

Frequently Asked Questions:
New York State Public Health Law Article 23
and Title 10, New York Codes, Rules and Regulations – Section 23
Guidance for Local Health Departments (LHD) and Health Care Providers

New York State Public Health Law and Regulations related to sexually transmitted disease (STD) testing and treatment have evolved over the years to keep pace with changes in clinical practice and the healthcare environment. Key updates were adopted in 2013, 2016 and 2017 to better serve New Yorkers at risk for STD acquisition. This document incorporates all developments since 2013, and represents the current regulatory landscape.

How to use this document:

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Additional questions should be directed to the Bureau of STD Prevention and Epidemiology at stdc@health.ny.gov or (518) 474-3598.

Background and Legislative History

1. When did changes to the law go into effect?

- A. Amendments to Public Health Law Article 23 were enacted with the passage of the State Budget on April 3, 2013 and the changes became effective immediately.
 - a. These amendments allow local health departments to bill insurance providers for STD clinical services.
 - b. The amendments also permit data sharing of STD information within or between state and local public health disease programs to assess co-morbidity and direct program needs.
- B. Updated Regulations (Part 23) were enacted May 18, 2016. These regulations:
 - a. Expand minor's consent to include preventative treatment, including HPV vaccination.
 - b. Include physician assistants as providers, and
 - c. Exclude HIV co-infection from eligibility for expedited partner therapy (EPT).
- C. Updated Regulations (Part 23) were enacted April 12, 2017. These regulations:
 - a. Include HIV as an STD, allowing minors to consent to treatment and prevention.

2. What are the key changes to the law?

- A. The revisions to Article 23 were sought in order to modernize statutory language, repeal outdated provisions and align the legislation with current public health practice. Specific changes include the following:
 - Archaic terminology was updated throughout the document such as changing the term 'venereal disease' to 'sexually transmitted disease'.
 - Sections of the legislation which addressed forced isolation and treatment were removed.
 - County health departments will be able to seek third-party reimbursement for STD-related clinical services that are provided directly or contractually by the county health department.
 - The statutory section pertaining to Expedited Partner Therapy for Chlamydia was set to expire January 1, 2014 but this "sunset clause" was removed thereby making the legislation permanent.
- B. The May 2016 regulatory revisions codify local health department requirements to seek third party reimbursement for STD clinical service delivery to the extent practicable and establish a new section to address minor consent for STD care, treatment and prevention services.

- C. The April 2017 regulatory revisions were sought to expand minor consent for HIV prevention and treatment, thereby bringing HIV prevention and treatment in line with a minor’s ability to consent for clinical STD prevention/treatment.
 - The statutory section pertaining to Expedited Partner Therapy for Chlamydia was clarified to exclude eligibility of patients co-infected with HIV.

Section 1 – STD Clinic Billing – LHD STD Clinics

This section is applicable only to LHD STD clinics, and/or the agencies providing such services through contract with an LHD.

1.1 Are LHDs required to implement billing for STD-related clinical services?

- A. State and local public health programs have experienced reductions in discretionary funding for services. Billing public and commercial third-party payers may offer LHD STD clinics additional revenue to support direct service delivery and offset budget gaps. However, Public Health Law section 2304 requires LHDs to seek reimbursement “to the greatest extent practicable.” LHDs will need to evaluate the costs associated with the development, implementation and maintenance of billing infrastructure and determine if such costs will be offset by the revenue generated.

1.2 What if an LHD STD clinic patient does not want to have a claim submitted to their insurance?

- A. Under the legislation, patients cannot be denied STD diagnosis and treatment services by an LHD if a patient is not willing to provide insurance information.

1.3 Under HIPAA, clinics must provide a Notice of Privacy to patients for signature. Should local health departments obtain a separate patient consent to bill for STD services?

- A. Technically, a separate patient consent form is not necessary under HIPAA; by signing the Notice of Privacy Form, a patient is acknowledging that protected health information may be shared with insurance companies to bill for care.

While not required, clinics may choose to develop a separate consent form that serves to inform the patient that some protected health information collected during the STD clinic visit may be shared with the patient's insurance company. A patient who refuses to allow the insurance company to be billed would not sign this section of the consent form. The following is sample consent language:

“I consent to allow the _____ Department of Public Health to bill my health insurance for the health care services I receive. I understand that some protected health information may be disclosed to my health insurance provider to the extent necessary to reimburse for those services. I understand that my STD Clinic record will remain confidential and protected by NYS Public Health Law Section 2306.”

