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**Consent for Health Care &
Confidentiality of Health
Information for Adolescents:
*A Guide to Michigan & Federal Laws***



Greetings from School-Community Health Alliance of Michigan Executive Director, Debra Brinson



DEBRA BRINSON

On behalf of the School-Community Health Alliance of Michigan, and the Board of Directors, we present this Guide to Consent for Health Care and Confidentiality of Health Information for Adolescents.

It is important to provide confidential care especially to vulnerable populations such as adolescents. While their care can be riddled with questions about the law, one thing is clear from research, young people need access to care especially as they approach adulthood. This valuable resource will help you navigate the often complex questions while providing important care to adolescents in your community.

The School-Community Health Alliance of Michigan has worked for years with Abigail English, JD, who is a nationally sought after expert in this area of expertise. In addition, the Guide was sent to several school-based health centers staff to seek their guidance and front line experience. Many great suggestions were garnered from these experts in the network of health centers – thank you to them!

We hope this provides important insight for you and your colleagues. Electronic copies are found on our website at www.scha-mi.org. Feel free to distribute. We also invite your comments, please direct them to Robin Turner, Director of Network Outreach and Training at rturner@scha-mi.org.

Thank you for the important work that you do on behalf of our young people.

A handwritten signature in black ink that reads 'Debra Brinson'.

Debra Brinson,
Executive Director
School-Community Health Alliance of MI

School-Community Health Alliance of Michigan (SCHA-MI)

SCHA-MI is a collaboration of individuals and organizations that represent and support school-based and school-linked health centers and programs. Through our actions, commitment, and passion, SCHA-MI supports the belief that all Michigan children and youth have a fundamental right to access and receive comprehensive primary health care and prevention services.

School-based and school-linked health centers bring health care services to children where they are—in school. These centers and programs provide quality health care services on or near school property that help students be healthy and succeed in school. They are focused on the prevention, early identification and treatment of medical and behavioral concerns that can interfere with a student’s learning.

Author

This guide was prepared for the School-Community Health Alliance of Michigan by Abigail English, JD, a consultant to SCHA-MI.

Disclaimer

This document provides information not legal advice. For legal advice, readers should consult their own counsel. When seeking legal advice, a practicing attorney who has knowledge of all relevant federal, state, and local laws and who has been informed of all relevant details of the situation should be consulted. The legal information in this publication is current through September 2023. Laws may change, so updated information must be sought to address specific situations.

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Consent for Health Care & Confidentiality of Health Information for Adolescents: *A Guide to Michigan & Federal Laws*

This guide provides an overview of state and federal legal consent requirements and confidentiality protections for adolescents in Michigan. The purpose of the guide is to inform health care providers and promote access to essential health care for adolescents. The guide provides information, not legal advice.

INTRODUCTION

Confidentiality protections encourage adolescents to seek the health care they need and safeguard their privacy when they receive services. The relationship between confidentiality of health information and consent for health care is important. The specific ways the law protects confidentiality depend on whether a patient is a minor or an adult and whether the patient can legally consent to their own care. Some adolescents are minors (younger than age 18) and some are young adults (age 18 or older). Throughout this guide, the term *adolescent* will refer to both age groups. The terms *adolescent minor*, *minor*, and *young adult* will be used when the specific age range is relevant.

Young adults almost always may consent to their own care; adolescent minors may consent sometimes, but not always. Young adults are generally entitled to the same confidentiality protections under state and federal laws as other adults. The confidentiality protections for minors depend on a variety of factors.



“Minor consent laws” allow adolescent minors to consent for their own care in specific situations and for specific services. Laws authorizing minors to consent and laws protecting confidentiality are closely linked but they do not always match each other. Adolescent minors who consent for their own care are entitled to many confidentiality protections; however, these protections may be qualified or limited in ways that allow for disclosure of some information to parents or others.

Numerous federal and state laws contain confidentiality protections for health information. The intersection of different laws and interplay of law and ethics are important in understanding confidentiality in the health care of adolescents. Careful analysis of the relevant state and federal laws, informed by sound ethical principles, can clarify these issues in Michigan as in other states.

IMPORTANCE OF PROTECTING CONFIDENTIALITY

What Are the Reasons to Protect Confidentiality?

Numerous reasons exist to protect confidentiality for the health care communications and health information of adolescents. The most compelling is to encourage young people to seek necessary care on a timely basis and to provide a candid and complete health history when they do so. Additional reasons include supporting their developing sense of privacy and autonomy as well as protecting them from the humiliation and discrimination that can result from disclosure of confidential information.

Offering confidential care can also help young people develop their capacity to engage independently with the health care system. Ultimately, confidentiality protection helps to build the trust that is essential between patients and their health care providers. Decades of research findings have documented the importance of privacy concerns for young people in the adolescent age group; additional research has found similar concerns specifically among young adults. (See [Appendix E](#).)

How Do Privacy Concerns Influence Adolescents' Use of Health Care?

Overarching goals of confidentiality protection include promoting both the health of individual young people and public health. One key element of reaching these goals is ensuring that young people receive the health care services they need.

Rationale for Confidentiality

Reasons to provide confidential health care include:

- Protecting health of adolescents & young adults
- Protecting public health
- Promoting positive health behaviors & outcomes
- Avoiding negative health outcomes
- Encouraging adolescents & young adults to seek needed care
- Increasing open communication with health care providers

Privacy concerns influence use of health care in many ways. Many adolescents are especially concerned about disclosure to their parents of information related to sexual behaviors, substance use, and mental health. This is true even though many adolescents voluntarily share a lot of health information with their

parents and other trusted adults. Voluntary communication can be very helpful in supporting adolescents' health; mandated communication and disclosure, on the other hand, can be counterproductive unless they are necessary to protect the health of a young person. Research spanning several decades has demonstrated, specifically, that concerns about confidentiality and disclosure can affect whether adolescents seek care,^{1,2,3} where they seek care,^{4,5} and how openly they talk with health care professionals.⁶ Some young adults also hesitate to use certain services unless their privacy can be maintained.⁷

Concerns that confidentiality will not be protected can lead adolescents and young adults to forego or delay care or to be less than candid when they do see a health care provider. (See [Appendix E](#).)

Research Findings about Privacy Concerns

Privacy concerns affect behavior and influence:

- Whether young people seek care
- When young people seek care
- Where young people seek care
- How openly young people talk with health care providers

What is the Effect of Privacy Concerns on Use of Sexual Health Services?

The effect of privacy concerns has been especially well documented with respect to adolescents' use of sexual health services, including care related to contraception, pregnancy, and sexually transmitted infections (STIs). For example, one study found that almost all adolescents would consent to STD testing if their parents would not know, but only about one third would agree if their parents would or might know.⁸ According to another study, nearly one half of adolescents would stop using family planning clinic services if parental notification were mandatory.⁹ Yet, a national survey found that only a very small minority (7%) of adolescents would stop having sex if parental notification were mandatory for contraceptives, and a significant percentage (18% overall) would have riskier sex.¹⁰

What Do Medical and Public Health Organizations Say About Confidentiality in Adolescent Health Care?

Health care professional organizations recognize the importance of confidentiality protections in health care. These organizations have adopted codes of ethics and issued policies that address privacy and confidentiality protections for patients generally, including young adults and adolescent minors.^{11,12,13,14} They also

Health Care Professional Organizations

Codes of ethics and policies support:

- Rationale for confidentiality
- Scope of confidentiality and its limits
- Confidentiality in specific health care settings
- Confidentiality for specific populations of adolescents
- Confidential access to specific health services

have adopted policies related to adolescent health care that address confidentiality protections for particular health care settings, special populations, and specific services—preventive health care, testing and treatment for STIs and HIV, contraception, pregnancy-related care, and other reproductive health services.^{15,16,17} These policies often speak to the importance of informing patients—including adolescents and their parents—about confidentiality and its limits.¹⁸

What Is the Role of Parents and Other Trusted Adults in Confidential Health Care for Adolescents?

Along with findings about the importance of privacy concerns for adolescents in health care, research has also documented the many ways that adolescents choose to involve their parents in their health decisions and voluntarily share information with them. Most parents are supportive of their adolescents when seeking health care and often agree with allowing them to receive confidential care. Some adolescents do not have parents, live in families where parents are unavailable or dysfunctional, are separated from their families, or are unwilling to share specific information with their parents for varied reasons. For these young people, the support of another trusted adult is important for helping them make health care decisions. (See [Appendix E](#) for a wide range of research studies documenting these findings.)

What Are the Limits of Confidentiality in Adolescent Health Care?

Confidentiality is not absolute. To understand the scope and limits of legal and ethical confidentiality protections, it is important to clarify: **what may not be disclosed** because it is confidential and none of the exceptions to confidentiality apply; **what may be disclosed** based on the discretion of the health care professional; and **what must be disclosed** because there is another requirement, such as a reporting requirement, that overrides confidentiality. From a clinical, legal, and ethical perspective, it is important that adolescent patients and their parents understand in advance the scope and limits of confidentiality protections.

Confidentiality is Not Absolute

Confidential information must be disclosed:

- To comply with reporting mandates for:
 - Child abuse
 - Communicable disease
 - Assaults such as knife or gunshot wounds
 - Domestic violence
- When a patient is dangerous to self or others

What Is the Relationship Between Consent and Confidentiality?

