I. Overview

Providing PrEP to youth, especially adolescents who are minors, is an important approach to HIV prevention that requires overcoming significant obstacles. The legal framework for consent is complex and protecting confidentiality for youth receiving PrEP involves addressing major legal and practical challenges.

II. Importance of PrEP for Youth

PrEP is an important element of HIV prevention for youth because of the significant rates of sexual activity among adolescents and significant rates of HIV among youth. PrEP offers a new and potentially highly effective approach to HIV prevention, but to be effective youth must have access. Key elements of access include the availability of PrEP and adolescents’ willingness to use it, as well as overcoming legal obstacles.

III. Obstacles to PrEP Access

a. Confidentiality concerns
   Adolescents who are at the greatest risk for becoming infected with HIV may also have heightened concerns about disclosure. These confidentiality concerns, together with access limitations related to consent, can discourage youth from seeking care, including PrEP.

b. Providers’ lack of clarity re laws
   Many health care providers lack a clear understanding of parent consent requirements, minor consent laws, and confidentiality requirements, particularly as these laws apply to PrEP for adolescents who are minors. Against this background—the absence of clear interpretations of consent laws to PrEP—some providers hesitate to offer PrEP to youth while others are anxious to move forward quickly to do so.
IV. Key Question

May adolescent minors consent for HIV PrEP & receive it confidentially? There is no single answer, but relevant considerations include:
   a. Who is the adolescent minor?
   b. In which state are services provided?
   c. What type of site is offering PrEP?

V. Legal Framework for Consent

Consent for PrEP must be understood in the context of the broader legal framework for consent for health care.
   a. This framework includes a basic rule that competent adults, including older adolescents who have reached the age of majority in their state, may consent for themselves.
   b. For minors the framework is more complex, involving parent consent as a basic starting point, with numerous exceptions including minor consent based on status or services.
   c. The minor consent laws may sometimes allow adolescent minors to consent for PrEP.

VI. Consent for Health Care

   a. Age of majority is 18 in almost all states.
   b. Parent consent is generally required for minors to receive health care, but numerous alternatives and exceptions to parent consent exist that may include consent by a legal guardian, court order, or an authorized agency. Many exceptions to parent consent requirements are contained in state minor consent laws.

VII. Minor Consent

   a. All 50 states & DC have minor consent laws that are based either on status or services with numerous variations among states.
   b. Consent based on status of minor usually extends to all or most services.
   c. Minor consent for specific services sometimes includes age limitations or a specific scope of services.
   d. Capacity to provide informed consent is implicitly required even if not specified.
   e. Minor consent laws sometimes permit notification of parents but may do so only if it is essential to the health of the minor, or if the minor’s health would not be harmed.
VIII. Consent Based on Status of Minor

Every state allows one or more groups of minors to consent for all or most care based on their status or personal circumstances. These groups may include:

a. Emancipated minors
b. Minors living apart from parents
c. “Mature” minors
d. Minors over a certain age
e. High school graduates
f. Pregnant minors
g. Married minors
h. Minor parents (for self &/or child)
i. Minors in military service
j. Incarcerated minors

IX. Minor Consent for Specific Services

Every state allows some or all minors to consent for one or more specific types of services, sometimes with limitations based on age, scope of service, or other criteria. The services for which minors may be authorized to consent include:

a. Prenatal, maternity, and “pregnancy related” care
b. Contraceptive services
c. STD (prevention), diagnosis, &/or treatment
d. Reportable disease (prevention), diagnosis, &/or treatment
e. HIV/AIDS testing &/or treatment
f. Drug &/or alcohol counseling &/or treatment
g. Outpatient mental health services
h. Examination &/or treatment for sexual assault

