

YOUTH AND HIV LAWS AND POLICY CONSIDERATIONS

While it is good practice for Primary Care Providers (PCPs) to be aware of the laws and policies in place that affect their patients and the provision of care, serving young people encompasses additional considerations. Laws, policies, and/or regulations in place relating to minor consent, confidentiality, and HIV criminalization may influence whether or not a young patient will be able to access pre-exposure prophylaxis (PrEP) for HIV prevention. It is important for PCPs to be versed on the laws in their state so that they can dutifully inform their young patients of what legal barriers they may encounter throughout their healthcare experience. The [State Policy Table](#) in this section is intended to indicate if states have applicable statutes and regulations and includes direct links to the relevant text in order to guide PCPs through the laws and policies that exist in each state to better help minors access PrEP as appropriate.

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CONSENT

There are no state or federal laws that explicitly allow or prohibit minors to consent to pre-exposure prophylaxis (PrEP), but rather an assortment of laws surrounding their ability to consent to sexually transmitted disease (STD) and/or communicable disease testing, treatment, and prevention. Some states' statutes expressly include testing, prevention, and treatment; others are more vague regarding which aspect of care a minor can consent. Still other states unambiguously include HIV in these laws, while others are unclear.

A minor's ability to consent to PrEP is important for a variety of factors. Many adolescents are unwilling to receive sensitive healthcare services if they need to involve their parent or guardian.¹ This can be an impediment to a minor's willingness to get tested for HIV or accept a prescription for a medication such as PrEP. Given continued stigma surrounding the behaviors that transmit HIV, as well as HIV itself, minors may not want to include their parents and/or guardians in their HIV-related decisions for this reason. Furthermore, minors that come from unsafe homes may fear violence if discovered to be taking an HIV preventive pill. Each state has a combination of statutes and regulations that try to address these issues. Though PrEP is not explicitly mentioned in any of the laws, their interpretation may provide several legal pathways for minor consent.

CONFIDENTIALITY

Even if a minor may consent to his or her own healthcare, there might be state laws in place that breach the confidentiality of the receipt of these services. In Iowa, for example, a minor can consent to HIV testing, but if the test result is positive, a parent or guardian must be notified.² Even in states in which confidentiality of services is expressly written into law, it may be breached in the health insurance claims and notification process. Many states require that explanation of benefits (EOBs), denial of claims, or processing of claims be sent to the policyholder, rather than the beneficiary.³ Few states have laws in place that protect minors from unintended breaches in this way.⁴

It is important to review the various confidentiality laws—including HIPAA requirements and exceptions—that impact a minor’s ability to receive healthcare services privately, and to delineate them to the minor before services are given, as these provisions may influence whether or not a minor wishes to proceed.

CRIMINALIZATION

There are a variety of notification requirements on the part of the healthcare provider regarding an HIV positive test result. PrEP is an HIV prevention medication but because an HIV test is required before prescribing it, there is a chance that providers will be faced with an HIV positive test result. It is therefore important to know what the law requires in these instances. Many states require providers to notify their state’s department of health of all HIV positive results. Some go further in requiring providers to put in a good-faith effort to notify their patient’s previous partners that they may have been infected with HIV, either with confidentiality provisions or without. There are varying degrees of liability attached to these statutes, as well as liability exemptions.

People living with HIV/AIDS (PLWHA) are subject to a variety of criminalizing statutes, many of which were written into law before treatment was available, that could diminish viral load and outlaw acts that pose no risk of transmitting the virus.⁵ These laws further stigmatize PLWHA through provisions related to sentence enhancement, prostitution, organ, blood, and semen donation, having sex or sharing needles without disclosure of HIV positive status, and even spitting. States may classify these acts as misdemeanors or felonies, and many of these laws are applicable to STDs more generally.

ADDITIONAL RESOURCES

Consent

1. [State Policies in Brief: Minors’ Access to STI Services](#) (Guttmacher Institute, Updated March 2016)
2. [PrEP and Our Youth: Implications in Law and Policy](#) (Burda, 2016)
3. [State Adolescent Consent Laws and Implications for HIV Pre-Exposure Prophylaxis](#) (Culp and Caucchi, January 2013)

Confidentiality/Insurance

1. [Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies](#) (English et. al, July 2012)
2. [Confidentiality, Third-Party Billing, & the Health Insurance Claims Process: Implications for Title X](#) (English et. al, April 2015)
3. [More Evidence Supports the Need to Protect Confidentiality in Adolescent Health Care](#) (English and Ford, 2007)
4. [Unintended Consequences: How Insurance Processes Inadvertently Abrogate Patient Confidentiality](#) (Gold, 2009)
5. [State Policies in Brief: Protecting Confidentiality for Individuals Insured as Dependents](#) (Guttmacher Institute, Updated March 2016)
6. [Confidentiality Protections for Adolescents and Young Adults in the Health Care Billing and Insurance Claims Process](#) (The Society for Adolescent Health and Medicine and the American Academy of Pediatrics, 2016)
7. [Protecting Adolescent Confidentiality Under Health Care Reform: The Special Case Regarding Explanation of Benefits](#) (Tebb, et. al, June 2014)

Criminalization/Partner notification

1. [Partner notification in the context of HIV: an interest-analysis](#) (Laar et. al, January 2015)
2. [Discretion to Warn: Balancing Privacy Rights with the Need to Warn Unaware Partners of Likely HIV/AIDS Exposure](#) (Burke, April 2015)
3. [Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States](#) (Lehmen, et. al, June 2014)

- 1 Diane M. Reddy, Raymond Fleming, Carolyne Swain, "Effect of Mandatory Parental Notification on Adolescent Girls' Use of Sexual Health Care Services," *The Journal of the American Medical Association* 288, no. 6 (2002): 710-714, DOI: 10.1001/jama.288.6.710.
- 2 "State Policies in Brief: Minors' Access to STI Services," Guttmacher Institute, March 2016, www.guttmacher.org/sites/default/files/pdfs/spibs/spib_MASS.pdf.
- 3 Abigail English, et al., "Confidentiality, Third-Party Billing, and the Health Insurance Claims Process: Implications for Title X," National Family Planning and Reproductive Health Association, April 2015, www.confidentialandcovered.com/file/ConfidentialandCovered_WhitePaper.pdf.
- 4 "State Policies in Brief: Protecting Confidentiality for Individuals Insured as Dependents," Guttmacher Institute, March 2016, www.guttmacher.org/sites/default/files/pdfs/spibs/spib_CMII.pdf.
- 5 J. Stan Lehmen, et al., "Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States," *AIDS and Behavior* 18, no. 6 (2014): 997-1006, DOI: 10.1007/s10461-014-0724-0.