

Youth Confidentiality in the Affordable Care Act

Approaches for Ensuring Greater Privacy Protections for Vital Health Care

Young people deserve confidential access to a full range of sexual and reproductive health care services. Confidentiality plays a key role in assuring that youth take personal responsibility for their own health as they transition into adulthood. By virtue of the Affordable Care Act, young adults can stay covered under their parents' health plans through age 25. Once covered, individuals have access to an array of preventive services – including STI screenings and birth control – without copayment. But despite these gains, many young people insured as dependents are deterred from obtaining sexual and reproductive health care because insurance claims and billing practices threaten to disclose private medical information to their parents. These inadvertent breaches in confidentiality contribute to serious negative health risks for teens and young adults. In response, a handful of states have crafted inventive approaches to secure greater privacy protections for individuals insured as dependents. Advocates should seek to replicate the most effective features of these measures in their own states and nationally, demanding that policymakers secure strong, comprehensive confidentiality protections for young people insured as dependents.

YOUNG PEOPLE & HEALTH CARE REFORM

An increasing number of young people are receiving health insurance coverage through their parents' plans. The Affordable Care Act (ACA) expands dependent coverage to young adults 25 years old or younger. As a result, over 3 million young adults have gained coverage since 2010.¹ Covered individuals can now obtain important preventive reproductive and sexual health care services – such as STI screenings and birth control – with no additional copayment.² Together, these changes have the potential to improve young people's access to critical sexual and reproductive health care. But teens and young adults insured as dependents may be deterred from taking full advantage of the ACA's benefits without adequate confidentiality protections.

INSURANCE COMMUNICATIONS INADVERTENTLY COMPROMISE YOUNG PEOPLE'S CONFIDENTIALITY

Widespread insurance billing and claims practices routinely risk compromising young people's confidential access to health care. An insurer issues an explanation of benefits (EOB) to a policyholder when any benefits are rendered under a plan. EOBs include details about the patient, the provider, and the medical services provided, and are intended to protect consumers from fraud and increase transparency. But when teenagers or young adult children access care through their parents' health plans, EOBs and other insurance communications disclose sensitive medical information to their parents, inadvertently breaching patient confidentiality.³

NEGATIVE IMPACT ON HEALTH

When young people perceive a lack of confidentiality, they often delay or forgo seeking sensitive health care services, including sexual and reproductive health care services. This deterrent effect contributes to negative health outcomes for teens and young adults.

- When young people fail to seek timely STI/HIV screening and treatment, they put themselves and their sexual partners at risk of a variety of serious health problems.⁴
- When young women delay or forgo contraceptive care, they increase their risk for unintended pregnancy and related health concerns.⁵
- Delayed entry into prenatal care can have negative health effects on both the mother and child.⁶
- A lack of confidentiality may cause young women to decline using their insurance coverage to obtain abortion care.⁷
- Alternatively, young people may turn to publicly-funded clinics in lieu of using their private health plans to obtain sexual and reproductive health services, causing public

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programs to front the cost for medical care which private insurers are paid to cover.⁸

YOUNG PEOPLE'S NEED FOR CONFIDENTIALITY IS RECOGNIZED BY LAW

Young people's confidential access to sexual and reproductive health care is a well-established policy goal enshrined in a range of existing state and federal law. For example, in every jurisdiction, all minors may obtain STI screening and treatment without parental consent. In 26 states and the District of Columbia, all minors can independently consent to contraceptive services. Additionally, 32 states and the District of Columbia allow all minors to consent to prenatal care.⁹ Analogously, the federal Title X family planning program and Medicaid guarantee confidential family planning services for the minors and adults its clinics serve.¹⁰ These protections are premised on the fact that young people will decide against seeking important health services if their privacy is compromised.¹¹

STATE LAW APPROACHES TO SECURING CONFIDENTIALITY IN DEPENDENT COVERAGE

Few existing laws directly address the confidentiality problems that arise during the health insurance billing and claims process. The issuance of EOBs is generally either presumed or mandated by state law.¹² Federal medical privacy laws such as the Health Insurance Portability and Accountability Act (HIPAA) and its associated regulations do not currently preempt these state requirements.¹³ However, a handful of states have crafted inventive approaches

to secure greater privacy protections for individuals insured as dependents.

- *No EOB Unless Patient Expressly Authorizes.* In Washington, for all services to which minor patients may consent, insurers cannot disclose EOBs to policyholders unless the minor patient expressly authorizes disclosure.¹⁴ Colorado requires the same for services provided to adults insured as dependents, but not minors.¹⁵ Significantly, these policies apply to any health care service to which a patient may lawfully consent regardless of the provider, and protect patient confidentiality by default.
- *No EOB Upon Request.* California now requires insurance companies to honor requests for confidential communications when individuals receive sensitive health care services or when disclosure could lead to danger.¹⁶ Adults insured as dependents in Washington hold similar rights when accessing sensitive services.¹⁷ However, allowing patients to request confidential insurance communications does not itself guarantee confidentiality unless patients are fully informed of their rights. A better rule would presume that individuals insured as dependents do not want their health information disclosed to policyholders absent a patient's express authorization otherwise.
- *No Balance, No EOB Issued.* New York and Wisconsin allow the issuance of EOBs to the patient instead of the policyholder unless there is an outstanding balance. These policies effectively allow insurers to provide confidential access to the preventive services available without copayment under the ACA, including STI screenings and contraception.¹⁸ However, these laws do not guarantee young people's confidential access to those sensitive services not fully covered by the ACA, nor care from out-of-network providers. A stronger privacy rule would affirmatively require confidential access to the full range of sensitive health care services from any provider.
- *No EOB for STI Services.* Connecticut, Delaware, and Florida require confidential insurance communications relating to STI screening and treatment for minors.¹⁹ These laws offer only the narrowest protections to individuals insured as dependents, excluding the full range of reproductive and sexual health care services young people need.

