Navigating the Maze: Consent, Confidentiality, and Access to Health Care for Texas Youth

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www.txcampaign.org
Ahead of us Today…

• What underlying concepts shape our laws?

• What health care can minors consent to in Texas?

• What health care can non-parents/guardians consent to on behalf of minors?

• What health care programs serve youth and young adults, and how can they be accessed?
Why do laws often require parental consent for teens to get health care?

Why do laws sometimes allow teens to consent to their own health care or allow other adults who are not parents/guardians to consent?
Parental involvement is often very valuable. For some teens, however, having the option of certain confidential services makes it more likely that they will seek care when they need it.

Protecting confidentiality, especially for older teens, is often considered a clinical best practice.
When can youth consent to medical care?

When can non-parents/guardians consent for minors?

The Texas laws around minor consent to health care are complex, and can be a barrier to health care.
What determines a minor’s right to consent?

1. Things about the youth (age, living situation, legal status, etc)
2. What type of insurance or funding they have (Title X, Medicaid, etc)
3. What medical care they’re seeking (birth control, infectious disease, mental health, etc)
Chapter 32 of the Texas Family Code lays out situations in which youth may consent to their own health care.

**In Texas, people under 18 may consent to medical care if they are:**

- Legally emancipated
- Married
- Serving in the armed forces
- Confined in adult prison (except abortion)
- Youth who are 16 or older, living on their own and managing their own finances may consent to their own health care (except abortion) even if they are not legally emancipated. Physicians may be unfamiliar with this statute. Texas Family Code § 32.003 (2)
- Unlike many other states, Texas does not have a “mature minor” doctrine.
Consent by Non-Parents

In some situations, other adults may provide consent to a minor’s care:

• Consent by other relatives
  • If a parent/guardian cannot be located and has not given actual notice to the contrary, a child’s grandparent, adult sibling, aunt, or uncle may consent to medical, dental, psychological, and surgical care.
  • The parent/guardian may provide written authorization for another adult to consent to the minor’s medical care

• Care in school settings
  • Schools may provide medical, dental, psychological, and surgical treatment if the parent/guardian has provided written authorization

• Special provisions apply to youth in foster care or juvenile justice system
In Texas, the payment source can determine whether a legal minor can consent to contraception or needs parental consent. This is because federally funded programs look to federal law and regulations.

- Minors can provide their own consent to contraception and reproductive health care in Title X clinics. This law is well supported and well-understood by practitioners. Minors have the best guarantee of receiving confidential reproductive health care in a Title X clinic.

- Under interpretation of federal law and under Texas guidance, minors on Medicaid can consent to contraception. This includes youth in foster care on STAR Health. This provision is not well known by providers and may be subject to legal challenge.
Minor consent to health care: Services

In Texas, minors may consent to:

- Emergency care
- Screening and treatment for diseases that are reported to DSHS, including STIS such as chlamydia, syphilis, gonorrhea, HIV (but not herpes, HPV, etc)
- Non-prescription medication including contraception (condoms, morning after pill, spermicide)
- Prenatal and Delivery Care (but not postpartum care)
- Pregnant or parenting minors may consent to certain immunizations (but not HPV vaccine)

Behavioral Health Care:

- Treatment for substance abuse/addiction
- Treatment for suicidal ideation (but not general mental health)
- Counseling/treatment for abuse
- Minors over 16 can check themselves into inpatient psychiatric care

This care is not required to be confidential – Texas law explicitly gives physicians the option of informing parents. Payment to physicians may not be guaranteed if parents haven’t provided consent.
Texas has one of the **highest rates of repeat teen births** in the nation.

Teen parents can consent to all medical care for their children, but under Texas state law, they **can’t consent to their own contraception**.
Minor consent to Contraception

- 21 states and the District of Columbia allow all minors to consent to contraceptive services.
- 25 states (including Texas) explicitly permit minors to consent to contraceptive services in one or more circumstances.
- 4 states have no explicit policy on minors’ authority to consent to contraceptive services.

Because Texas law doesn’t generally allow minors to consent to their own contraception, Title X clinics can be a good resource.
Because HIV prophylactic medication is a recent development, many states have no statute around minor consent to prevention drugs like Truvada.

- All states allow minors to access STD screening and treatment
- 19 states now explicitly allow minors to consent to PrEP
- Texas law is silent on PrEP/PEP, but PEP is usually offered without parental consent. Post-exposure prophylaxis could be considered both emergency care and STI treatment.
So...How can Texas minors access medical care?

