

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 receive sensitive health care 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, gender affirming 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 it 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 entitled to medical privacy is only the first step; we must also ensure that this legislation is implemented, enforced, and publicized. 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.
- Please note, although we are aware that [Washington](#) state law contains an "opt-out" structure, which automatically requires suppression of certain health communications, this structure was not integrated into the model bill due to implementation concerns. If an opt-out structure is being considered in your state, we strongly encourage advocates to engage all relevant stakeholders (e.g., providers, patients, insurers, state insurance regulating agencies, state Medicaid agencies, etc.) early in the drafting process to ensure implementation is feasible.

A BILL

To ensure confidentiality of 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 “Dependent Privacy for Sensitive Health Services Act”, the Confidential Health Act (CHA), or the Real Access to Confidential Health Care Act (RACHA).			

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 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 gender affirming 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 overburdened, and limited 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 laws do not ensure that young people are able to maintain their confidentiality in accessing the care they can legally consent to. Insurance communications, such as an explanation of benefits (EOBs), that are sent to the primary policyholder can reveal sensitive, confidential information about the services a dependant sought. Young people may avoid seeking sensitive health services—such as STI testing and treatment—out of fear that their private health information would be accessible by the policyholder.
- (c) Federal law sometimes fails to protect the ability of minors and other people who are dependents on another’s health insurance policy to obtain confidential health care 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) 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 on a parent's health insurance plans to 26. However, this expansion has also expanded the population of young people for whom confidential access to health care services may be compromised. Under the ACA, EOBs for health care services provided to any person on a health insurance policy are sent to the policy holder and not the dependent receiving the care. EOBs may contain information about the type of services provided, compromising the dependent's confidentiality. This may discourage insured dependents from using their insurance for sensitive health services out of fear that a parent might disagree with or judge their choices. EOBs can be used to track someone's address and health care provider/location, and thus are also a potential safety threat, particularly in cases of domestic violence. Minors in this position may risk going without care or relying on safety net programs that they believe protect their confidentiality, such as Title X, when they otherwise would not need to. All people deserve to access the confidential care they need with the coverage they are entitled to.
- (e) Current laws and regulations also fail to reflect technological advancements that allow health insurance issuers to communicate electronically with insureds. All people deserve to feel safe to access care by having communications concerning confidential care remain confidential by opting to receive sensitive communications from an insurer—whether via mail or electronically—at an address or email of their choosing.
- (f) Existing policies may create unnecessary hurdles which make it difficult for all people, but especially young people, to limit the unwanted disclosure of sensitive health information.

[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 Chelsea Gonzalez at chelsea@advocatesforyouth.org or Liam Cutler at liam.cutler@ppfa.org]

2) PURPOSE. The purpose of this Act is – To ensure that all people in **[state]**, including young people, are assured confidentiality in the provision of sensitive health care services and any related communications.

SECTION 3. DEFINITIONS

1) Minors – Individuals under **[legal age of majority in your state]**

2) Qualified Dependents – Adult or minor individuals who are covered as dependents on a parent's, guardian's or spouse's health insurance.

3) Subscriber – the primary holder of an insurance plan who can enroll qualified dependents as plan members.

4) Sensitive Health care Services – Health care 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 gender affirming 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]**

5) Health care 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.

6) 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 and Medicaid [and CHIP] managed care plans that contract with the State [insert single state agency and relevant referencing statutes]), which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance.

7) 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 health care 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.

