaining to data security, as may be amended; and provided further that any insured dependent who is legally authorized to consent to certain care shall have access to said forms through the means described in section (4) of this paragraph for said care. The preferred method of receipt shall be valid until the insured individual submits a request orally or in writing for a different method, provided that the issuer may request verification of the request in writing following an oral request. Health insurance issuers shall comply with an insured individual's request pursuant to this paragraph within three business days of the request.
 - i. A health care provider may make arrangements with the subscriber or enrollee for the payment of benefit cost sharing and communicate that arrangement with the health care service plan.
 - ii. A health insurance issuer shall not condition enrollment or coverage on the waiver of rights provided in this section.
- d. To the extent permitted by federal law, a health insurance issuer shall not be required to provide a healthcare consumer with a summary of payments form in any case where the service is provided by a facility or provider participating in the issuer's program and full reimbursement for the claim, other than a co-payment that is ordinarily paid directly to the provider at the time the service is rendered, is paid by the issuer directly to the participating facility or provider.
- e. Health insurance issuers shall permit all insured individuals who are legally authorized to consent to care, including qualified minors and adult dependents, or parties legally authorize to consent to care for the insured individuals, to request suppression of summary of payments forms for a specific service or procedure, in which case summary of payments forms shall not be issued; provided that the insured clearly makes the request orally or in writing. Issuers shall not require an

explanation as to the basis of for an insured individual's confidential communications request, unless otherwise required by law or court order.

- f. The right to request the preferred method of receipt pursuant to subsection 2(c) and to request suppression of summary of payments forms pursuant to subsection (e) shall be communicated in plain language and in a clear and conspicuous manner in evidence of coverage documents, member privacy communications and on every summary of payments form, and shall be conspicuously displayed on the carrier's member website and online portals for individual members .

SECTION 6. ADMINISTRATIVE ENFORCEMENT

1) ADMINISTRATIVE IMPLEMENTATION AND ENFORCEMENT. The [Name of State department or agency which is empowered to regulate the provision of health insurance and medical services] is authorized and directed to ensure the compliance of healthcare service providers and health care insurance issuers with Sections (4) and (5) by any means authorized by law. Including, but not limited to:

- (a) The promulgation of rules, regulations, or orders of general applicability not later than the date that is twelve months after the date of the enactment of this Act, which shall address at least the following;
 - i. The procedures that should be established to ensure the protection of the right that any individual age twelve or older, including minors and qualified dependents, has to consent to the provision of sensitive health care services.
 - ii. The procedures that should be established by healthcare providers and health insurance issuers to ensure the protection of the right that any individual age twelve or older, including minors and qualified dependents, has to confidential provision of sensitive health care services and related communications, including:
 1. The steps a health insurance issuer or care service plan must take to protect the confidentiality of a patient's medical information as it relates to the provision of sensitive health care services, including the process and forms a patient may use to request communications in the form and format requested by the individual, if those communications disclose medical information or provider name and address relating to receipt of sensitive services or if disclosure of all or part of the medical information or provider name and address could endanger the subscriber or enrollee.
- (b) For the purpose of research and data collection, the development of a process for the regular collection of information from health insurance issuers on requests for confidential communications pursuant to Section (4).
- (c) The established of a process for ensuring compliance, including but not limited to;
 - i. Designating an office for the collection of individual complaints regarding the violation of section (4) or (5) by any health care provider or health insurance issuer;
 - ii. Developing a process and timeline for investigations of complaints

- iii. Referral of the results of investigations to the Attorney General to pursue an action to enjoin the violation of Sections (4) or (5), or an action for civil penalty.

SECTION 7. SEVERABILITY

- 1) SEVERABILITY. If any section or subsection of this Act, or any application of such provision to any person or circumstance, is held to be in violation of the U.S. or [state] Constitution, the remainder of this chapter, and the application of the provision to any other person or circumstance, shall not be affected.