X. Relevant Minor Consent Laws for PrEP

a. Some minor consent laws based on status are likely to be particularly helpful for minors who desire to receive PrEP confidentially and based on their own consent. These laws include consent authorization for:  
   i. Minors living apart from parents
   ii. “Mature” minors
   iii. Minors over a certain age
      e.g., Ala. Code § 22-8-4 ["Any minor who is 14 years of age or older . . . may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary.“]
b. Some minor consent laws allowing minors to consent for specific services are particularly relevant for enabling minors to receive PrEP based on their own consent. These include laws allowing minors to consent for:

i. STD
   1. 50 states & DC for diagnosis &/or treatment
   2. Some states include prophylactic treatment for minors who have been exposed
   3. A growing number of states include prevention

ii. Reportable disease
   1. Variously described as “reportable,” “infectious,” “contagious,” or “communicable” disease
   2. A few states explicitly authorize consent for prevention &/or diagnosis &/or treatment

iii. HIV/AIDS
   1. Law expressly authorizes minor consent for HIV testing &/or treatment
   2. Law classifies HIV as STD &/or reportable
      a. Prophylactic treatment included
      b. Prevention included

iv. State variations include:
   1. Age
   2. Permissive notice to parents
   3. Required notice to parents if HIV test is positive

XI. Confidentiality Protections & Challenges

Confidentiality is a key concern both for adolescents who are minors and for young adults. This concern may be heightened for some groups of young people who are at increased risk for HIV. The underlying rationale for confidentiality protection underscores the reasons why it is important in delivering PrEP effectively. Not only is it essential to understand the existing laws and the extent to which they prohibit, permit, or require disclosure. It is also essential to address important evolving challenges such as the potential for confidentiality breaches related to billing, insurance claims, electronic health records, and web portals.

XII. Rationale for confidentiality

Underlying goals of confidentiality include protecting the health of youth as well as the public health and avoid negative health outcomes by encouraging young people to seek needed care. The importance of confidentiality protection has been supported by decades research findings demonstrating that privacy concerns influence:
a. Whether adolescents seek care  
b. Where they seek care  
c. When they seek care  
d. How candid they are with health care providers

XIII. Confidentiality Laws

Myriad federal and state laws include confidentiality protections along with provisions articulating when confidential information must, may, or may not be disclosed.
a. Important federal laws that include relevant confidentiality protections:
   i. HIPAA Privacy Rule  
   ii. FERPA  
   iii. Title X Family Planning Program  
   iv. Medicaid  
   v. Ryan White HIV/AIDS program  
   vi. FQHCs  
b. Important state laws that include relevant confidentiality protections:
   i. Minor consent laws  
   ii. Medical privacy laws

XIV. Consent & Confidentiality

“Consent” and “confidentiality” are distinct legal concepts that are often confused. It is sometimes assumed that if a minor is allowed to consent for specific health care, the information about that care is necessarily confidential. This is not always true. Nevertheless, consent and confidentiality are closely linked in clinical practice, ethical guidelines, professional policies and standards of care, and in state and federal laws.

XV. Disclosure of Confidential Information

Even when information is legally protected as confidential, circumstances exist in which it may be disclosed or must be disclosed. Examples of mandated disclosures include:
a. Child abuse reporting of physical, sexual, & emotional abuse  
b. Patient threats of harm to self or others  
c. Other disclosures required by law such as for domestic violence or certain injuries

XVI. HIPAA Privacy Rule

a. The HIPAA Privacy Rule establishes certain rights for individuals to control disclosure and access the records of their “protected health information” (PHI).
b. Individuals also may request that health care providers and health plans provide certain special confidentiality protections:
   i. Restrictions on disclosure of their PHI
   ii. Confidential communications by alternate means or at alternate locations

c. Minors are treated as individuals when:
   i. They are authorized to consent for their own care and do so, OR
   ii. Their parent accedes to confidentiality

d. Parents’ access to minors’ information
   i. Ordinarily parents are authorized representatives who can access their minor children’s PHI
   ii. When a minor is an “individual” ...
       1. Parent is not necessarily the authorized representative
       2. Parent’s access is determined by state or other applicable law