SECTION 4. 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 health care 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 health care 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 dependents, must take reasonable steps to ensure

confidentiality of 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 4(2)(a) at the member level for all insured individuals. Issuers may establish a standard method of delivery of summary of payments forms, and must offer a method of delivery that is entirely digital. 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 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 dependent; (3) sending a paper form to any alternate address upon request of the subscriber or qualified dependent; or (4) sending no paper forms and allowing only the subscriber or qualified dependant who received such care to access said form through electronic means, provided that such access is provided in compliance with any applicable state and federal laws and regulations pertaining to data security. 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 qualified dependent 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 subscriber or qualified dependent 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 subscribers or qualified dependents who are legally authorized to consent to care or parties legally authorized 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 a confidential communications request, unless otherwise required by law or court order.
- f. No later than six months after this Act takes effect, health insurance issuers shall make available an easily understandable and accessible web page for subscribers or qualified dependents to request the preferred method of receipt for communications pursuant to subsection 2(c) and to request suppression of summary of payments forms pursuant to subsection (e).
- g. 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) The online process for making a request pursuant to subsection 2(f) 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. In addition, upon enrollment of a qualified dependent, this information must be sent in a communication addressed directly to the qualified dependent and containing their insurance card. The qualified dependent must be told explicitly in clear and plain language that the subscriber will not be notified of their request. For any such communications sent to a qualified dependent under the age of twenty-six, the communication must explain in a clear, easily understandable format what an EOB is, the information typically contained in an EOB, who the EOB will be sent to by default, and explain that a young person should request suppression of these communications if they wish for such information to remain private. These requirements apply to digital and nondigital communications.
- h. A health insurance issuer shall not require a qualified dependent to obtain the subscriber or other covered person's authorization to receive health care services or to submit a claim as to health care which the individual may obtain without parental consent under state or federal law.

SECTION 5. 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 health care service providers and health care insurance issuers with Section 4 by any means authorized by law. Including, but not limited to:

- (a) The **[Name of State department or agency which is empowered to regulate the provision of health insurance and medical services]** shall issue guidance as necessary to implement and enforce Section 4 no later than than the date that is twelve

months after the date of the enactment of this Act. This guidance shall include, but is not limited to, the following:

- i. Requirements for reasonable reporting by carriers to the division regarding compliance and the number and type of complaints received regarding noncompliance with this section.
- ii. The steps a health insurance issuer 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.
- iii. Suggested form language for insurers to use in communications and their website to comply with Sections 4(2)(f-g).
- (b) **[Name of State department or agency which is empowered to regulate the provision of health insurance and medical services]** shall also have the authority to promulgate rules, regulations, or orders of general applicability as necessary to ensure compliance with the Act.
- (c) The **[name of state department or agency which is empowered to regulate the provision of health insurance]**, in collaboration with the **[name of state department of public health]**, shall develop and implement a plan to educate providers and consumers regarding the rights of insured members and the responsibilities of carriers to promote compliance with this section. The plan shall include, but not be limited to, youth staff training and other education for hospitals, community health centers, school-based health centers, physicians, nurses and other licensed health care professionals, as well as administrative staff including, but not limited to: (i) all staff involved in patient registration and confidentiality education; and (ii) billing staff involved in processing insurance claims. At minimum, the required training must include strategies for communicating effectively with young people on their rights pursuant to this Act and how to exercise these rights. The plan shall be developed in consultation with groups representing health care insurers, youth serving groups and professionals, providers and consumers, including consumer organizations concerned with the provision of sensitive health care services.
- (d) Establishing 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 by any health care provider or health insurance issuer;
 - ii. Developing a process and reasonable timeline for investigations and timely resolution of complaints;
 - iii. Referral of the results of investigations to the Attorney General to pursue an action to enjoin the violation of Section 4, 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.

REFERENCES

[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 <https://www.advocatesforyouth.org/wp-content/uploads/storage/advfy/documents/Factsheets/youth%20confidentiality%20in%20the%20affordable%20care%20act.pdf>.

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

[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/journals/psrh/2004/hipaa-privacy-rule-and-adolescents-legal-questions-and-clinical-challenges>

[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.).

[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 <https://www.advocatesforyouth.org/wp-content/uploads/storage/advfy/documents/Factsheets/youth%20confidentiality%20in%20the%20affordable%20care%20act.pdf>.