Although “consent and confidentiality” are often assumed to go hand in hand or to be identical, they refer to distinct legal concepts; even “consent” refers to different legal requirements. Consent to care means granting permission to a provider to engage in a health test, exam, or service. A health care provider generally must obtain consent before providing care. While an adult (age 18 years or older) typically consents for their own health care, federal and state statutes, regulations, and court decisions help establish which individuals generally have the legal authority to provide consent on behalf of minors (children or adolescents under age 18 years); adolescent minors are sometimes authorized to consent for themselves.

Linkage of Consent & Confidentiality

“Consent” & “confidentiality” are not perfectly matched but are closely linked in:

- Clinical practice
- Ethical standards
- Professional policies
- State & federal laws



Once a provider engages in delivery of health services, information about the care is confidential. Confidentiality laws control the release of this information. Confidentiality laws sometimes require written permission to release health care information and specify which individuals may or must sign that authorization. Often, the person with authority to consent to care is the same person with authority to sign for release of information—but not always.

What is the Role of State and Federal Laws in Protecting Confidentiality for Adolescents?

Many state and federal laws have a role in protecting the confidentiality of adolescents' health information. Often these laws intersect and must be interpreted in relation to each other. For example, the Privacy Rule under the Health Insurance Portability and Accountability Act (HIPAA Privacy Rule) defers to state and other applicable laws on the question of when parents have access to protected health information (PHI) about care for which their adolescent minor child has given consent. The HIPAA Privacy Rule definition of PHI also excludes students' personally identifiable information (PII) in

Legal Sources of Confidentiality Protection

- Constitutional right of privacy
- HIPAA Privacy Rule
- State minor consent laws
- State medical confidentiality & medical records laws
- Federal education privacy laws
- Federal & state funded health program requirements
- Evidentiary privileges
- Professional licensing laws

education records governed by the Federal Educational Rights and Privacy Act (FERPA). Also, the confidentiality regulations for the Title X Family Planning Program require compliance with state child abuse and other reporting requirements. Therefore, it is essential to understand how state and federal confidentiality laws intersect. Consultation with legal counsel is often necessary to clarify these issues.

What Are Some Emerging and Evolving Challenges in Protecting Confidentiality for Adolescents?

Two sets of issues represent increasing challenges for protecting confidentiality in the health care of adolescent minors and young adults:

- The first set comprises the issues associated with billing and health insurance claims, particularly the use of explanations of benefits (EOBs) to communicate with health insurance policyholders.^{19,20} The problem of confidentiality losses that occur through billing and insurance has long been recognized but still evades fully effective solutions. (See [Appendix C](#).)
- The second set of issues relates to the complex questions associated with use, access, and sharing of electronic health information (EHI), electronic health records (EHRs), and patient portals.^{21,22,23} The issues related to EHI and EHRs, and the sharing of information on patient portals are increasingly complex and challenging, especially in light of the 21st Century Cures Act and its Information Blocking Rule.²⁴ In these arenas, laws and policies as well as best practices are evolving rapidly. (See [Appendix C](#) and [Appendix D](#).)

Protecting Confidential Information in EHRs

Particularly in light of the 21st Century Cures Act and its Information Blocking Rule, it is noteworthy that some EHRs do not have the ability to separate or "segment" confidential visit information or test results. This means that other providers within the health system may be able to view confidential information. Also, as Health Information Exchanges (HIEs) are implemented, information in EHRs may be shared not only within systems but also across systems. It is important that health care providers alert patients that if they go to another provider within the same health system, especially the emergency department, or even to a provider in another system, their information may be shared with their parent or guardian. Different EHRs include varied options for highlighting or limiting access to confidential information—using banners, notes marked as confidential, or other methods. These options should be implemented whenever possible.

Full discussion of these issues is beyond the scope of this guide but considering them is essential in any effort to protect confidentiality for adolescents and young adults.

MICHIGAN HEALTH CARE CONSENT AND CONFIDENTIALITY LAWS FOR ADOLESCENTS

The age of majority in Michigan is 18 years. Some adolescents are legally minors, younger than age 18; some are legally adults, age 18 or older. Adolescents who are adults generally may give their own consent for health care. Parental consent for health care is generally required for minors younger than age 18 years who are not emancipated. However, Michigan law contains numerous exceptions that allow adolescent minors to give consent for their own health care either based on their status or living situation or based on the services they are seeking. The confidentiality of adolescents' health information is protected to varying degrees in these situations, depending on provisions in state and federal law. (See [Tables 1, 2, and 3.](#))

When Are Adolescent Minors in Michigan Allowed to Consent for Their Own Health Care?

Adolescent minors in Michigan may be allowed to consent for their own health care if one of these categories applies to their status or living situation. Specific limitations and confidentiality protections are described in the following sections.

- Emancipation
- Marriage
- Pregnancy
- Parenthood
- Law enforcement/Corrections custody
- Military service

Adolescent minors in Michigan may be allowed to consent for their own health care if it involves one of these services. Specific limitations and confidentiality protections are described in the following sections, *including limitations that apply on school property or to services offered by school-based health centers.*

- Contraception
- Pregnancy related care
- Abortion
- Sexually transmitted infection/HIV care
- Inpatient mental health services
- Outpatient mental health services
- Substance use disorder services

When Are Adolescent Minors Allowed to Consent for Health Care Based on Their Status or Living Situation?

Adolescent minors in Michigan are allowed to consent for their own health care if they have a particular status or living situation, with some limitations and with varying degrees of confidentiality protection for that care.

Emancipated Minors

Who is considered legally emancipated in Michigan?

Michigan law considers the following individuals to be legally emancipated:²⁵

- Individuals ages 18 years or older, who are legally adults
- Minors who have been validly married
- Minors on active duty with the armed forces of the United States

Michigan law considers some minors to be legally emancipated specifically for the purpose of consenting to health care if certain criteria are satisfied:²⁶

- Minors in the custody of law enforcement
- Minors committed to jurisdiction of the Department of Corrections

Michigan law allows minors to petition a court for an order of emancipation if certain requirements are met—including the ability to manage their own financial, personal, and social affairs—and the petition is supported by an affidavit from one of several professionals that emancipation is in the best interests of the minor.²⁷

Emancipated minors have numerous rights that allow them to act as adults, including the right to make specific health care decisions and to apply for medical assistance (Medicaid).²⁸



Are emancipated minors allowed to consent for their own health care in Michigan?

Emancipated minors are allowed to consent for their own preventive health care, medical care, dental care, and mental health care.²⁹

Is health care confidential for which emancipated minors give their own consent?

Emancipated minors are allowed to consent for their own health care “without parental knowledge.”³⁰ When emancipated minors lawfully consent for their own health care, they have the “exclusive right” to exercise the rights of a patient with respect to medical records relating to that care.³¹

Who is financially responsible when emancipated minors consent for their own health care?

Emancipated minors may consent for their own health care “without parental... liability.”³² When a minor is emancipated by court order, the parents are not liable for any debts incurred while the minor is emancipated.³³ An emancipated minor may apply for medical assistance (Medicaid).³⁴

Married Minors

Are married minors allowed to consent for their own health care in Michigan?

Married minors are considered emancipated under Michigan law. Emancipated minors are allowed to consent for their own preventive health care, medical care, dental care, and mental health care.³⁵

Is the health care confidential for which married minors give their own consent?

Married minors are allowed to consent for their own health care “without parental knowledge.”³⁶ Minors who have lawfully consented to health care have the “exclusive right” to exercise the rights of a patient with respect to medical records relating to that care.³⁷

Who is financially responsible when married minors consent for their own health care?

Married minors may consent for their own health care “without parental... liability.”³⁸ If the married minor has been emancipated by court order, the parents are not liable for any debts incurred while the minor is emancipated.³⁹ Because married minors are legally emancipated, they may apply for medical assistance (Medicaid).⁴⁰

Pregnant Minors

Are pregnant minors allowed to consent for their own health care in Michigan?

Pregnant minors are allowed to consent for “prenatal and pregnancy related health care.”⁴¹ In this context, *health care* is defined to mean “only treatment or services intended to maintain the life and improve the health of both the minor and the minor’s child or fetus.”⁴² If they are married or legally emancipated by court order, they are also allowed to consent for a broad range of health care services, including preventive health care, medical care, dental care, and mental health care.⁴³

Is the health care confidential for which pregnant minors give their own consent?

At the initial visit for prenatal or pregnancy related care, the pregnant minor must be asked for permission to contact their parents to obtain information necessary or helpful for the provision of proper care.⁴⁴ A physician, health care professional, or member of the medical staff under the direction of the physician, is permitted but not obligated to notify “the putative father of the [minor’s] child or the spouse, parent, guardian, or person *in loco parentis*” of the health care given or needed; the notice may be given with or without the consent or over the refusal of the pregnant minor.⁴⁵ Before the health care is provided, the pregnant minor must be informed that this notice may be given.⁴⁶

Minor Parents

Are minor parents allowed to consent for health care in Michigan?

