

# Youth Awareness of a Minor's Right to Access Reproductive Health Services Independently

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## Introduction

Recent data from the Section of Family Planning & Contraceptive Research suggests that youth need more information about their ability to access reproductive health care services on their own. This brief highlights findings from a recent study conducted in spring of 2011 in Illinois. The study revealed that a number of teens were not aware that Illinois minors could legally access the following services without parental permission: medical care when pregnant, contraception, abortion, and testing and treatment for sexually transmitted infections (STIs). Special laws grant minors access to these services; this brief explores the reasons for such laws and the importance of teen awareness in serving the purpose of the laws. The study findings suggest that more should be done to educate teens so they will be encouraged to seek care.

## Why Can Minors Access Reproductive Health Services On Their Own?

Typically, a minor needs parental consent to obtain medical care. However, all 50 states have laws that allow minors to consent to certain reproductive health services on their own.<sup>1</sup> While many minors do involve a parent when seeking reproductive health care services,<sup>2-6</sup> minor consent laws recognize that some adolescents may not seek needed health care if they are forced to involve a parent. Such laws aim to improve health outcomes given that more than 40% of adolescents in the United States have had sex by age 18<sup>7</sup> and where, in one recent year, there were 769,000 pregnancies among young women aged 15-19, most unintended.<sup>8</sup> In addition, 15-24-year-olds account for nearly half of all new STIs, including HIV, diagnosed annually in the United States.<sup>9</sup>

These facts and related research findings support laws allowing minor consent for reproductive health services. Studies have shown that youth may forego needed health care due to concerns about privacy and confidentiality.<sup>10,11</sup> Studies have also shown that most 15, 16 and 17-year-olds – and sometimes younger teens – possess the cognitive and emotional maturity

to understand the consequences of their health decisions and give informed consent.<sup>10,12,13</sup>

Furthermore, court decisions have established that the constitutional right to privacy encompasses minors' reproductive decisions, including a minor's right to certain reproductive health care such as contraceptive services and abortion.<sup>14-17</sup> While a minor's right to privacy is not absolute and the state has more authority to restrict that privacy than it does with adults, there are still strong federal privacy protections in place. This federal legal framework supports state consent laws and suggests that a minor could argue for independent access to abortion and contraception even in a state that does not have a special consent law.

## What do State Minor Consent Laws Look Like?

State laws governing minor consent for reproductive health care are usually based on one of four factors: (1) the status of the minor; (2) the services sought; (3) court-recognized emancipation, or; (4) the "mature minor" doctrine. State consent laws based on *status* are, for example, those that allow a minor to consent to care if she is pregnant or a parent; in some states the minor may only be able to consent to care related to the pregnancy or the child. Some state laws allow for consent when the minor is seeking a particular *service*, such as STI testing or contraception.

An *emancipated* minor is often able to make his or her own medical decisions. All states have laws dealing with the emancipation of minors. Many states have statutes that describe the circumstances when a minor may be found emancipated, a process usually done through a court proceeding.<sup>\*\*</sup> In some cases, a judge may declare a minor fully emancipated, in other cases he or she may be emancipated only for certain purposes.

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\* In Illinois, a mature minor may be found emancipated by the court if the person is 16 years of age or over and has demonstrated "the ability and capacity to manage his own affairs and to live wholly or partially independent of his parents or guardian." Emancipation of Minors Act, 750 ILCS 30.

## MINOR CONSENT LAWS ACROSS THE STATES

### STI Services

All 50 states and the District of Columbia explicitly allow minors to consent to STI testing and treatment, although 11 states have a minimum age requirement (generally 12 or 14) before a minor can consent.<sup>18</sup> Eighteen states allow physicians to inform a minor's parents that he or she is seeking STI services.

### Prenatal Care

The majority of states currently allow a minor to obtain prenatal care, including regular medical visits and routine services for labor and delivery. Thirty-seven states have a law regarding a minor's ability to access prenatal care, while 13 states have no explicit policy.<sup>19</sup> Some of these states, however, allow physicians to inform parents that their minor daughter is seeking or receiving services when they deem it in the best interests of the minor.<sup>19</sup> In states that lack relevant policy or case law, physicians may commonly provide medical care to a mature minor without parental consent, particularly if the state allows minors to consent to related health services.