RECOMMENDATIONS

Health insurance billing and claims practices continue to unintentionally put young people's health at risk. In response, state and federal policies need to empower young people to take personal responsibility for their own sexual and reproductive health. To that end, advocates can take the following steps:

Advocates should petition the federal government for a national solution. The U.S. Department of Health and Human Services (DHHS) Secretary Kathleen Sebelius should be encouraged to interpret the HIPAA Privacy Rule to grant individuals the option of requesting that insurance communications be sent directly to the patient when they reference sensitive health care services because forgoing those services could endanger the patient.

Additionally, advocates should urge their **state legislators and insurance commissioners to enact strong, comprehensive confidentiality protections for young people and all individuals insured as dependents.** At minimum, a strong policy instructs insurers to **issue EOBs directly to minor or adult patients insured as dependents** when they have received any sensitive health care service from any provider, absent that patient's express authorization. A strong policy would also require that, for any other health care services rendered, insurers honor requests for confidential communications when disclosure could place the patient in danger.

Finally, unless patients are adequately informed of their rights, confidentiality protections will fail to meaningfully improve young people's access to sensitive health care services. If patients continue to perceive a lack of confidentiality, they will be deterred from seeking care, even if their confidentiality is technically secure. That is why advocates should support **state-wide efforts to educate patients and providers on the right to confidential health care.**

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REFERENCES

1. Benjamin D. Sommers. ASPE Issue Brief: Number of Young Adults Gaining Insurance Due to The Affordable Care Act Now Tops 3 Million. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE). <http://aspe.hhs.gov/aspe/gaininginsurance/rb.pdf>. Published June 19, 2012. Accessed March 11, 2014.
2. Adelle Simmons and Laura Skopec. ASPE Issue Brief: 47 Million Women Will Have Guaranteed Access to Women's Preventive Services With Zero Cost-Sharing Under The Affordable Care Act. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE). <http://aspe.hhs.gov/health/reports/2012/womensPreventiveServicesACA/ib.pdf>. Published July 31, 2012. Accessed March 11, 2014.
3. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).
4. National Institute for Health Care Management Foundation. Protecting Confidential Health Services for Adolescents & Young Adults: Strategies & Considerations for Health Plans. <http://www.nihcm.org/images/stories/NIHCM-Confidentiality-Final.pdf>. Published May 2011. Accessed March 11, 2014.
5. National Institute for Health Care Management Foundation. Protecting Confidential Health Services for Adolescents & Young Adults: Strategies & Considerations for Health Plans. <http://www.nihcm.org/images/stories/NIHCM-Confidentiality-Final.pdf>. Published May 2011. Accessed March 11, 2014.
6. National Institute for Health Care Management Foundation. Protecting Confidential Health Services for Adolescents & Young Adults: Strategies & Considerations for Health Plans. <http://www.nihcm.org/images/stories/NIHCM-Confidentiality-Final.pdf>. Published May 2011. Accessed March 11, 2014.
7. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).

Policymakers need to empower young people to take personal responsibility for their own sexual and reproductive health.

8. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).
9. Guttmacher Institute. "State Policies in Brief: An Overview of Minors' Consent Law." Accessed from https://www.guttmacher.org/statecenter/spibs/spib_OMCL.pdf on March 11, 2014.
10. Rachel Benson Gold. "Unintended Consequences: How Insurance Processes Inadvertently Abrogate Patient Confidentiality." *Guttmacher Policy Review*, 2009: 12(4).
11. Guttmacher Institute. "State Policies in Brief: An Overview of Minors' Consent Law." Accessed from https://www.guttmacher.org/statecenter/spibs/spib_OMCL.pdf on March 11, 2014.
12. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).
13. English A, Gold RB, Nash E and Levine J. Guttmacher Institute. Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies. <http://www.guttmacher.org/pubs/confidentiality-review.pdf>. Published July 2012. Accessed on March 11, 2014.
14. English A, Gold RB, Nash E and Levine J. Guttmacher Institute. Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies. <http://www.guttmacher.org/pubs/confidentiality-review.pdf>. Published July 2012. Accessed on March 11, 2014.
15. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).
16. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).
17. English A, Gold RB, Nash E and Levine J. Guttmacher Institute. Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies. <http://www.guttmacher.org/pubs/confidentiality-review.pdf>. Published July 2012. Accessed on March 11, 2014.
18. Rachel Benson Gold. "A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents." *Guttmacher Policy Review*, 2013: 16(4).
19. English A, Gold RB, Nash E and Levine J. Guttmacher Institute. Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies. <http://www.guttmacher.org/pubs/confidentiality-review.pdf>. Published July 2012. Accessed on March 11, 2014.