Minor parents are allowed to consent for health care for their child in addition to consent for prenatal and pregnancy related care.⁴⁷ In this context, *health care* is defined to mean “only treatment or services intended to maintain the life and improve the health of both the minor and the minor’s child or fetus.”⁴⁸ If they are married or legally emancipated by court order, they are also allowed to consent for a broad range of health care services for themselves, including preventive health care, medical care, dental care, and mental health care.⁴⁹

Is the health care confidential for which minor parents give consent?

At the initial visit, the minor must be asked for permission to contact their parents to obtain information necessary or helpful for the provision of proper care.⁵⁰ A physician, health care professional, or member of the medical staff under the direction of the physician, is permitted but not obligated to notify “the putative father of the [minor’s] child or the spouse, parent, guardian, or person

in loco parentis” of the health care given or needed; the notice may be given with or without the consent or over the refusal of the minor parent.⁵¹ Before the health care is provided, the minor must be informed that this notice may be given.⁵²

Minors in Military Service

Are minors in active military service allowed to consent for their own health care in Michigan?

Minors in active military service with U.S. armed forces are considered emancipated under Michigan law. Emancipated minors are allowed to consent for their own preventive health care, medical care, dental care, and mental health care.⁵³



Is the health care confidential for which minors in active military service give their own consent?

Minors in active military services are allowed to consent for their own health care “without parental knowledge.”⁵⁴ Minors who have lawfully consented to health care have the exclusive right to exercise the rights of a patient with respect to medical records relating to that care.⁵⁵

Who is financially responsible when minors in active military service consent for their own care?

Minors in active military service may consent for their own health care “without parental... liability.”⁵⁶ If the minor has been emancipated by court order, the parents are not liable for any debts incurred while the minor is emancipated.⁵⁷

When Are Adolescent Minors Allowed to Consent for Specific Health Care Services?

Adolescent minors in Michigan are allowed to give their own consent for several specific health care services, with some limitations and with varying degrees of confidentiality protection for the information related to that care. Some of those limitations are specific to services provided in public schools or on public school property, as noted below.

Family Planning and Contraceptive Services

Michigan does not have a statute that explicitly authorizes adolescent minors to consent for family planning or contraceptive services. However, there are several circumstances in which they may be able to do so. First, any minor who is authorized to give their own consent for health care generally would also be able to do so for contraception or family planning services. These minors include emancipated minors, married minors, and minors who are in active military service. Also, adolescent minors in Michigan may obtain confidential family planning services, including contraception, based on their own consent at sites funded by the federal Title X Family Planning Program.^{58,59} (See section on [Title X](#) for a more detailed discussion, noting the potential for evolving requirements related to parental consent and notification.)

Michigan law provides that: “A person shall not dispense or otherwise distribute in a public school or on public school property a family planning drug or device.”⁶⁰

Pregnancy Related Care

Are adolescent minors allowed to consent for pregnancy related health care in Michigan?

Adolescent minors in Michigan are allowed to consent for “prenatal and pregnancy related health care.”⁶¹ In this context, *health care* is defined to mean “only treatment or services intended to maintain the life and improve the health of both the minor and the minor’s child or fetus.”⁶² (See section on [Abortion](#).) The consent of any other person, including “the putative father of the [minor’s] child or a spouse, parent, guardian, or person *in loco parentis*,” is not necessary.⁶³

Is pregnancy related care confidential for which minors give their own consent?

At the initial visit for prenatal or pregnancy related care, the minor must be asked for permission to contact their parents to obtain information necessary or helpful for the provision of proper care.⁶⁴ A physician, health care professional, or member of the medical staff under the direction of the physician, is permitted but not obligated to notify “the putative father of the [minor’s] child or the

spouse, parent, guardian, or person *in loco parentis*” of the health care given or needed; the notice may be given with or without the consent or over the refusal of the pregnant minor.⁶⁵ Before the health care is provided, the pregnant minor must be informed that this notice may be given.⁶⁶

Helping a pregnant adolescent who is reluctant to involve her parents:

Points to Consider

- May she consent for prenatal and pregnancy related care?
- Are you legally required to notify her parents?
- How can you help her involve her parents? Should you?
- Are there other trusted adults who could support her?
- May you notify her parents without her permission?
- Why would you do that? Why wouldn’t you do that?
- Would you let her know in advance that you will notify her parents?

Abortion

Are adolescent minors allowed to consent for abortion in Michigan?

The written consent of the minor and one parent or legal guardian is required for an unemancipated minor in Michigan to obtain an abortion.⁶⁷ The minor may seek a court order waiving the parental consent requirement if the parent or guardian is unavailable or refuses consent, or if the minor chooses not to seek parental consent.⁶⁸ The law contains an exception for medical emergencies.⁶⁹ (See section on [Michigan Constitution Article 1, Section 28](#).)

Prior to October 1, 2023, Michigan law provided that: “The governing board of a [school] district or intermediate district shall adopt and implement a disciplinary policy for a school official, member of a governing board, or employee of the district or intermediate district who refers a pupil for an abortion or assists a pupil in obtaining an abortion and who is not the parent or legal guardian of that pupil.”⁷⁰ This requirement of Michigan law was repealed effective October 1, 2023.

STI/HIV Services

Are adolescent minors allowed to consent for health care related to STIs and HIV?

An adolescent minor who “is or professes to be infected” with a sexually transmitted infection (STI) or HIV may consent for “medical or surgical care, treatment, or services by a hospital, clinic, or physician” on the same basis as an adult.⁷¹ The consent of no other person is necessary.⁷² In addition, if the services are received in a Title X funded health center, parental consent is not required. (See section on [Title X Family Planning Program](#).)

Is the health care for STI/HIV confidential for which minors give their own consent?

A physician, health care professional, or member of the medical staff under the direction of the physician, is permitted but not obligated to notify the minor’s “spouse, parent, guardian, or person *in loco parentis*” of the health care given or needed; the notice may be given with or without the consent or over the refusal of the minor.⁷³ However, if the services are provided at a Title X funded site, information about the services is protected by the Title X confidentiality regulations and parents may not be notified without the minor’s permission. (See section on [Title X Family Planning Program](#).)

Explaining to a young person whether an STI visit is confidential:

Points to Consider

- Are they allowed to consent for STI services independently of a parent or guardian?
- What is the reason for their concern about confidentiality?
- How would you explain the limits to confidentiality?
- Are you legally allowed to notify a parent?
- Would you ever do so? Why or why not?
- What would you do if the young person refuses services because their parent will be notified?

Are adolescent minors allowed to consent for PrEP in Michigan?

Michigan law does not explicitly address whether minors are allowed to consent for PrEP. However, they may be able to do so in some circumstances. At a Title X funded site, they would be able to receive PrEP confidentially based on their own consent. Whether they can do so at other sites would depend on whether they either: are considered to have met the criteria of being or professing to be infected with STI or HIV, or have a status (e.g., emancipation) that allows them to consent for all of their own health care. The Michigan Department of Health & Human Services (MDHHS) has made available a toolkit for providers of PrEP.⁷⁴

Who is financially responsible for health care for STI/HIV for which minors give their own consent?

The “spouse, parent, guardian, or person *in loco parentis*” is not financially responsible for the medical or surgical care, treatment, or services for STI/HIV for which the minor has consented.⁷⁵

Inpatient Mental Health Services

Who is authorized to request inpatient mental health services for minors in Michigan?

Michigan laws governing the Department of Mental Health contain detailed requirements for inpatient mental health services, including procedures for requesting admission, review of suitability for initial and ongoing hospitalization, and response to objections to hospitalization.⁷⁶ A parent may request admission for inpatient mental health care for a minor of any age.⁷⁷ Minors age 14 years or older may request admission for inpatient mental health care for themselves.⁷⁸ The Department of Human Services or a county juvenile agency may also request admission for minors under their jurisdiction or in their custody.⁷⁹ Minors will only be admitted if they are found suitable for hospitalization.⁸⁰

The hospital providing inpatient mental health services is required to request consent from a parent or guardian of a minor both for the minor's treatment and also for the release of information from agencies or individuals involved in treating the minor before the hospitalization that is considered necessary by the hospital for the minor's treatment.⁸¹

Who is allowed to object to inpatient hospitalization of a minor for mental health services?

A minor age 14 years or older is allowed to object to hospitalization for mental health services and obtain court review; the parents of a minor who has been admitted are also allowed to object.⁸²

Outpatient Mental Health Services

Are adolescent minors allowed to consent for outpatient mental health services in Michigan?

A minor age 14 years or older is allowed to consent for outpatient mental health services consistent with specific limitations and requirements.⁸³ The law specifically applies to services provided by a "mental health professional" and does not mention other services to address mental health concerns that may be provided by primary care providers who are not mental health professionals. The consent of a parent, guardian, or person *in loco parentis* is not required.⁸⁴

Is there a limit on the scope of outpatient mental health services for which a minor may consent?

The outpatient mental health services for which minors may consent do not include referral for pregnancy termination or use of psychotropic drugs.⁸⁵

Is there a limit on the duration of outpatient mental health services for which a minor may consent?

The outpatient mental health services for which minors may consent are limited to 12 sessions or up to four months per request; after that, the services must be terminated or, if the minor consents, the parent, guardian, or person *in loco parentis* must be notified to obtain consent to continue the services.⁸⁶ The law does not explain the meaning of "per request" or specify a time limit for when a minor might be allowed to initiate a new request.