XVII. Confidentiality, Billing, & Insurance Claims

a. Significant opportunities exist for breaches of confidentiality in the context of billing and health insurance claims. In particular, explanations of benefits (EOBs) are ubiquitous and often contain information that reveals the identity of the provider or the nature of the service.

b. Federal laws that pertain to billing and insurance communications contain both confidentiality protections and disclosure requirements.
   i. HIPAA Privacy Rule special confidentiality protections can be used with respect to insurance communications.
   ii. Notice is required when claims are denied in whole or in part which may result in disclosure of confidential information to policyholders.

c. State laws are beginning to incorporate measures to increase confidentiality protections into insurance communications.
   i. Six states have enacted statutes (CA, IL, MD, OR) or adopted regulations (CO, WA)
   ii. These protections build on and expand the special confidentiality protections offered in the HIPAA Privacy Rule:
       1. Confidential communications
       2. Restrictions on disclosure
   iii. Some protect both minors and adults; some only protect adults

XVIII. EHRs & Web Portals

The advent of EHRs and web portals has created new challenges with respect to confidentiality protection and addressing these challenges is very much a work in progress, particularly for information about adolescents who are minors.
a. Different sites are adopting different standards for who has access:
   i. Adolescent minor patient
   ii. Young adult patient ≥ age 18
   iii. Parent
b. The application of different federal and state laws with respect to EHRs and web portals is variable among different sites. This is especially true regarding the integration of HIPAA Privacy Rule protections, minor consent laws and associated confidentiality protections, and insurance disclosure requirements.

XIX. Addressing Challenges

Effectively addressing the challenges of consent and confidentiality in the delivery of PrEP to youth involves revisiting interests of parents and adolescents, understanding the legal framework, and applying the laws

a. Revisiting interests of parents & adolescents
   i. A set of first principles should include a commitment to provide adolescents with comprehensive care, a recognition that although family involvement is positive for most adolescents, some lack supportive families. In this context laws should promote not inhibit access to care.
   ii. Although the interests of parents and adolescents may appear to be in conflict, and sometimes are, more often there is harmony in the shared goal of a healthy outcome.

b. Understanding the legal framework & applying the laws
   i. It is essential to focus on the identity of who is being offered PrEP and where it is being offered.
      1. The particular status of individual minors and the state in which the service is offered may determine whether they can consent.
      2. The site of service delivery may affect whether confidentiality can be assured.
   ii. Interpretation of legal requirements based on a broad understanding of the overall context for consent and confidentiality is necessary for
      1. Educating decision makers
      2. Developing sound policies
      3. Clarifying gray zones

XX. The ultimate goal is to protect the health of young people by preventing HIV.
References & Resources

General Resources


Consent Resources


Confidentiality Resources


Statutory Examples

Consent by Minors Living Apart from Parents

E.g., Colo. Rev. Stat. § 13-22-103: “. . . a minor fifteen years of age or older who is living separate and apart from his or her parent, parents, or legal guardian, with or without the consent of his or her parent, parents, or legal guardian, and is managing his or her own financial affairs, regardless of the source of his or her income, . . . may give consent to the furnishing of hospital, medical, dental, emergency health, and surgical care to himself or herself. Such consent is not subject to disaffirmance because of minority, and, when such consent is given, the minor has the same rights, powers, and obligations as if he or she had obtained majority.”

Consent by “Mature” Minors

E.g., Idaho Code § 39-4503: “Any person . . . who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, surgical or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. . . .”

Consent by Minors Over a Certain Age

E.g., Ala. Code § 22-8-4: “Any minor who is 14 years of age or older . . . may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary.”

Minor Consent for Prevention, Diagnosis, &/or Treatment of STD / Reportable Disease / HIV

E.g., Cal. Fam. Code § 6926: “(a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Public Health Officer. (b) A minor who is 12 years of age or older may consent to medical care related to the prevention of a sexually transmitted disease. (c) The minor’s parents or guardian are not liable for payment for medical care provided pursuant to this section.”