- With their parent or guardian’s permission
- In some situations, with other adult’s permission
- For reproductive healthcare, at a Title X clinic
- If they’re on Medicaid, they can consent to birth control (not all doctors know about this)
- If they are 16, living on their own and managing their own finances (including homeless youth)
- If they are married, serving in the armed forces, or emancipated
- If they are seeking certain types of care like screening and treatment for certain types of STIs, prenatal care, substance abuse care, over the counter drugs, etc
Clinicians, social workers, educators, and other youth-serving professionals may have to break confidentiality to comply with certain reporting requirements intended to ensure health and safety.

Reports must be filed:

- **To DSHS, in the case of certain conditions or infectious diseases**, primarily for epidemiology purposes. In rare situations this could potentially result in parents, partners, or other individuals being contacted directly or inadvertently.
- **To appropriate parties, if the patient is an imminent danger to self or others.**
- **To CPS, in the case of suspected abuse or neglect, including sexual abuse.** While many reporting situations are straightforward for youth-serving professionals, others may be complex.

Failure to report can result in civil, professional, and even criminal penalties.
Reporting Suspected Sexual Crimes

Some of the most complex reporting situations involve sexual encounters.

- Under the Texas Penal Code, sexual contact with a child 16 or younger is a crime.

- It is an affirmative defense to prosecution that the encounter was consensual and the other party was within three years of age, not a registered sex offender, and of the opposite sex.

- Most professionals interpret this to mean that they do not need to report situations that they believe meets the affirmative defense to prosecution.

- Sexual contact with a child under the age of 14 always should be reported.
Discrimination in Romeo and Juliet laws

Texas “Romeo and Juliet” laws discriminate against LGBTQ youth and would likely be found unconstitutional in court.

• Advocates are not aware of anyone being prosecuted when this law would have protected them had they been same-sex. Prosecution would allow for a court test.

• However, the harm to youth and to clinicians occurs at the level of mandatory reporting. Publicly funded health clinics that contract with DSHS or HHSC are required to show compliance with all reporting laws, so this discrimination disproportionately impacts low-income LGBTQ youth seeking health care, and the providers who are legally required to provide discriminatory care.

• For multiple sessions, advocates have supported legislation to change this law. In the 86th Legislative session, a bill was unanimously passed out of committee and scheduled for House debate, but was then sent back to committee.
How can you develop processes around adolescent consent and confidentiality in your work?

- Clearly explain consent and confidentiality policies and limitations to youth (posters help!)
- Train all staff, including front desk, on state and federal laws
- Establish time to talk privately with older minors
- Assess record-keeping and billing practices
Quiz!

Can these youth consent to their own health care?

- Jorge: 15 years old, covered by Medicaid, seeking treatment for depression
- Kayla: 14, at Title X clinic, wants birth control pills
- Tyler, 16, homeless, thinks he has strep throat
- Jacob: 17, no insurance, abusing prescription pills
- Alma: 16 year old, recently had first baby and wants an IUD, private insurance
Access to Health Care:

Programs serving children and young adults
How can youth get medical care?