Are the outpatient mental health services confidential for which the minor gives their own consent?

When a minor consents for their own outpatient mental health services, “the minor’s parent, guardian, or person *in loco parentis* shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is notified of the mental health professional’s intent to inform the minor’s parent, guardian, or person *in loco parentis*.”⁸⁷ The mental health professional is not relieved of any obligation to report child abuse or neglect.⁸⁸

Managing the limits on confidential outpatient mental health visits:**Points to Consider**

- What are the durational limits on outpatient mental health visits without parental consent?
- What happens when the limits are reached?
- Is it possible to safely assist the patient to obtain parent consent for additional sessions?
- When would you consider involving parents without the adolescent’s permission?
- How would you explain to the adolescent a compelling need to involve parents?

Who is financially responsible for the outpatient mental health services for which minors consent?

The parent, guardian, or person *in loco parentis* of a minor is not financially responsible for the cost of the outpatient mental health services for which minors have given their own consent.⁸⁹

Substance Use Disorder Services**Are adolescent minors allowed to consent for substance use disorder services?**

A minor who “professes” to have a substance abuse disorder is allowed to consent for substance use disorder related “medical or surgical care, treatment, or services by a hospital, clinic, or health professional authorized by law” on the same basis as an adult.⁹⁰ No other person’s consent is required.

May a parent request substance use disorder services for a minor?

The law sets out detailed procedures for situations in which a parent or person *in loco parentis* requests substance use disorder services for a minor; the requirements vary depending on whether the minor is younger than age 14 years or is age 14 years or older.⁹¹

Are the substance use disorder services confidential for which the minor gives their own consent?

Under Michigan law, when a minor consents for their own substance use disorder services, a physician, health care professional, or member of the medical staff under the direction of the physician, is permitted but not obligated to notify the minor’s “spouse, parent, guardian, or person *in loco parentis*” of the health care given or needed; the notice may be given with or without the consent or over the refusal of the minor.⁹² The federal confidentiality rules for substance use disorder programs have specific provisions concerning minors. (See section on [Part 2 Substance Use Disorder Confidentiality Regulations](#).)

Who is financially responsible for the substance use disorder services for which minors consent?

The spouse, parent, or person *in loco parentis* of a minor is not financially responsible for the services for which the minor has given consent.⁹³

What Are the Consent and Confidentiality Considerations for Other Specific Groups of Minors?

In addition to the minors who are generally authorized to consent for their own health care because they have a specific status or living situation, specific consent and confidentiality considerations are relevant to several specific groups of minors, including:

- Minors in the custody of a law enforcement agency or the department of corrections
- Minors in foster care
- Minors experiencing homelessness
- LGBTQ+ minors

Minors in Custody of Law Enforcement or Department of Corrections**Are minors in the custody of law enforcement allowed to consent for their own health care?**

Minors in the custody of a law enforcement agency whose parent or guardian cannot be contacted are considered emancipated for the purpose of consenting for routine, nonsurgical medical care, or emergency medical treatment.⁹⁴ The parents remain financially responsible for the cost of the care.

Are minors in the custody of the Department of Corrections allowed to consent for their own health care?

Minors committed to the jurisdiction of the Department of Corrections and housed in a variety of settings, whose parent or guardian cannot be promptly located, are considered emancipated for the purpose of consenting to “preventive health care or medical care including surgery, dental care, or mental health care, except vasectomies or any procedure related to reproduction.”⁹⁵

Minors in Foster Care**Who is authorized to give consent for health care for adolescent minors in foster care?**

Michigan law specifies who is authorized to consent for health care when a child is in foster care.⁹⁶ The child’s parents may continue to give consent if their parental rights have not been terminated. Consent may also be given by a court, the Michigan Department of Health & Human Services (MDHHS), or a child placing agency for “routine, non-surgical medical care, or emergency medical and surgical treatment for the child.”^{97,98} If authorized in a written document, consent may also be given by a “foster parent, relative caregiver, childcare institution (CCI) or any other foster care provider.”⁹⁹ MDHHS has defined what is included and excluded in the care for which the agency and those with authorization may consent.¹⁰⁰

Although Michigan does not have a law that explicitly authorizes adolescent minors to consent for their own health care because they are in foster care, they would be able to do so for specific services on the same basis as other minors if they meet the criteria related to that service.

Minors Experiencing Homelessness

Are adolescent minors who are experiencing homelessness allowed to consent for their own health care?

Michigan does not have a law that explicitly authorizes minors who are experiencing homelessness to consent for their own health care unless they fit the criteria for being an emancipated minor. However, these youth would be able to consent for specific health care services for which minors generally are authorized to consent under Michigan law.

Assisting a young person experiencing homelessness with their asthma condition:

Points to Consider

- Is the young person a minor or an adult?
- When does Michigan law allow a minor experiencing homelessness to consent for their own health care?
- Is asthma a health care service for which minors generally may consent?
- Is the young person able to contact a parent to obtain consent?
- Is the need sufficiently urgent to constitute an emergency?
- If not, what do you do?

LGBTQ+ Minors

Are LGBTQ+ minors allowed to consent for their own health care?

Michigan does not have a law that explicitly authorizes LGBTQ+ minors to consent for their own health care based on their sexual orientation or gender identity. They would be able to do so if they fit the criteria for being an emancipated minor. However, even if they are not legally emancipated, these youth would be able to consent for specific health care services for which minors generally are authorized to consent under Michigan law, such as contraception at Title X funded sites, prenatal and pregnancy related care, STI/HIV services, outpatient mental health services, and substance use disorder services.

Laws related to gender-affirming care for minors, including puberty blockers, gender-affirming hormones, and other services, are changing rapidly. Current information about laws in Michigan related to gender-affirming care should be sought from legal counsel.

What Other Michigan Laws Affect Minor Consent and Confidentiality of Adolescents' Health Care Information?

Several additional Michigan laws affect minors' ability to consent for health care and the confidentiality of their health care information, including:

- Medical Records Access Act
- Reporting of communicable diseases, infections, and disabilities
- Child abuse reporting
- Michigan Constitution Article 1, Section 28

Medical Records Access Act

Do minors who have consented for their own health care control the medical records related to that care?

The Michigan Medical Records Access Act¹⁰¹ establishes the right of a patient to access to their medical records and to authorize others to do so.¹⁰² Ordinarily, a parent, guardian, or person acting *in loco parentis* exercises the rights of a minor patient with respect to their medical records.¹⁰³ However, the Act provides that when a minor “lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting *in loco parentis*... the minor has the exclusive right to exercise the rights of a patient under this act with respect to those medical records relating to that care.”¹⁰⁴

Reporting of Communicable Diseases, Infections, and Disabilities

Are reports of communicable diseases, infections, and disabilities confidential?

Michigan law contains requirements for the reporting of specific communicable diseases, infections, and disabilities.¹⁰⁵ Regulations issued by the Department of Communicable Disease specify the details of these reporting requirements.¹⁰⁶ Confidentiality requirements apply to personally identifiable medical and epidemiological information.¹⁰⁷

Child Abuse Reporting

Who is required to report child abuse and neglect in Michigan?

Michigan’s Child Protection Law specifies a list of professionals who are mandated reporters of child abuse and neglect; the list includes most health care professionals.^{108,109} Mandated reporters are required to submit a report if they have “reasonable cause” to suspect child abuse or neglect.¹¹⁰

How does Michigan law define child abuse and neglect?

The Michigan Child Protection Law defines *child abuse* as “harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment by a parent, a legal guardian, any other person responsible for the child’s health or welfare, a teacher, a teacher’s aide, a member of the clergy, or an individual 18 years of age or older who is involved with a youth program.”¹¹¹

The Child Protection Law contains a detailed definition of child neglect that includes: failure to provide necessities, including medical care, though financially able to do so, or failure to seek financial or other reasonable means to do so; and placing the child’s health and welfare at unreasonable risk or failing to take steps to eliminate that risk.¹¹²

The Child Protection Law specifies that “the pregnancy of a child less than 12 years of age or the presence of a sexually transmitted infection in a child who is over one month of age but less than 12 years of age is reasonable cause to suspect child abuse or child neglect has occurred.”¹¹³

Michigan Constitution Article 1, Section 28

On November 8, 2022, Michigan voters approved Proposal 3, adding a “right to reproductive freedom” to the Michigan Constitution. Article 1, Section 28 now provides, along with other specific language, that: “Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.”¹¹⁴ The ballot language for Proposal 3 stated that the amendment would invalidate state laws conflicting with the amendment.¹¹⁵ The governor has issued an executive order to Michigan agencies with directives on how to proceed with implementation of the right to reproductive freedom.¹¹⁶ Details of how implementation of Article 1, Section 28 will affect Michigan laws related to consent and confidentiality of specific health services for adolescent minors remain to be determined. Legal counsel should be consulted for advice about questions pertaining to abortion and other aspects of Article 1, Section 28 implementation.