NYSDOH has issued STD Billing Guidance which addresses strategies for ensuring patient confidentiality in billing practices. The guidance includes templates for waiting room signage and suggested scripts to guide clinic staff conversations with patients about billing and confidentiality. This guidance document is available at: http://www.health.ny.gov/diseases/communicable/std/docs/billing_guidance.pdf

1.4 If a minor who is seeking services has insurance through a parent or guardian but expresses fears of disclosure to the parent/guardian, can we still treat the minor?

- A. Yes, and since only the minor’s income should be included in determining the fee, the minor may owe little or nothing.

1.5 Can a minor seeking services who has insurance through a parent or guardian and is comfortable with this approach request that the explanation of benefits (EOB) be redirected to another address?

- A. Yes, adolescents may contact the health care plan and request that an alternative address be used when issuing an EOB for services provided to the adolescent patient. The adolescent should contact the health plan to determine what procedures or forms are required to request an address change. Furthermore, adolescents should make this request before seeking services in order to allow enough time for the health plan to make the necessary changes to their information system. In some situations, the adolescent has listed the health care provider’s address as the alternative address for EOB notifications. Minors should be advised that Insurance Law §3234(c) allows the primary policyholder to demand an EOB even if one is not required.

Adult children who are covered by their parents’ insurance plan as well as other adults who are concerned about, or at risk of, retaliation from their partner or spouse may also wish to redirect EOBs. Insurance Law 2612(h)(2)(A) and Title 11, Insurance, New York Codes, Rules and Regulations (NYCRR) provide protections for

the redirection of communications from health plans for victims of domestic violence.

1.6 If a person has insurance and does not want to use it, can a sliding fee scale be used?

- A. The patient should be billed for the cost of the services. If the patient cannot pay the full amount of the bill, then it would be appropriate to use a sliding fee scale to attempt to obtain payment for the services rendered. A client cannot be denied services if s/he cannot pay the sliding fee scale.

1.7 If a person has Medicaid coverage, can they request that Medicaid not be billed?

- A. The law does not make any distinction based on type of insurance plan. A person cannot be denied STD diagnosis and treatment services if the patient is not willing to have their insurance billed, regardless of the type of insurance.

1.8 What happens if a patient has a co-pay for services not covered by insurance?

- A. The Affordable Care Act has provisions that require the majority of insurance plans to cover certain preventive services (received in-network) without cost sharing (no co-payment or coinsurance) by the patient (this requirement refers only to plans that are not 'grandfathered'). The Department of Health and Human Services has defined the preventive services to be covered as those services described in the U.S. Preventive Services Task Force (USPSTF) A and B recommendations (available at: <http://www.uspreventiveservicestaskforce.org/uspstf/uspsabrecs.htm>), the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and certain guidelines for infants, children, adolescents and women supported by the Health Resources and Services Administration Guidelines including the American Academy of Pediatrics Bright Futures periodicity guidelines. With respect to STDs, preventive services include but are not limited to Chlamydia screening of women under 25, gonorrhea screening of women, syphilis screening and risk reduction counseling. Clinics should not charge patients a co-pay or coinsurance for these preventive services. These services should be provided to the patient for free with the total cost covered by insurance. For other services, patients may have a financial liability for payment of amounts not covered by insurance.

The National STD Related Technical and Training Assistance Center (STD TAC) provides billing and technical assistance to State and local STD programs. STD TAC has issued an *STD Billing and Reimbursement* toolkit on its website (www.stdtac.org) that includes a guide to billable STD preventive services and CPT codes

<http://stdtac.org/wp-content/uploads/2014/06/List-of-ACA-Preventative-Services-and-CPT-Codes-STDAC.pdf>).

1.9 Do the amendments to Article 23 permit local health departments to bill fee-for-service Medicaid for STD services?

A. Local health departments have been permitted to bill fee-for-service (FFS) Medicaid for HIV counseling and testing in an STD clinic for nearly two decades. The Part 23 regulations that were enacted on May 18, 2016 permit health departments to expand billing of FFS Medicaid to include all STD and other services, i.e., vaccines, provided in the STD clinic.

1.10 Are there alternative reimbursement strategies for local health departments if an insurance company denies a claim for reimbursement and the patient is unwilling to use insurance or unable to cover the cost of an STD visit?

A. In situations where neither the insurance company nor the patient covers the cost of the service, the STD services provided by the local health department are eligible for Article 6 reimbursement. Guidance on the requirements for State Aid reimbursement are provided in the document entitled: “Conditions and Procedures for Article 6 – State Aid for General Public Health Workforce Reimbursement.”