### Contraception

Twenty-one states and the District of Columbia explicitly allow all minors to consent to contraceptive services while 25 states explicitly permit minors to consent to under one or more specific circumstances.<sup>20</sup> These circumstances include when the minor is married, a parent, is or has been pregnant, if the minor would otherwise face a health hazard, or if the minor meets other requirements such as a minimum age, high school graduate, demonstrating maturity, or receiving a referral from specific professions (e.g. clergy or physician). Four states have no explicit policy regarding a minor's ability to consent to contraceptive services.

### Abortion

Currently, 36 states require some parental involvement in a minor's decision to have an abortion; 22 states require parental consent, 11 states require parental notification, and four states require both consent and notification.<sup>21</sup> Of the 36 states requiring parental involvement, six permit a minor to obtain an abortion if a grandparent or other adult relative is involved in the decision and 35 have an established judicial bypass system whereby a minor may petition the court for a waiver of notification or consent.

Most states include exceptions to mandated parental involvement, including for medical emergencies (32 states) or in the case of abuse, assault, incest or neglect (16 states).<sup>21</sup>

Finally, the “mature minor” doctrine is a product of common law that provides a historical basis for minor consent statutes. It is a legal concept which suggests that an adolescent who demonstrates maturity and decision-making capacity can consent to care when the procedure entails minimal risk and is within mainstream medical care.<sup>11,22</sup> In Illinois, the state supreme court applied the mature minor doctrine in a 1989 case<sup>23</sup> and the court's decision offers guidance on when the doctrine may be applied in future cases. However, physicians determining whether to provide reproductive health care to minors without parental consent will most likely look to state statutes for guidance before relying on the less well-defined mature minor doctrine.

Current statutes in Illinois allow minors to consent to several reproductive health services without involving a parent or guardian:

- Testing and treatment for STIs if 12 years of age or older;<sup>24</sup>
- Contraception services (including pregnancy testing);<sup>25</sup>
- Abortion services;<sup>24</sup> and
- Prenatal or other healthcare if the minor is pregnant;<sup>24</sup>

In addition, physicians may treat a minor patient in an emergency situation where there is not sufficient time to consult a parent.<sup>24</sup> These consent laws were enacted to grant youth opportunities to seek health care in certain situations without the fear that parental consent will be a barrier. However, in order to serve the underlying goal of the laws, youth must first be aware of their rights under them.

## What Do Youth Know About Their Rights?

As part of a larger study exploring parent-daughter communication regarding adolescent sexual health, we wanted to know if adolescent participants knew about their ability to seek reproductive health care without parental permission. We surveyed 286 African-American teen girls who were between the ages of 14 – 17 and currently attending one of three Chicago charter schools located on the South Side. The median age of the participants was 15.

The survey asked participants to answer a series of questions in order to capture their understanding of the existing laws (Figure 1). The survey asked participants to mark “yes”, “no”, or “no idea” when prompted with a statement such as, “In the State of Illinois, do you think a female age 17 or younger needs her parent's permission to get birth control?” In response to this particular question, 60% (n=172) correctly answered “no”, 35% (n=99) incorrectly answered “yes”, and 5% (n=13) had “no idea.” In sum, this means that 40% of respondents did not correctly identify that minors could obtain contraception services without involving a parent.