FEDERAL LAWS THAT AFFECT CONFIDENTIALITY OF ADOLESCENTS’ HEALTH CARE INFORMATION

Numerous federal laws contain confidentiality protections as well as requirements for information sharing. These laws protect patients’ privacy in the health care system and the confidentiality of their health information. Federal confidentiality laws that are of particular importance for the health care information of adolescents include:

- HIPAA Privacy Rule
- Family Educational Rights and Privacy Act (FERPA)
- “Part 2” – Confidentiality of Substance Use Disorder Records
- Title X Family Planning Program
- Medicaid
- Federally Qualified Health Centers (FQHCs)
- Ryan White HIV/AIDS Program
- 21st Century Cures Act and Information Blocking Rule



A full discussion of the requirements of each of these laws is beyond the scope of this guide. Important highlights are included in the following sections. Detailed information about HIPAA and FERPA is available in a resource guide from the National Center for Youth Law and the School-Based Health Alliance.¹¹⁷ Legal counsel should be consulted for advice about how these federal laws intersect with Michigan laws.

HIPAA Privacy Rule

The HIPAA Privacy Rule—the federal medical confidentiality regulations issued in 2002 under the Health Insurance Portability and Accountability Act—protects the health care information (PHI) of patients of all ages, including adolescent minors and young adults.¹¹⁸ The HIPAA privacy protections for young adults are the same as for other adults: they are entitled to access their health information and to control the disclosure of that information in some circumstances. Additional specific requirements apply to the information of adolescents who are minors. Throughout this section, the rule will be referred to interchangeably as both the HIPAA Privacy Rule and HIPAA.

Who is required to comply with the HIPAA Privacy Rule?

The HIPAA Privacy Rule protects the privacy of specific types of patient health information held by specific individuals, organizations, and systems that are “covered entities” including: health plans, health care providers, and health care clearinghouses.

Healthcare providers who “transmit health information in electronic form” are “covered entities” and must comply with HIPAA.¹¹⁹ “Healthcare providers” include individual providers such as physicians, nurses, clinical social workers, and other medical and mental health practitioners, as well as hospitals, clinics, and other organizations.¹²⁰

What information does the HIPAA Privacy Rule protect?

The HIPAA Privacy Rule imposes limits on the disclosure of patients’ “protected health information” (PHI).¹²¹ The definition of PHI is broad and includes individually identifiable information—about the health, provision of health care, or payment for health care of an individual—created or received by a healthcare provider, health plan, employer, or health care clearinghouse in any form, including oral communications as well as written or electronically transmitted information.¹²² PHI includes both health and mental health information but has special provisions for “psychotherapy notes.”¹²³ HIPAA does not limit the disclosure of health information that is not individually identifiable, also known as “de-identified information.”¹²⁴

What are the requirements for disclosure of PHI under HIPAA?

For disclosure of PHI, the HIPAA Privacy Rule generally requires a written release signed by someone legally authorized to do so.¹²⁵ Adults, including adolescents who are young adults over the age of 18, usually sign for themselves. Parents or guardians usually sign for their unemancipated minor children, unless the child is considered an “individual” under HIPAA, when special requirements may apply, as noted below.

The HIPAA Privacy Rule contains exceptions that either allow or require disclosure of PHI without a written authorization, provided certain requirements are satisfied.¹²⁶ These exceptions, among others, include disclosures:

- For treatment, payment, and healthcare operations¹²⁷
- To avert a serious and imminent threat¹²⁸
- For research purposes¹²⁹
- To public health authorities as required by law¹³⁰
- To report child abuse as required by law¹³¹
- To protect victims of domestic violence¹³²

For purposes of the exception allowing disclosure for treatment purposes without a written authorization, *treatment* is defined as: “the provision, coordination, or management of health care and related services by one or more health care providers; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.”

For situations in which a written authorization is legally required, and also when health care providers choose to obtain an authorization even in situations covered by one of the exceptions, it is important to know who is legally authorized to sign the authorization. This might be a young adult for themselves, a parent or guardian for an unemancipated minor child, or an adolescent minor who is considered to be an “individual” under HIPAA.

When are adolescent minors considered “individuals” under HIPAA?

The HIPAA Privacy Rule treats minors as “individuals” who are able to exercise rights over their own protected health information (PHI) in three specific situations:

- the minor is legally authorized to consent for their care and does so, **or**
- the minor lawfully may obtain care without the consent of a parent or person acting in place of the parent such as a legal guardian, and the minor, a court, or another person authorized by law consents for the care, **or**
- a parent, guardian, or person acting in place of a parent assents to an agreement of confidentiality between the minor and the health care provider.¹³³

Who must sign a release of PHI when a minor is considered the individual?

Generally, the HIPAA Privacy Rule treats parents as the “authorized representative” of their unemancipated minor children, including adolescents, giving them access to their PHI and requiring their signature to authorize disclosure. However, when minors are considered “individuals,” their parents are not necessarily their authorized representative. When a minor is considered the individual, the minor’s signature would be required to release their PHI unless they have agreed to have their parent, guardian, or person acting as a parent to be their authorized representative.

Disclosing PHI to school personnel who referred a student to the school-based health center (SBHC):

Points to Consider

- What type of follow-up information is requested?
- Is the requested information PHI that requires a signed release?
- What services did the student receive?
- Is the student considered the individual under HIPAA?
- Whose signature would be required on a release?

Do parents have access to adolescent minors’ PHI?

On the issue of when parents may have access to PHI for minors who are considered “individuals” and who have consented to their own care, the HIPAA Privacy Rule defers to other laws. Parents’ access to their adolescent minor child’s information in these circumstances depends on “state or other law.”¹³⁴

Thus, a health care provider must look to state laws or other laws to determine whether they specifically address the confidentiality or disclosure of a minor's health information to a parent. State or other laws that explicitly require, permit, or prohibit disclosure of information to a parent are controlling.¹³⁵ If state or other laws are silent on the question of parents' access, a health care provider exercising

Importance of Online Patient Portals

In addition to the specific requirements of the HIPAA Privacy Rule along with state and other laws, in order to understand when parents have access to their adolescent minors' confidential health information, it is essential to understand the practical effects of online patient portals and how they are set up. In Michigan, it is now quite customary for access to information in a minor patient's online portal to be limited to the patient on the minor patient's 14th birthday. Advance discussion, before the patient's 14th birthday, with the patient and parent/guardian would provide understanding about the extent of confidentiality protections and access to confidential information.

professional judgment has discretion to determine whether or not to grant access.¹³⁶ The relevant sources of state or other law that a health care provider must consider include all of the state and federal laws that contain confidentiality protections.

When is a parent's access to a minor's PHI limited?

In addition to those situations where an adolescent minor is considered the individual and their parents' access to their health information might be limited due to requirements of state laws, or other laws, there are two specific circumstances in which a parent's access to a minor's PHI may be limited by what is sometimes referred to as the "safety exception." This is applicable when a parent would otherwise have access, but the health care provider may decide not to disclose because:

- the provider has a reasonable belief that the minor has been or may be subject to domestic violence, abuse, or neglect by the parent, **or**
- giving the parent the right to access to the minor's medical information could endanger the minor, **and** the provider—in the exercise of professional judgment—decides that it is not in the best interest of the minor to provide the parent with access to the minor's medical information.¹³⁷

Does the HIPAA Privacy Rule allow adolescents to request special confidentiality protections?

Additional provisions of the HIPAA Privacy Rule that are important for adolescents are those that allow individuals to request restrictions on the disclosure of their PHI and to request that communications regarding their PHI occur in a confidential manner.¹³⁸ The right to request special confidentiality protections may be exercised both by young adults and by adolescent minors who are considered to be individuals under the HIPAA Privacy Rule. Other protections address situations in which disclosure may be restricted to protect individuals who may be at risk for domestic violence or child abuse.¹³⁹

FERPA

How does FERPA affect the legal framework for health care services in a school setting?

When health care services are provided in a school setting, the legal framework for consent to health care for adolescents remains generally the same as in other settings; however, different rules may apply to consent for releasing information, including health information. In a school setting, the HIPAA Privacy Rule requirements must be understood in relation to the requirements of the Family

Educational Rights and Privacy Act (FERPA), a federal statute that, with its implementing regulations, controls the disclosure of the educational records of students at most primary, secondary, and post-secondary schools.¹⁴⁰

Health care professionals who provide services in schools often are uncertain whether they must follow the HIPAA Privacy Rule or FERPA. Two federal agencies—the Department of Health & Human Services and the Department of Education—have issued joint guidance that provides some clarification.^{141, 142} Detailed information about the intersection of HIPAA, FERPA, and state laws is also available in a comprehensive resource guide.¹⁴³

In Michigan, the information and records of health centers operating with Child and Adolescent Health Center (CAHC) grants, are generally subject to HIPAA, not FERPA. Information is not shared between the CAHC and the school unless formal agreements are in place and legally compliant releases have been signed by parents and/or patients. Even so, in specific situations it may be necessary to consult legal counsel to clarify what information may be shared and with whom.

How does the HIPAA Privacy Rule treat education records governed by FERPA?

While the HIPAA Privacy Rule typically controls release of health information created by health care professionals, the HIPAA Privacy rule explicitly *excludes* from its purview health records that are part of an “education record” as that is defined under FERPA.¹⁴⁴ FERPA defines *education record* in a way that sometimes can include health records created by a health care provider (such as a school nurse) employed by or acting on behalf of a school or university.