Section 2 – Minor’s Consent to Biomedical STD Prevention Services, including Vaccination

2.1 What do the regulations say about minors?

A. Section 23.4 prohibits the release of medical or billing records by a health care provider to a parent or guardian that might be generated as a result of the minor consenting to STD screening/testing, diagnosis and treatment services. The section also permits health care providers to provide medical care for other STDs to a minor without the consent of the parent or guardian.

2.2 What is the definition of a ‘minor’?

A. A minor is any person under the age of eighteen. A person eighteen or older is an adult. A minor may consent to any type of treatment if the minor is pregnant, parenting, or married. A minor who is pregnant may consent to prenatal care.

2.3 Is it new that minors can request certain STD services without parental consent?

- A. No. Minor consent for STD diagnosis and treatment has been covered by New York State law. The current regulation expands this authority to permit minors to consent to STD medical care which will provide access to vaccinations for STDs and specifically for the Human Papillomavirus (HPV) vaccine.

New York State law also permits minors to receive confidential reproductive health services, HIV testing and treatment, mental health services and substance abuse treatment. For more information on minor consent and HIV treatment, see Section 3.

2.4 Does this mean minors can get all vaccinations without parental consent?

- A. No. The regulations only permit sexually active minors to consent for vaccines to prevent sexually transmitted diseases. Public Health Law section 2311 defines the list of sexually transmitted diseases in New York State and currently, HPV is the only STD on the list for which a vaccine is available.

2.5 Why is minor consent for the HPV vaccine important?

- A. The regulations will help to curb the growing HPV infection rate. In New York State, HPV vaccination coverage continues to fall behind other adolescent vaccination coverage estimates and remains below Healthy People 2020 targets of 80% coverage. Low HPV vaccination rates are leaving another generation of young people vulnerable to preventable cancers.

Most parent(s)/guardian(s) are involved in their children's health care decisions. But not all teens have healthy family relationships, and especially when it comes to sexual and reproductive health care, some teens are unable or unwilling to involve their parent(s)/guardian(s).

Studies have shown that teens will not seek sexual health care services if their confidentiality is compromised. A 2002 study in the Journal of the American Medical Association showed that almost half of sexually active teens visiting a family planning clinic would stop using clinic services if their parents were notified that they were seeking birth control, and another 11% reported that they would delay testing or treatment for STIs, including HIV. Notably, virtually all (99%) reported that they would continue having sex.

2.6 Do any other states allow minor consent for HPV vaccination?

- A. On January 1, 2012, a California law (known as AB 499 or Chapter 652, Statutes of 2011) expanded the legal authority of minors 12 years and older to consent to confidential medical services for the prevention of STDs without their parents' consent. On June 12, 2013, Illinois adopted a regulation to permit minors 12 years of age and older to consent to the diagnosis or treatment of, or vaccination against, an STI (Title 77, Section 693.130).

2.7 Can a minor receive free confidential HPV vaccination through the Vaccines for Children (VFC) Program?

- A. VFC-eligible minors can receive HPV vaccine through their primary medical provider or any other VFC-enrolled provider through the VFC program without parental consent.

Privately-Insured minors: VFC-enrolled providers at family planning and STD clinics may provide VFC HPV vaccine to privately insured minors who are seeking the vaccine without parental consent. Other VFC-enrolled providers in NYS may provide publicly purchased HPV vaccine to privately insured minors who are seeking the vaccine without parental consent if they cannot access their insurance for this purpose. The NYS VFC Program uses state funds to provide HPV vaccine for this underinsured population.

2.8 Does federal law require parental notice or consent for immunizations?

- A. There is no federal law requiring parental consent for immunizations. Federal law does, however, require the Secretary of the Department of Health and Human Services to “develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child or to any other individual receiving a vaccine set forth in the Vaccine Injury Table.” Because HPV is included in the Vaccine Injury Table, health care providers are required to provide these materials to the “legal representative” of the child. This federal law amounts to a notification requirement (in the form of a Vaccine Information Statement or VIS), rather than consent, for a child’s immunization. If the minor is consenting to HPV vaccination without parental consent, the minor would be considered the legal representative and health care providers should give the VIS to the minor.

2.9 Will a minor’s parent or guardian be notified that the HPV vaccination was administered?

- A. While efforts are made to protect the confidentiality of minors, please note that in 2006 New York State established an Immunization Registry Law. This Law requires

health care providers to report all immunizations administered to persons less than 19 years of age, along with the person's immunization histories, to the New York State Department of Health using the New York State Immunization Information System (NYSIIS). This includes the HPV vaccination as there is no exemption to the reporting mandate. The goal of NYSIIS is to establish a complete, accurate, secure, real-time immunization medical record that is easily accessible and promotes public health by fully immunizing all individuals appropriate to age and risk. Minors who independently consent to the HPV vaccination should be advised of this reporting system and further advised that any information reported to the system may be requested by a parent or guardian.