Texas provides healthcare through a patchwork of programs that can be confusing to navigate and access.
<table>
<thead>
<tr>
<th>Program</th>
<th>State or Federal Funding?</th>
<th>Must Be Citizen?</th>
<th>Age and other criteria</th>
<th>Gender(s) Served</th>
<th>Services provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthy Texas Women</td>
<td>State</td>
<td>Yes, or LT legal res.</td>
<td>15-44, no other insurance, 200% FPL</td>
<td>Female</td>
<td>Contraception; reproductive and interconception care, etc</td>
</tr>
<tr>
<td>Family Planning</td>
<td>State</td>
<td>No</td>
<td>Under 64, 250% FPL</td>
<td>Male and Female</td>
<td>Contraception, limited prenatal, Screening/treatment for STIs, etc</td>
</tr>
<tr>
<td>Children’s Medicaid</td>
<td>State/Federal</td>
<td>Yes, or LT legal res.</td>
<td>Under 19, income caps vary; 133% FPL for teens</td>
<td>Male and Female</td>
<td>Full Medical Care, contraception, prenatal care</td>
</tr>
<tr>
<td>CHIP</td>
<td>State/Federal</td>
<td>Yes, or LT legal res.</td>
<td>Under 19, 207% FPL</td>
<td>Male and Female</td>
<td>Full medical care, prenatal care, no contraception unless medically needed</td>
</tr>
<tr>
<td>Pregnant Women’s Medicaid</td>
<td>State/Federal</td>
<td>Yes</td>
<td>Pregnant, 198% FPL</td>
<td>Female</td>
<td>Coverage for pregnant women up to 60 days postpartum</td>
</tr>
<tr>
<td>CHIP Perinatal</td>
<td>State/Federal</td>
<td>No</td>
<td>Pregnant, 207% FPL</td>
<td>Female</td>
<td>Limited-service coverage for pregnant women plus 2 postpartum visits</td>
</tr>
<tr>
<td>Title X</td>
<td>Federal</td>
<td>No</td>
<td>Sliding scale</td>
<td>Male and Female</td>
<td>Reproductive Health Services</td>
</tr>
<tr>
<td>Federally Qualified Health Clinics</td>
<td>Local/Federal</td>
<td>No</td>
<td>Sliding scale</td>
<td>Male and Female</td>
<td>Various</td>
</tr>
<tr>
<td>Local Healthcare Programs/Safety Net</td>
<td>Local/Federal</td>
<td>Not usually</td>
<td>Varies; often extremely low</td>
<td>Male and Female</td>
<td>Outpatient and Inpatient Care</td>
</tr>
</tbody>
</table>
Reproductive Health Care Coverage

All Texas residents under the age of 64 with incomes below 250% FPL are eligible for free reproductive health care, regardless of citizenship status or gender.

Access to care can be a barrier in rural or suburban counties, but urban counties generally have options.

Policy decisions in 2011-2013 resulted in loss of access to reproductive care. Full access and usage has not yet been restored, but funding now exceeds 2011 levels.

Knowing your local options helps you make the most effective referrals!
Healthy Texas Women

• Reproductive and limited benefit primary care program providing contraception, well women care, STI, screening and treatment for diabetes, hypertension, etc

• Enrollment criteria: women aged 15-44 (minors with parental consent), no other insurance, not pregnant, citizen/certain long-term legal residents, under 200% FPL
  • Youth under 19 generally should not be enrolled in this program – they should be getting full Medicaid coverage through Medicaid or CHIP
  • Former foster youth should not be enrolled if under 26 – they should be receiving Medicaid benefits

• Women are auto-enrolled when coming off of Pregnant Women’s Medicaid, or they can apply at My Texas Benefits. Providers also can enroll women.

• Approx. 2,000 primary care providers participating statewide
  www.healthytexaswomen.org/find-a-doctor
Family Planning Program

- Provides contraception, basic reproductive health care, STI screening/treatment, immunizations screening and treatment for diabetes, hypertension, limited prenatal care
- Minors need parental consent to get contraception and reproductive health care through this program unless they meet exceptions in Family Code
- Patients are enrolled into program at clinic site
- Numerous clinic sites in RGV

Enrollment criteria: women and men under 64, Under 250% FPL, Texas resident (no citizenship requirement)
  - Participants may have other insurance – can be good option if insurer doesn’t fully cover contraception
  - Good option for youth on CHIP, since contraception is not covered on CHIP
  - Good option for undocumented residents
  - Good option for males
Federal Funding stream that has provided family planning services since 1970.

Title X clinics are federally funded and offer free or sliding scale reproductive health services at approximately 100 clinics across Texas.

This is the easiest and most surefire way for teens to access confidential reproductive health care

About 15 Title X locations in the RGV

www.whfpt.org/find-a-clinic
Medicaid

• **For children**
  - **Children’s Medicaid** covers full medical care, including prenatal care and contraception. Children must be citizens or certain legal residents.
  - Under interpretation of federal law, minors on Medicaid may consent to their own contraception.
  - Youth can apply for their own Medicaid, as can non-parents caring for children.

• **For pregnant women**
  - **Pregnant Women’s Medicaid** covers medical care during pregnancy and for about 2 months after, including contraception.

• **For adults**
  - Unless they are disabled, full Medicaid is only available to adults in Texas if they are citizens, have children, and have an extremely low income (less than $300/month for a family of 3).
  - Lawfully present adults who arrived before 1997 may be eligible for Medicaid (have children/under 17% FPL)
Children’s Health Insurance Program (CHIP)

For children

• **CHIP** provides full medical care including prenatal care (but no contraceptive coverage for non-medical purposes) for low to middle income children whose parents earn too much for Medicaid. Children must be citizens or legal residents.