E.g., 13 Del. Code § 710: “(a) A minor 12 years of age or over who professes to be . . . afflicted with contagious, infectious or communicable diseases may give written consent, except to abortion, to any licensed physician, hospital or public clinic for any diagnostic, preventive, lawful therapeutic procedures, medical or surgical care and treatment, including X rays, by any physician licensed for the practice of medicine or surgery or osteopathic medicine or surgery in this State and by any hospital or public clinic, their qualified employees or agents while acting within the scope of their employment. . . .”

E.g., Iowa Code § 141A.7: “. . . (3)A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor’s legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is
exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority. . . .”

E.g., Kan. Stat. Ann. § 65-2892: “Any physician, upon consultation by any person under eighteen (18) years of age as a patient, may, with the consent of such person who is hereby granted the right of giving such consent, make a diagnostic examination for venereal disease and prescribe for and treat such person for venereal disease including prophylactic treatment for exposure to venereal disease whenever such person is suspected of having a venereal disease or contact with anyone having a venereal disease. All such examinations and treatment may be performed without the consent of, or notification to, the parent, parents, guardian or any other person having custody of such person. Any physician examining or treating such person for venereal disease may, but shall not be obligated to, in accord with his opinion of what will be most beneficial for such person, inform the spouse, parent, custodian, guardian or fiancé of such person as to the treatment given or needed without the consent of such person.”

E.g., Mont. Code Ann. § 41-1-402: “The consent to the provision of health services and to control access to protected health care information by a health care facility or to the performance of health services by a health professional may be given by . . . (c) a minor who professes or is found to be . . . afflicted with any reportable communicable disease, including a sexually transmitted disease. . . . This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. . . .”

E.g., Neb. Rev. Stat. § 71-504: “The chief medical officer . . . or local director of health, if a physician, or his or her agent, or any physician, upon consultation by any person as a patient, shall, with the consent of such person who is hereby granted the right of giving such consent, make or cause to be made a diagnostic examination for sexually transmitted diseases and prescribe for and treat such person for sexually transmitted diseases including prophylactic treatment for exposure to sexually transmitted diseases whenever such person is suspected of having a sexually transmitted disease or contact with anyone having a sexually transmitted disease. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any other person having custody of such person. . . . Parents shall be liable for expenses of such treatment to minors under their custody. . . .”

E.g., N.Y. Pub Health Law § 2305: “. . . A licensed physician, or in a hospital, a staff physician, may diagnose, treat or prescribe for a person under the age of twenty-one years without the consent or knowledge of the parents or guardian of said person, where such person is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease. . . .” Note: In 2017, HIV was added to the list of sexually transmitted diseases in 10 CRR-NY § 23.1.

E.g., N.C. Gen. Stat. § 90-21.5: “Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other [reportable] diseases . . . .”

E.g., 63 Okl. St. § 1-532.1: “Any person, regardless of age, has the capacity to consent to examination and treatment by a licensed physician for any sexually transmitted infection (STI).” 63 Okl. Stat. § 2602: “Notwithstanding any other provision of law, the following minors may consent to have services provided by health professionals in the following cases: . . . Any minor who is . . . afflicted with any reportable communicable disease . . . provided, however, that such self-consent only applies to the prevention, diagnosis and treatment of those conditions specified in this section. . . .”
E.g., **S.D. Codified Laws § 34-23-16**: “Any licensed physician, upon consultation by any minor as a patient, may, with the consent of such person who is hereby granted the right of giving such consent, make a diagnostic examination for venereal disease and prescribe for and treat such person for venereal disease including prophylactic treatment for exposure to venereal disease whenever such person is suspected of having a venereal disease or contact with anyone having a venereal disease. Any such consent shall not be subject to later disaffirmance by reason of minority.” **S.D. Codified Laws § 34-23-17**: “Treatment of a minor for venereal disease by a county health department, state health department or doctors attached to such departments shall be offered to a minor, if available, upon the minor’s request and without the necessity of consent of parents or notification to the parents.”