2.10 Who recommends the HPV vaccine?

- A. The HPV vaccine is recommended by the federal Advisory Committee on Immunization Practices (ACIP), a group of medical and public health experts that develops recommendations on how to use vaccines to control diseases in the United States.

The HPV vaccine is also recommended by the Centers for Disease Control and Prevention (CDC), the American Academy of Pediatrics (AAP), American Academy of Family Physicians, and the Society for Adolescent Health and Medicine.

2.11 Is the HPV vaccine covered by insurance?

- A. All private insurance plans regulated by New York State are required to cover the cost of all vaccines recommended by ACIP, including HPV, for patients through the age of 18. All other private insurance plans should be contacted individually to determine their coverage of HPV vaccination.

The VFC Program can help pay for a minor's vaccines if they are 18 or younger, uninsured or underinsured, eligible for Medicaid, or an American Indian or an Alaska Native. For more information, visit

www.health.ny.gov/prevention/immunization/vaccines_for_children.htm.

2.12 Why is the HPV vaccine recommended?

- A. The HPV vaccine is a safe and effective way to protect against the serious health problems that HPV can cause. HPV is the main cause of genital warts in men and women. It can also cause cancers of the cervix, vagina, and vulva in women, cancer of the penis in men, and cancers of the anus and the mouth or throat, in both women and men. Most of these diseases could be prevented with the HPV vaccine.

2.13 What strategies should be used to remind patients of additional required doses with a multi-dose vaccine?

- A. Work with the minor to determine the best method of communication about vaccination reminders and scheduling. Scheduling the next follow up appointment while the minor is at the clinic may be helpful. Providers may wish to encourage young people to add an alert to their mobile phone, to remind them of the appointment. If the phone or the calendar can be accessed by a parent or guardian, they may wish to use a general subject. Provide the minor with information about the clinic hours, locations and telephone number/website address.

Please note that current clinical guidelines indicate that young people who receive at least one dose of HPV vaccination before turning age fifteen need a total of two doses of vaccine to achieve immunity. Young people who do not begin the vaccine series prior to turning age fifteen need the full three dose vaccine series.

Section 3 – Minor’s Consent and Billing for STD Clinical Services and HIV Treatment

Guidance in this section is intended for health care providers in settings other than local health departments or their contractual partners, and may vary from guidance to local health departments in Section 1.

3.1 If a minor does not want their parent/guardian(s) to be informed that they are being tested or treated for an STD, are taking PrEP/PEP for HIV prevention, or are being treated for HIV, what can be done to stop an insurance explanation of benefits form (EOB) from being sent to the parent’s address?

- A. Minors may contact the health care plan and request that an alternative address be used when issuing an EOB for services provided to the adolescent patient. The adolescent, with assistance from a health or support services provider when possible, should contact the health plan to determine what procedures or forms are required to request an address change. Minors should make this request before seeking billable health care services, in order to allow time for the health plan to make the necessary changes to their information systems. In some situations, the adolescent may list the health care provider’s address as the alternative address for EOB notifications.

Minors should be advised that NYS Insurance Law §3234(c) allows the primary policyholder to demand an EOB even if one is not required. Adult children who are covered by their parent’s insurance plan, as well as other adults who are concerned

about, or at risk of, retaliation from their partner or spouse may also wish to redirect EOBs. Insurance Law §2612(h)(2)(A) and 10 NYCRR 244.3 provide protections for the redirection of communications from health plans for victims of domestic violence.

Section 4 – Minor’s Consent and HIV Testing, Treatment and Pre-Exposure/Post-Exposure Prophylaxis (PrEP/PEP)

4.1 Does the change in public health law mean that clinical providers should not seek to engage the parents of a minor in the minor’s HIV health care or HIV prevention decisions?

A. The change in public health law means that minors have the ability to consent to their own HIV treatment and prevention services, without the involvement of a parent/guardian. Clinical providers may, over time, discuss with their minor patients’ opportunities for parental/guardian involvement in these decisions, including exploring with the young person the potential benefits of parental/guardian involvement. However, decisions about the involvement of a young person’s parent(s)/guardian(s) must be left to the young person. Clinical providers should maintain a high level of sensitivity to the concerns of the young person regarding potential negative consequences of involvement of the parent(s)/ guardian. Discussions about whether to involve parents/guardians should never result in a delay in starting HIV treatment or prevention services.