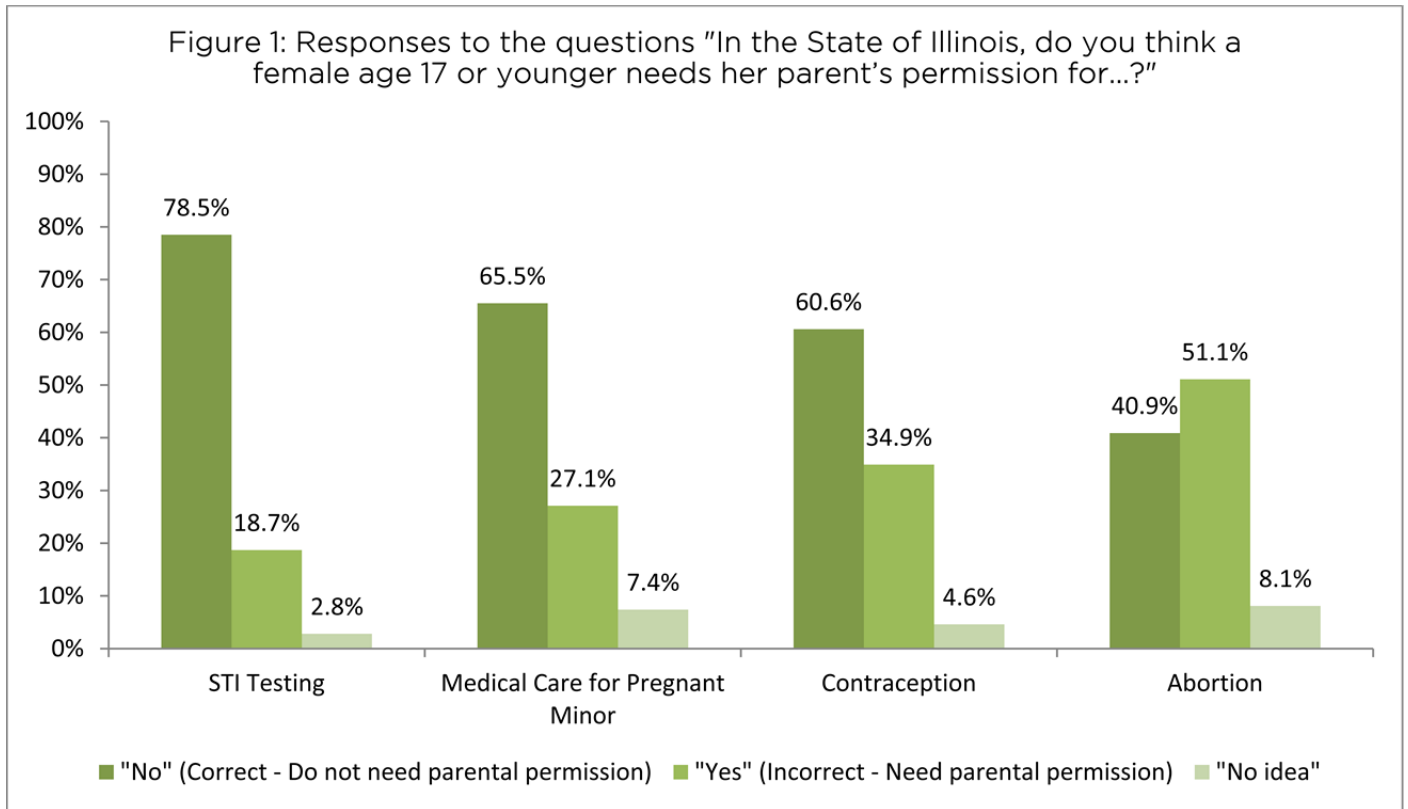
Participants responded to three other similarly-worded questions about STI testing, medical care for a pregnant minor, and abortion. Knowledge was stronger regarding STI testing; only 18% (n=53) incorrectly believed that minors needed parental permission. At the same time, 27% (n=77) incorrectly thought a pregnant minor needed parental permission to seek medical care. Participants had the least knowledge about a minor's ability to obtain an abortion; 51% (n=145) incorrectly believed that a minor needed permission and 8% (n=23) had "no idea." Together, this means that nearly 60% of the study participants did not correctly identify that a minor could obtain an abortion without parental involvement in Illinois.

These gaps in knowledge are particularly striking given that nearly 50% of the respondents reported that they had been sexually active. However, those who had been sexually active were nearly two times (OR=1.96, 95% CI 1.22-3.18) more likely to know that minors could access abortion without involving a parent and more than four times (OR=4.58, 95% CI 2.73-7.71) as likely to know that minors could access contraception without a parent. While the trend regarding contraception is encouraging, it is unclear whether the teens knew about their ability to access contraception before they became sexually active. Older participants were more likely (OR=1.36, 95% CI 1.01-1.85) to know that minors could access STI testing on their own.

The teens in the study also answered questions about how much information they have received from their parents regarding sex, birth control, STIs and abortion. There was no clear relationship between receiving "a medium amount" to "a lot" of information (versus "none" or "a little") and correctly answering questions about a minor's ability to consent to reproductive care. This finding suggests that parents could be unaware of minor consent laws or choosing not to share information with teens about their ability to seek care on their own. While parents likely prefer that minor children discuss their desire to seek reproductive health care, parents could still inform adolescents that they do have the ability to seek that care independently if they are unable or unwilling to involve a parent.