How do HIPAA and FERPA affect records of school-based and school-linked health centers?



Health information in records created by medical professionals employed by a school may be part of an “education record” and subject to FERPA rather than HIPAA. The most important implication of this is that parents have access to the education records of their minor children. Young adults, beginning at age 18, control access to their own education records under FERPA, including any health information.

Health records created by medical professionals working in a school setting such as a school-based health center (SBHC) but employed by a health entity such as a health department, hospital, or Federally Qualified Health Center (FQHC) would usually be covered by HIPAA, not FERPA. Nevertheless, the issues involving education records, school health records, and the medical records of SBHCs are complex in terms of who has access and who controls disclosure; determinations in individual situations depend on a careful analysis of interaction of FERPA and HIPAA as well as other federal and state laws.^{145, 146, 147} Consultation with legal counsel is often necessary to clarify these complex issues.

Title X Family Planning Program

Does the Title X Family Planning Program offer confidential services for adolescents?

The confidentiality regulations for the federal Title X Family Planning Program are exceptionally strong and have protected adolescents as well as adults for half a century. Federal Title X confidentiality protections take precedence over state requirements for parental consent or notification, allowing minors to receive family planning services at Title X sites without parental involvement.

As of September 2023, the current Title X confidentiality regulation provides:

- (a) All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipient must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client.
- (b) To the extent practical, Title X projects shall encourage family participation. However, Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services.¹⁴⁸

A Texas federal district court recently held that the Title X regulation allowing minor adolescents to receive confidential contraceptive services without parental consent or notification violates the constitutional rights of parents.¹⁴⁹ As of September 2023, that case is currently on appeal to the U.S. Court of Appeals for the 5th Circuit. However, a longstanding decision of the U.S. Court of Appeals for the 6th Circuit, in a Michigan case, held that the provision of confidential family planning services to adolescent minors by a Title X health center without parental consent *did not* violate the constitutional rights of parents.¹⁵⁰ Consultation with legal counsel about the current status of this issue is essential.

Medicaid

Does Medicaid cover confidential family planning services for adolescents?

Federal Medicaid law contains safeguards against disclosure of confidential information. State Medicaid plans are required to provide “safeguards for confidentiality for information concerning applicants and recipients[,]” subject to additional requirements and limitations.¹⁵¹ Medicaid also requires coverage of family planning “services and supplies” for Medicaid enrollees of childbearing age, including “minors who can be considered to be sexually active.”¹⁵² These criteria have been interpreted to provide significant protection for confidential access to family planning services for minors.¹⁵³ State laws and policies also contain varied provisions that help to protect the privacy of Medicaid beneficiaries and their confidential health information. These provisions include both general confidentiality requirements and specific confidentiality protections for information related to family planning services, such as through states’ Medicaid family planning expansions that include coverage

for minors as well as young adults, although Michigan does not currently have a family planning expansion as part of its Medicaid program.¹⁵⁴

“Part 2” – Confidentiality of Substance Use Disorder Records

Do the “Part 2” confidentiality rules for substance use disorder programs protect adolescent minors?

Federal regulations—contained in 42 CFR Part 2 and often referred to as “Part 2”—establish special confidentiality protections for substance use records,^{155,156} they apply to “substance use disorder programs” that meet certain very broad criteria of being “federally assisted.”¹⁵⁷ The definition of a federally assisted program includes not only health care entities but also individual medical personnel whose primary function is providing substance use diagnosis, treatment, or referral.¹⁵⁸



The regulations protect both adolescent minors and young adults. When minors are allowed to consent for substance use disorder treatment under state law, they have independent rights under the federal regulations.¹⁵⁹ For those providers and programs that must comply with the federal rules, the regulations impose strict confidentiality requirements that do not allow disclosure without the consent of the patient except in specific circumstances that pose a substantial threat to the life or physical wellbeing of the patient or another person.¹⁶⁰ To the extent that these federal

regulations are more protective of confidentiality, they take precedence over state law; if they are less protective, state law controls.¹⁶¹

Ryan White HIV/AIDS Program

The Ryan White HIV/AIDS Program (aka “Ryan White”) supports some medical services for patients with HIV.¹⁶² Ryan White generally is a payer of last resort and fills the gaps for individuals with HIV who have no other source of coverage or face coverage limits. Ryan White service providers and patients have significant concerns about confidentiality, but like other federal funding programs such as Title X, the Ryan White law includes strong and explicit confidentiality protections.¹⁶³

Federally Qualified Health Centers

Do the regulations for FQHCs provide confidentiality protections for adolescents?

Federally qualified health centers (FQHCs) funded under Section 330 of the Public Health Service Act,¹⁶⁴ also frequently referred to as “community health centers,” often provide services for adolescents and young adults. For example, some FQHCs operate school-based health centers. FQHCs also are required to provide preventive health services, including voluntary family planning services and many of the preventive services recommended for adolescents and young adults¹⁶⁵ and some FQHCs receive Title X funds to help provide family planning services. FQHCs are required to maintain the confidentiality of patient records¹⁶⁶ and, if they receive Title X Family Planning funds, to comply with Title X confidentiality regulations. The confidentiality regulation for FQHCs¹⁶⁷ contains language almost identical to the Title X confidentiality regulations, although the FQHC confidentiality regulation does not specifically address the issues of parental consent and notification.¹⁶⁸

21st Century Cures Act and Information Blocking

How do the 21st Century Cures Act and its Information Blocking Rule affect adolescents' health information?

The 21st Century Cures Act, enacted in 2016, affects patients, health care providers, payers, technology developers, and other health care and health IT stakeholders. A key requirement of the Act mandated development of rules to enhance patient access to and control of their health data by addressing the blocking of access to and exchange of electronic health information, interoperability, and health IT certification.

The Office of the National Coordinator for Health Information Technology (ONC) developed the regulations, known as the Information Blocking Rule,¹⁶⁹ which became final in 2020, with a compliance date of April 5, 2021. The ONC website contains extensive material about the Rule, including the language of the Rule itself, fact sheets, and FAQs about information blocking.¹⁷⁰ (See additional resources listed in [Appendix D.](#))

The Information Blocking Rule is having a major impact on adolescent health care providers and their patients.¹⁷¹ The Rule prohibits information blocking.^{172,173} The Rule requires health care providers (and other "actors") to provide immediate access to a patient's electronic health information (EHI). This is resulting in a wide array of patient information being rapidly transmitted from EHRs to patient portals, which makes it available not only to adolescent patients themselves but also to anyone, including a parent who has access to their portal account.

The Rule includes eight specific exceptions that allow providers to withhold access to information in certain situations if specific requirements are met. Three exceptions are particularly important for adolescent health care providers and their ability to protect the confidentiality of adolescents' health information: the Preventing Harm Exception, the Privacy Exception, and the Infeasibility Exception. Under the Privacy Exception, withholding information in compliance with federal or state privacy laws is not considered information blocking.

Implementation of the Information Blocking Rule is moving forward rapidly making it important for adolescents' health care providers to understand and implement it in ways that include as much confidentiality protection as possible for adolescents' health information while complying with the requirements of this new rule. Consultation with legal counsel and assistance from information technology (IT) staff are important in this process.

CONSENT AND CONFIDENTIALITY FOR PREVENTIVE SERVICES

What preventive services are recommended for adolescent minors and young adults?

The U.S. Preventive Services Task Force (USPSTF) and Bright Futures have issued recommendations for preventive services for adolescents and young adults. In each category, the specific services recommended by the USPSTF vary for adolescents and for young adults; in Bright Futures the recommendations are for ages 11-21. The Adolescent and Young Adult Health (AYAH) National Resource Center has issued a fact sheet on:

“[Evidence-Based Clinical Preventive Services for Adolescents and Young Adults](#)” that presents the specific services recommended for the different age groups in each category.¹⁷⁴

Recommended Preventive Services for Adolescents

The USPSTF and Bright Futures have recommended clinical preventive services for adolescents and young adults in each of these categories:

- substance use
- sexual and reproductive health
- mental health
- nutrition and exercise
- immunizations
- safety and violence

Are preventive services for adolescent minors confidential?

Many of the preventive services recommended for adolescents fall into categories about which young people have privacy concerns. These include at least some services in all recommended areas of

prevention. Sometimes the privacy concerns are associated with a visit for a specific purpose, such as family planning; on other occasions, concerns about confidentiality arise when sensitive issues, such as STIs, HIV, or substance use, are addressed during a wellness visit.

Not all preventive services raise heightened privacy concerns for adolescents and young adults; but when they do, it is important to understand when confidentiality can—and when it cannot—be assured. For young adults, who are able to consent to their own care and are entitled to the same confidentiality protections as other adults, any preventive health service they receive should be treated as confidential, meaning that information usually should not be disclosed to parents or others without their permission. For adolescent minors, if they are allowed to consent for their own care under the Michigan minor consent laws, they can usually expect confidentiality, subject to any disclosures that are specifically permitted or required by law. For both adolescent minors and young adults, other legal and ethical disclosure obligations, such as when a patient is dangerous to self or others, must be considered. Ultimately, the extent of confidentiality protection for any particular preventive service depends on the service as well as the age and other characteristics of the young person, and sometimes the site where the service is provided and the funding source.