4.2 What can providers communicate to young people who consent to PrEP about their ability to access financial assistance to pay for PrEP?

A. Regardless of age, many people benefit from assistance with navigating payment for PrEP or PEP. This is especially true for minors. Health and support services providers working with a minor interested in PrEP should seek to connect the patient with a PrEP specialist in the community whenever possible. Providers working with minors around PrEP may direct these young people to a local STD clinic or Sexual Health Clinic that offers PrEP. Minor patients of these clinics have the right to request their insurance plans not be billed for services and may have access to services on a sliding fee scale.

Medicaid will cover the cost of PrEP, but prior approval is required.

Minors covered by private insurance may need assistance determining how their plan covers the various expenses of PrEP.

Minors who follow the directions outlined in FAQ 3.1 can take steps to avoid having EOBs sent to their parents.

Minors have access to assistance from the New York State PrEP Assistance Program (PrEP-AP) which covers the cost of health care appointments and lab work when these services are accessed through a provider registered with PrEP-AP.

The Gilead Co-Pay Coupon and Medication Assistance Programs are **not** available to minors, but other patient assistance programs may be available to minors. For a complete review of resources related to paying for PrEP, please review the NYSDOH [Payment Options for PrEP](http://www.health.ny.gov/diseases/aids/general/prep/docs/payment_options.pdf) (http://www.health.ny.gov/diseases/aids/general/prep/docs/payment_options.pdf).

4.3 What can providers communicate to young people who consent to Post-Exposure Prophylaxis about their ability to access financial assistance to pay for PEP.

- A. To be effective, PEP must be initiated as soon as possible. Initiation of PEP should not be delayed in order to make arrangements for payment. Minors who are victims of sexual assault should be directed to the emergency room and are eligible for assistance from the NYS Office of Victim Services. For a complete description of payment options, please review the NYSDOH [Payment Options for PEP Following Non-Occupational Exposures Including Sexual Assault](http://www.health.ny.gov/diseases/aids/general/standards/docs/payment_options_npep.pdf) (http://www.health.ny.gov/diseases/aids/general/standards/docs/payment_options_npep.pdf).

Section 5 – Additional Miscellaneous Questions

5.1 Are LHD STD clinics required to diagnose and treat cases of epididymitis?

- A. While epididymitis is not specifically included among the list of STDs in Public Health Law §2311, it is most frequently caused by *C. trachomatis* or *N. gonorrhoeae* and therefore requirements for diagnosis and treatment of these etiologic causes of epididymitis would apply.

5.2 Where can I find additional information about HIV testing?

- A. The New York State Department of Health has HIV testing information available at www.health.ny.gov/aids. An in-depth frequently asked questions document related to HIV testing laws and regulations is available at <https://www.health.ny.gov/diseases/aids/providers/testing/>

5.3 Are educational materials available for patients or consumers?

- A. Educational materials from the New York State Department of Health are available for in-state providers, organizations and community members, free of charge.

STD educational materials are available at

http://www.health.ny.gov/forms/order_forms/std_materials.htm.

Clinical providers can order materials for Expedited Partner Therapy for Chlamydia online at http://www.health.ny.gov/forms/order_forms/ept.htm.

HIV educational materials are online at

<http://www.health.ny.gov/diseases/aids/general/publications/orderinginfo.htm>.

Viral hepatitis educational materials are available at

http://www.health.ny.gov/forms/order_forms/hepatitis_education.pdf.

Information and materials on HPV can be found at

<http://www.health.ny.gov/diseases/communicable/humanPapillomavirus>.

5.4 Where can I get more information and training about these issues or other HIV and STD-related topics?

- A. There are many training resources for health care providers and non-clinical providers to support and enhance HIV and STD prevention services.

Health care providers: The New York State Clinical Education Initiative (CEI) provide a variety of trainings through on-site and face-to-face group trainings, as well as real-time and archived webinars. Visit www.ceitraining.org for more information. CEI also offers consultation through the CEI line at (1-866-637-2342), as well as monthly telementoring through the CEI [STD ECHO](https://ceitraining.org/resources/echo/) (link: <https://ceitraining.org/resources/echo/>) and [HIV ECHO](https://ceitraining.org/resources/echo/hiv-echo.cfm) (link: <https://ceitraining.org/resources/echo/hiv-echo.cfm>) program.

Non-clinical providers: The New York State Education and Training Program offers many trainings on HIV, STD, viral hepatitis, sexual health, LGBT health, drug user health and other topics. Visit www.hivtrainingny.org for more information.