• This session, HB 800, which would have added contraceptive coverage to CHIP, passed the House but failed to receive a Senate hearing.

• Youth can apply for their own CHIP, as can non-parents caring for children.

For pregnant women

• **CHIP Perinatal** is a limited coverage program that provides prenatal care for women, typically non-citizens. Emergency Medicaid typically covers hospital delivery costs. Post-partum contraception is not covered. Non-pregnancy related care is not covered.
Publicly Funded Clinics

Federally Qualified Health Care Centers (FQHCs)

- Federal and local funding
- Offers a wide variety of health care services
- Sliding scale. May accept a variety of insurance and participate in other programs.
- FQHCs can be based in schools!

County indigent care programs

- Funded through local taxpayer district and other funding sources
- Offers a wide variety of health care coverage including hospital care

Primary Care Program

- State funded program for low-income residents
- Offers a wide variety of primary health care services

Many hospitals have philanthropic programs to fund health care for patients who cannot pay.
# Access to Care for Low-Income Non-Citizens

<table>
<thead>
<tr>
<th>Undocumented Individuals</th>
<th>“Qualified Non-Citizens”</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Children’s Health</strong></td>
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</tr>
<tr>
<td>County, FQHCs</td>
<td>Children’s Medicaid, CHIP</td>
</tr>
<tr>
<td><strong>Reproductive Health Care</strong></td>
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</tr>
<tr>
<td>Family Planning Program, Title X</td>
<td>Healthy Texas Women, Title X</td>
</tr>
<tr>
<td><strong>Prenatal Care/Delivery</strong></td>
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</tr>
<tr>
<td>CHIP Perinatal/Emergency Medicaid</td>
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</tr>
<tr>
<td><strong>Other Health Care</strong></td>
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</tr>
<tr>
<td>County, FQHCs</td>
<td>County, FQHCs, (in rare situations, Medicaid)</td>
</tr>
<tr>
<td><strong>Purchased insurance</strong></td>
<td><strong>Purchased insurance</strong></td>
</tr>
<tr>
<td>Unsubsidized, outside of Marketplace</td>
<td>Subsidized through Marketplace</td>
</tr>
</tbody>
</table>
# The “Coverage Gap”

<table>
<thead>
<tr>
<th>US Citizen</th>
<th>Non-Citizen Legal Resident*</th>
</tr>
</thead>
</table>
| **400% FPL** | 400% FPL | • May qualify for Marketplace Subsidies  
• Family glitch may prevent qualification |
| **100% FPL** | 100% FPL | • Does not qualify for Medicaid  
• **Not eligible** for Marketplace Subsidies |
| **17% FPL** | 17% FPL | • Qualifies for Texas Medicaid if a parent  
• Does not qualify for Medicaid  
• Is eligible for Texas Medicaid  
• Is eligible for Marketplace Subsidies |

*Unless arrived in 1996 or earlier
Concerns for Undocumented Families

Federal “Public Charge” Rule
• People likely to become a “Public Charge” generally are barred from immigration. Historically, this was limited to cash welfare or long-term institutional care.
• A new rule penalizes applicants for use of programs such as SNAP or adult Medicaid, and prioritizes higher-income applicants.
• This is producing a chilling effect around applying for programs, even those not included in the public charge language.

Fear of deportation
• Health care centers may not be considered safe spaces in current climate
• Families may be fearful of applying for public programs or seeking care, creating health risks

Mixed-status families
• May face challenges and confusion around program eligibility

Long wait for care
• Some publicly funded programs have long wait times for appointments
How can these youth access care?

• Pilar is 19 year old girl and US citizen with an income at 150% percent of the FPL. She wants an IUD.

• Anne is a 16 year old girl with medical coverage through her parent’s work insurance (BCBS). She is scared they’ll kick her out if they find out she’s sexually active. She wants a Depo Provera shot.

• Maria is 17. Her mother agrees that she should get on the birth control pill, but they are uninsured and undocumented and money is tight.

• Shawna is a 17 year old youth in foster care who is worried about getting pregnant but doesn’t want her foster parents to know she’s having sex.

• Diego is a 21 year old uninsured community college student and part-time waiter who thinks he may have an STI.
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