CONSENT AND CONFIDENTIALITY IN SCHOOL-BASED AND SCHOOL-LINKED HEALTH CENTERS

Many of the Michigan and federal laws that determine when adolescent minors are allowed to consent for their own health care and that protect the confidentiality of their health care information apply to the provision of services in school-based and school-linked health centers; they also apply to services provided in other settings, such as primary pediatric care sites. One important difference is that family planning drugs and devices may not be dispensed on public school property.¹⁷⁵ Additional relevant requirements are contained in the program requirements for school-based and school-linked health centers in Michigan.¹⁷⁶ Many of the services provided in these centers are ones to which the Michigan consent and confidentiality laws and related federal laws apply.

What services are required or excluded by the minimum program requirements?

Clinical services are required to include, among others: “confidential services including mental health services, STI diagnosis and treatment and HIV counseling and testing as allowed by state and/or federal law; health education and risk reduction counseling; and referral for other services not available at the health center.”¹⁷⁷ For health centers located on school property, approval by the school administration and local school board is required for the services rendered in the health center.¹⁷⁸

Health centers are not permitted to provide abortion counseling or services or to make referrals for abortion services.¹⁷⁹ Health centers on school property are not allowed to prescribe, dispense, or distribute family planning drugs or devices.¹⁸⁰

What do the minimum program requirements specify about parental consent policies?

For health centers located on school property approval by the school administration and local school board is required for the parental consent policy.¹⁸¹ Local community advisory councils for health centers must approve policies for parental consent.¹⁸²

What do the minimum program requirements say about confidentiality?



Local community advisory councils for health centers must approve policies for release of medical records and release of information that includes the role of the non-custodial parent with joint custody, confidential services as allowed by state or federal law, and disclosures or evidence of physical or sexual abuse or neglect.¹⁸³

“Confidential services as defined by Michigan and/or federal law” include those services that may be obtained by minors without parental consent. They include: mental health counseling, pregnancy testing and services, STI/HIV testing and treatment, substance use disorder counseling and treatment, family planning (excluding contraceptive prescription/distribution on school property).¹⁸⁴

Health centers must have billing and fee collection processes that do not breach the confidentiality of the client.¹⁸⁵

CONCLUSION

Confidentiality in adolescent and young adult health care is an important element in protecting the health of individual young people and the public health. Decades of research have found that privacy protection encourages young people to seek essential health care and speak openly with their health care providers. Research findings have also documented the important role of parents in the health care of adolescents. Many state and federal laws as well as ethical guidelines require confidentiality protection and support the rights of adolescents and young adults to receive confidential health care including many preventive health services. As these laws evolve, ongoing consultation with legal counsel can guide their implementation in ways that support adolescents, their families, and their health care providers.

TABLE 1: MICHIGAN HEALTH CARE CONSENT & CONFIDENTIALITY LAWS FOR MINORS – STATUS*

Michigan Minor Consent & Confidentiality Laws Based on Status			
Status	Consent	Confidentiality & Disclosure	Citations
Unemancipated Minor	Age of majority is 18 years; parental consent generally required for health care provided to unemancipated minor (under age 18 years) unless exceptions apply	Parent generally has access to health information of unemancipated minor unless exceptions apply	MCL §§ 722.1, 722.52
Emancipated Minor	Emancipated minor has the right to authorize their own preventive health care, medical care, dental care, and mental health care	Emancipated minor may authorize their own health care without parental knowledge	MCL §§ 722.4, 722.4e
Married Minor	Married minor has the right to authorize their own preventive health care, medical care, dental care, and mental health care	Married minor may authorize their own health care without parental knowledge	MCL §§ 722.4, 722.4e
Pregnant Minor	Pregnant minor may consent for prenatal and pregnancy related treatment or services intended to maintain the life and improve the health of the minor and her child	Provider has discretion to notify (or not) the putative father or minor's spouse, parent, guardian, or person <i>in loco parentis</i> of health care given or needed; notification must be for medical reasons and may be given without minor's permission, but minor's permission must be requested	MCL § 333.9132
Minor Parent	Minor parent may consent for health care for their child	Provider has discretion to notify (or not) the putative father or minor's spouse, parent, guardian, or person <i>in loco parentis</i> of health care given or needed; notification must be for medical reasons and may be given without minor's permission, but minor's permission must be requested	MCL § 333.9132
Minor in Custody of Law Enforcement	Minor in custody of law enforcement may consent for routine, nonsurgical medical care or emergency medical treatment if minor's parent cannot be promptly located	No confidentiality provision specified	MCL §§ 722.4(2)(d), 722.4e
Minor in Custody of Department of Corrections	Minor prisoner in state or youth correctional facility or probationer in special alternative incarceration unit may consent for preventive health care or medical care including surgery, dental care, or mental health care, except vasectomies or any procedure related to reproduction, if minor's parent cannot be promptly located	No confidentiality provision specified	MCL §§ 722.4(2)(e), 722.4e
Minor on Active Military Service	Minor on active military service has the right to authorize their own preventive health care, medical care, dental care, and mental health care	Minor on active military service may authorize their own health care without parental knowledge	MCL §§ 722.4(2)(c), 722.4e

* This table contains only brief summary information about the laws; more detailed information and selected excerpts of the laws are contained in earlier sections of this guide.

TABLE 2: MICHIGAN HEALTH CARE CONSENT & CONFIDENTIALITY LAWS FOR MINORS – SERVICES*

Michigan Minor Consent & Confidentiality Laws Based on Health Care Services			
Service	Consent	Confidentiality & Disclosure	Citations
Emergency Care	No specific MI statutes explicitly authorize minor consent for emergency care; MI court decisions allow consent to be implied for emergency care in life threatening situations or if immediate medical attention needed and parent cannot be contacted		Zoski v. Gaines, 271 Mich 1 (1935) Franklyn v. Peabody, 249 Mich 363 (1930) Banks v. Wittenberg, 82 Mich App 274 (1978)
Family Planning & Contraception	No specific MI statute; minor's federal constitutional right of privacy related to contraception recognized by U.S. Supreme Court in Carey v. Population Services Int'l (1977)	No specific MI statute; federal appeals court determined parent does not have constitutional right to be notified that minor is seeking or has obtained contraceptives in Doe v. Irwin (1980)	Carey v. Population Services Int'l, 431 U.S. 678 (1977) Doe v. Irwin, 615 F.2d 1162 (6th Cir. 1980) Letter from Stanley D. Steinhorn, Assistant Attorney General of Michigan (1993) (see Appendix B) 42 C.F.R. § 59.10 (see Table 3 regarding Title X Family Planning Program)
Pregnancy Related Care	Minor may consent for prenatal and pregnancy related treatment or services intended to maintain the life and improve the health of the minor and her child	Provider has discretion to notify (or not) the putative father or minor's spouse, parent, guardian, or person <i>in loco parentis</i> of health care given or needed; notification must be for medical reasons and may be given without minor's permission, but minor's permission must be requested	MCL § 333.9132
Abortion	Written parental consent required; exception for emergencies; special provisions related to sexual abuse	Minor may seek court order in "judicial bypass" proceeding to obtain abortion without parental consent or notification	MCL §§ 722.901 - 722.908
Sexually Transmitted Infection (STI)/ HIV	Minor who is or professes to be infected with a STI or HIV may consent for medical or surgical care, treatment, or services by a physician, hospital, or clinic	Provider has discretion to notify (or not) the minor's spouse, parent, guardian, or person <i>in loco parentis</i> of health care given or needed; notification must be for medical reasons and may be given without minor's permission, but minor's permission must be requested	MCL § 333.5127
Mental Health - Inpatient	Minor found suitable for hospitalization may be admitted for inpatient mental health care based on request by a parent or by a minor age 14 or older	Detailed requirements specified are related to parent involvement, contact, knowledge	MCL §§ 330.1498a - 330.1498t
Mental Health - Outpatient	Minor age 14 or older may consent for outpatient mental health services; services limited to 12 visits or up to four months without parental consent	Minor's parent or guardian may not be informed of services without minor's consent, unless mental health professional determines that compelling need for disclosure exists based on substantial probability of harm to minor or other persons; mental health provider must notify minor of intent to inform minor's parent or guardian	MCL § 330.1707
Substance Use Disorder (SUD)	Minor who has or professes to have a SUD may consent for medical or surgical care, treatment, or services related to the substance use disorder	Provider has discretion to notify (or not) the minor's spouse, parent, guardian, or person <i>in loco parentis</i> of health care given or needed; notification must be for medical reasons and may be given without minor's permission	MCL § 330.1264; see MCL §§ 1265-1268 regarding procedures when parent requests services for minor (see Table 3 for information about federal Part 2 SUD confidentiality regulations)

* This table contains only brief summary information about the laws; more detailed information and selected excerpts of the laws are contained in earlier sections of this guide.