This study focuses on a particular population and results cannot be generalized for all Illinois adolescents; however, the findings do suggest that teens are in need of more information about their ability to seek reproductive health care independently. Lack of knowledge about a minor's ability to access services without the consent of a parent or guardian has been shown to be a barrier to care.<sup>26</sup>

Since consent laws reflect exceptions to the law on minor medical consent, and since these exceptions were enacted specifically to improve adolescent and public health outcomes, young people should be better educated about their rights.



## Does Right to Consent Mean Right to Confidentiality?

The laws discussed above grant minors the legal capacity to consent to care on their own. However, it is important to note that granting a minor the ability to consent to treatment does not necessarily guarantee confidentiality regarding that treatment. Studies have shown that the ability to seek confidential care is important to young people; confidentiality protections can improve the chances that teens will receive needed care, while privacy concerns can serve as a barrier to access.<sup>2,10,11,27-35</sup> Teens have reported resistance to telling a parent as well as concern that parents will be informed; studies have shown that these concerns can affect their decision to seek care.<sup>2,11,27,34,35</sup> Adolescent concerns about confidential care can lead them to delay or forgo seeking health care,<sup>27,35</sup> affect their choice of provider,<sup>31,36</sup> impact their willingness to candidly disclose sensitive information,<sup>32</sup> and influence their acceptance of certain services.<sup>37-39</sup> Delays and foregone care associated with the loss of confidentiality may also result in higher rates of teen pregnancy and STIs, along with associated economic costs.<sup>34,40,41</sup>

For these reasons, numerous leading professional medical organizations support confidential care for adolescent patients, while also encouraging family communication and compliance with the law.<sup>42-46</sup>

When educating Illinois youth about their ability to access reproductive healthcare without parental consent, it should be pointed out that access to completely confidential care is a more complicated issue. Rules governing confidential care for a minor stem from federal and state laws, regulations, and professional practice. For instance, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) plays a key role and has rules that apply specifically to minors. While generally protecting health information for any patient who is able to consent to his or her own care, the HIPAA Privacy Rule defers to state laws when it comes to a parent's ability to access medical information.<sup>47-49</sup> When state laws are silent, it may be left to the discretion of the treating physician under HIPAA.<sup>†</sup>

In addition to HIPAA and state laws, other rules and practices influence confidentiality. The Family Education Rights and Privacy Act (FERPA) is a federal rule that allows parents access to a minor's school records, which could mean access to any health information filed with school records; however, records in school-based clinics would not usually be considered part of

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<sup>†</sup> For more information on HIPAA rules and minors, see English, A & Ford, C, "The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges," *Perspectives on Sexual and Reproductive Health*, 36:2 (2004) and Rosenbaum, S, et al., "Health Information Law in the Context of Minors," *Pediatrics*, 123:2 (2009).

a student's educational record. Other system-based factors can interfere with confidentiality; for example, if a minor uses a parent's insurance coverage to pay for care, an explanation of benefits detailing the care may be sent to the parents if the youth does not request otherwise. At the same time, certain requirements attached to federal funding, including Medicaid and Title X, contain specific confidentiality protections for minors receiving care through these programs.

Given the complex nature of confidentiality protections and the important role that confidentiality plays for minors seeking health care, clinicians should be knowledgeable about the laws and regulations governing confidentiality in their practice.<sup>‡</sup>

## What Can Be Done To Increase Awareness?

More should be done to educate youth about their ability to access reproductive health care services on their own if the goals of minor consent laws are to be fulfilled. This information could be included as a part of health education curricula in schools. Clinics could also make sure to provide this information to teen patients, whether during visits or by means of pamphlets or other take-home information. Parents can also make sure that teens know they can seek reproductive health care on their own while still encouraging their children to talk to them about any sexual health concerns. Along with education about their rights, youth should be given information about where they can seek reproductive health services, including free services, and situations where their care may or may not be kept confidential.

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<sup>‡</sup> For example, in Illinois, the law allowing minors to consent to birth control services does not mention confidentiality; under HIPAA, this would mean a provider has discretion. At the same time, if that provider is seeing patients in a Title X clinic, he or she must follow the Title X confidentiality guidelines.

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