TABLE 3: MICHIGAN & FEDERAL CONFIDENTIALITY LAWS FOR ADOLESCENT MINORS & YOUNG ADULTS*

Michigan Laws Related to Privacy Confidentiality, Disclosure, & Reporting		
Law	Select Provisions Related to Privacy, Confidentiality, Disclosure, & Reporting	Citations
Medical Records Access Act (Michigan)	Emancipated minor or minor who lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting <i>in loco parentis</i> has the exclusive right to exercise the rights of a patient with respect to medical records relating to that care	MCL §§ 333.26261 - 333.26271
Child Protection Law (Michigan)	Reporting of a wide range of child abuse and neglect is required by a significant number of health care providers	MCL §§ 722.621 et seq.
Reporting of Communicable Diseases (Michigan)	Specific communicable diseases, disabilities, and conditions are required to be reported; confidentiality protections and disclosure requirements apply	MCL §§ 333.5111, 333.5131; MAC R. §§ 325.171 et seq.
Federal Laws Related to Privacy, Confidentiality, Disclosure, & Reporting		
Law	Scope of Protection/Limitations	Citations
HIPAA Privacy Rule - minor as individual	Minor who consents, or whose parent accedes to confidentiality, is an "individual" with control over their own protected health information (PHI)	45 C.F.R. § 164.502(g)(3)
HIPAA Privacy Rule - parent as personal representative	Parent is not necessarily the personal representative when minors have consented to their own care; parent may not be personal representative if minor is subject of domestic violence, abuse, neglect, or endangerment	45 C.F.R. § 164.502(g)(3) 45 C.F.R. § 164.502(g)(5)
HIPAA Privacy Rule - parents' access	Parents' access to PHI when minor is the "individual" depends on other state and federal laws; parental access may be denied if health care professional determines it would cause substantial harm to minor or another individual	45 C.F.R. § 164.502(g)(3) and §164.524(a)(3)(iii)
21st Century Cures Act Information Blocking Rule	Rule requires that patients have "immediate access" to their electronic health information (EHI) in response to patient requests subject to several exceptions, including a "Privacy" exception and a "Preventing Harm" exception	85 Fed. Reg. 25642 (May 1, 2020) 45 C.F.R. Parts 170, 171
FERPA	Information about health services provided by a school may be included in a student's "education records"; education records are subject to FERPA, not HIPAA; parents have access to minors' education records	20 U.S.C §1232g 34 C.F.R. Part 99 45 C.F.R. § 160.103
Title X Family Planning	Information about family planning services received at Title X funded sites is confidential and may only be disclosed with the minor's permission or if required by law	42 C.F.R. § 59.10
Medicaid	Adolescent minors who are eligible for Medicaid may receive confidential family planning services funded by Medicaid	42 U.S.C. § 1396a(a)(7), 42 U.S.C. § 1396d(a)(4)(C)
"Part 2" - Confidentiality of Substance Use Disorder Records	In federally assisted "Part 2" programs, when patient consent is required for disclosure, it must be obtained from minor who is authorized under state law to consent for alcohol or drug abuse treatment, unless a specific exception applies; disclosure to parents may occur only if minor lacks capacity for rational choice due to extreme youth, physical incapacity, or substantial threat to minor or another	42 C.F.R. Part 2 42 C.F.R. § 2.14

* This table contains only brief summary information about the laws; more detailed information about the laws is contained in earlier sections of this guide.

APPENDIX A:

KEY QUESTIONS WHEN CONSIDERING CONFIDENTIALITY PROTECTION FOR ADOLESCENTS

This appendix contains questions that are important to consider in order to determine whether an individual young person in Michigan can obtain a particular service confidentially. These questions are based on the Michigan and federal laws that establish consent requirements and confidentiality protections for adolescent and young adult health services. The answer to each of these questions may influence what confidentiality and disclosure requirements apply. Depending on the specific situation, additional considerations and laws not discussed in this guide may affect whether the young person may receive confidential services. In specific situations, guidance from legal counsel will be important.

- Is the youth an adult or a minor?
 - Young adults are generally able to consent for their own care and are entitled to the same confidentiality protections as other adults.
 - Minor adolescents may be able to consent for their own care based on their status or the services they are seeking; confidentiality protection may depend on whether they can consent for their own care, the specific service they receive, where they receive the service, and the source of the payment.
- If the young person is a minor, what is their status?
 - Emancipated
 - Married
 - A parent
 - Serving in military
 - In law enforcement or corrections custody
- What service is the young person seeking?
 - Contraception or family planning services
 - Prenatal or pregnancy related care
 - STI services
 - HIV/AIDS services
 - Mental health services
 - Substance use disorder services
- Where is the service being provided?
 - School-based or school-linked health center
 - General medical office, health center, or hospital outpatient clinic
 - Title X funded family planning health center
 - “Part 2” substance use disorder treatment program
- What is the source of the payment?
 - Private/commercial health insurance
 - Self-pay
 - Parent payment
 - Medicaid
 - Title X Family Planning Program
 - Michigan state funding

APPENDIX B:

RESOURCES FOR ADOLESCENT HEALTH & THE LAW IN MICHIGAN

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- U.S. Dept. of Health & Human Services, Admin. for Children & Families. Child Welfare Information Gateway. State Statutes Search: Michigan. <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main.getResults>.
- U.S. Dept. of Health & Human Services, U.S. Dept. of Education. Joint Guidance on the Application of the Federal Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 to Student Health Records. December 2019 Update.
<https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf>.

APPENDIX C:

RESOURCES ON CONFIDENTIALITY, HEALTH INSURANCE, & ELECTRONIC HEALTH RECORDS

Confidentiality & Insurance

Extensive resources on confidentiality and insurance were developed by the National Family Planning & Reproductive Health Association (NFPRHA) as part of a three-year research project, Confidential & Covered. These resources are available on the NFPRHA website at <https://www.nationalfamilyplanning.org/confidentiality>.

The following publications on that website specifically address legal and policy issues related to confidentiality and insurance:

English A, Summers R, Lewis J, Coleman C. Confidentiality, Third-Party Billing, & the Health Insurance Claims Process: Implications for Title X (2015)

English A, Mulligan A, Coleman C. Protecting Patients' Privacy in Health Insurance Billing & Claims: An Illinois Profile (2017) [Note: Similar profiles were published for 5 other states studied as part of the Confidential & Covered project: Maryland and Oregon in 2017; California, Colorado, and Washington in 2016]

Lewis J, Summers R, English A, Coleman C. Proactive Policies to Protect Patients in the Health Insurance Claims Process (2015)

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Confidentiality & Electronic Health Records

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APPENDIX D:

RESOURCES ON 21ST CENTURY CURES ACT AND INFORMATION BLOCKING RULE

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APPENDIX E:

SELECTED AYAH CONFIDENTIALITY STUDIES AND REPORTS—A BIBLIOGRAPHY

This appendix lists selected articles and reports from the past three decades that form an important part of the evidence base of research findings supporting confidentiality in adolescent and young adult health care.

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¹⁶⁵ 42 U.S.C. § 254b(a)(1)(A) and (b)(1)(A)(i)(III).

¹⁶⁶ 42 U.S.C. § 254b(k)(3)(C).

¹⁶⁷ 42 C.F.R. § 51c.110.

¹⁶⁸ 42 C.F.R. § 59.10.

¹⁶⁹ 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program. 85 Fed. Reg. 25642, May 1, 2020. <https://www.govinfo.gov/content/pkg/FR-2020-05-01/pdf/2020-07419.pdf>. Codified at 45 C.F.R. Parts 170 and 171.

¹⁷⁰ ONC Cures Act Final Rule. <https://www.healthit.gov/curesrule/>.

¹⁷¹ Pasternak RH, Alderman EM, English A. 21st Century Cures Act ONC Rule: Implications for Adolescent Care and Confidentiality Protections. *Pediatrics* 2023;151:S1-S10. <https://doi.org/10.1542/peds.2022-057267K>.

¹⁷² 45 C.F.R. § 171.102.

¹⁷³ American Medical Association, What is information blocking? n.d. <https://www.ama-assn.org/system/files/2020-11/information-blocking-part-1.pdf>.

¹⁷⁴ AYAH Resource Center. Evidence-Based Clinical Preventive Services for Adolescents & Young Adults. http://nahic.ucsf.edu/wp-content/uploads/2016/03/March-2016_AYAHNRC_evidence.V3.pdf.

¹⁷⁵ MCL § 380.1507.

¹⁷⁶ MDHHS. Minimum Program Requirements for Child and Adolescent Health Centers: Clinical and Alternative Clinical Models (effective October 1, 2022). <https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder2/Folder83/Folder1/Folder183/Clinical-MPR.pdf?rev=b6062509373f4e73ba30981b75403d75&hash=AE9734E8EE2AFD4CCB5EC57251622DE2>.

¹⁷⁷ Minimum Program Requirements § 1.a.

¹⁷⁸ Minimum Program Requirements § 6.d.

¹⁷⁹ Minimum Program Requirements § 2.

¹⁸⁰ Minimum Program Requirements § 3.

¹⁸¹ Minimum Program Requirements § 6.c.

¹⁸² Minimum Program Requirements § 13.e.1.

¹⁸³ Minimum Program Requirements § 13.e.2-4.

¹⁸⁴ Minimum Program Requirements Attachment 1: Services Detail.

¹⁸⁵ Minimum Program Requirements § 19.

NOTES



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