



# WHITMAN-WALKER HEALTH

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## BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON HEALTH

### Testimony of Whitman-Walker Health on Bill 24-0231, the Minor Access to Medical Records and Appointments Amendment Act of 2021

**November 29, 2021**

Pursuant to the Committee's Notice of Hearing of October 14, 2021, Whitman-Walker Health (WWH or Whitman-Walker) is pleased to submit this testimony in support of bill 24-0231 – with recommendations for modification and implementation of Bill 24-0231 to ensure that everyone continues to receive privacy and confidentiality in their health care within the scope allowable by current law.

#### **Interest and Experience of Whitman-Walker**

Whitman-Walker Health is a Federally Qualified Health Center serving greater Washington, DC's diverse community, including individuals who face barriers to accessing care, and with a special expertise in HIV care and serving lesbian, gay, bisexual, transgender and questioning/queer (LGBTQ) populations. We provide consumers with integrated care by offering primary medical, behavioral health, dental, legal services, insurance navigation, health education and wellness services. In 2020, despite the challenges of the COVID-19 pandemic, WWH provided high quality, affirming health care to more than 16,000 individuals, nearly 70% of whom are DC residents – and about 60% of our patients and clients are members of the region's gay, lesbian, bisexual, and transgender communities.

Whitman-Walker serves a substantial number of the District's LGBTQ youth in our behavioral health programming. Many of our youth patients are beneficiaries of the grants provided by the Office of Victims Services and Justice Grants for trauma-informed mental health services to youths in underserved communities. While currently closed due to the COVID-19 pandemic, until February 2020, Whitman-Walker's Youth Services site near Eastern Market provided a wide range of health-related services to DC youth and their families, as well as to youth in the larger metropolitan area, including:

- individual and group psychotherapy for youth who identify as lesbian, gay, bisexual, transgender, queer or questioning (LGBTQ) who have experienced or have witnessed a crime;
- health care navigation for young people who are living with HIV;
- our Stable Families program, which provides support for families affected by HIV, including HIV-positive pregnant women;

- HIV, STI and pregnancy testing and counseling services;
- our REAL TalkDC program, which links young people ages 13 to 24 years old to sexual health information; leadership and workforce readiness training opportunities; free condoms; and HIV/STI/pregnancy testing; and
- Capacity Talk, which offers free capacity building services to youth-serving organizations and schools in the District.

### **Comments on Bill 24-0231, the Minor Access to Medical Records and Appointments Amendment Act of 2021**

At Whitman-Walker our experience is in providing services to stigmatized youths with a high degree of concern for privacy and confidentiality, and we applaud this bill, with recommendation for a modification.

Bill 24-0231 communicates with clarity that minors older than 16 have the right to expect confidentiality and exercise autonomy over their body. That clarity is an important part of what makes this bill likely to have a positive impact in the health of the District's youth. However, from our experience with the practical concerns of medical practices, we are concerned that providers may prefer to operate within the very clear standard set by Bill 24-231 and disfavor the more contextual analysis in the current regulations that allow for certain services to be provided to minors based on an analysis of the best practices and capacity of the minor patient. As the Councilmember Henderson notes in her introductory statement:

Current D.C. law allows a minor over the age of 12 who is deemed capable of providing informed consent by a doctor to access various medical procedures and care, subject to medical best practices and professional standards, including contraceptive services, mental health care, prenatal care, and abortions, without parental consent. However, the law is unclear as to whether parental consent may be required to actually schedule such appointments, or secure records that would inform a provider's decision-making.

Bill 23-0231 underscores the rights of 16- and 17-year-olds by adding a new section to the DC public health regulations providing them the express right to make appointments, access their medical records, and receive confidential communications from their insurer. Unfortunately, it is not clear how the proposed new section would interact with the existing regulations in Chapter 6 of Title 22-B § 22-B600.7 of the District of Columbia Municipal Regulations, which states:

A minor of any age may consent to health services which he or she requests for the prevention, diagnosis, or treatment of the following medical situations:

- (a) Pregnancy or its lawful termination;
- (b) Substance abuse, including drug and alcohol abuse; and
- (c) A mental or emotional condition and sexually transmitted disease.

Further, although the above provision applies only to reproductive health, sexual health and substance use, § 22-B600.4 of the same chapter provides more broadly:

Health services may be provided to a minor of any age without parental consent when, in the judgement of the treating physician, surgeon, or dentist, the delay that would result from attempting to obtain parental consent would substantially increase the risk to the minor's life, health, mental health, or welfare, or would unduly prolong suffering.

Section 22-B600.4 provides latitude to provide health services, including counseling and support, to sexual and gender diverse minors of any age without parental knowledge or consent when the parent would withhold consent or the parent's knowledge might put the minor in danger. We are concerned that by expressly providing rights to only 16- and 17-year old minors, the new bill might undercut the existing rights of minors under the age of 16.

We therefore recommend that Section 2 of Bill 24-0231 be modified to amend Chapter 6 of Title 22-B of the DC Code, by adding a new provision, § 600.10 (e) that could read

Nothing in this bill should be construed to limit the rights of minors of any age to consent to health services as provided in Chapter 6 of Title 22-B of the District of Columbia Municipal Regulations §§ 22-B600.4,7.

By reaffirming the current latitude in existing regulations this modification also reinforces that Bill 24-231 solely expands and does not diminish access to life changing medical and behavioral health care.

### **Protecting the Confidentiality of Dependent Beneficiaries**

We are encouraged by the inclusion of the insurers Explanation of Benefits as part of the privacy and confidentiality protections included in this bill. Our patients report that lack of confidentiality in medical treatment is a major barrier to access to stigmatized health services for dependent beneficiaries who feel endangered by potential disclosures. Insurance billing communications and Explanations of Benefits are primary sources of privacy breaches for dependent beneficiaries.

Bill 24-0231 provides protections to 16- and 17-year-old minors that are needed for all dependent beneficiaries of insurance plans, and we recommend that the DC Council effectuate the protections this bill provides for all dependent beneficiaries, regardless of age. Explanations of Benefits from insurances companies, a routine tool sent to policyholders, may inadvertently disclose the confidential health information of dependent beneficiaries. Dependent beneficiaries, (whether youth or adults) seeking care for the prevention of STIs or pregnancy, may risk endangering their health and wellbeing by disclosing confidential health information to the primary beneficiary.

The HIPAA Privacy Rules allows individuals to request confidential communications when disclosure could endanger the person receiving care.<sup>1</sup> Additionally, HIPAA allows individuals to request restricted disclosures when the healthcare services are paid in full.<sup>2</sup>

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<sup>1</sup> HIPAA 164.522(b)(1)

<sup>2</sup> HIPAA 164.522(a)(1)

However, in practice consumers are often unaware of HIPAA's protections and insurers are uncertain how to effectuate them. Beneficiaries require assistance from insurance commissioners in effecting their rights.

Bill 24-0231's mandate to protect minors from accidental disclosure of sensitive health information is an opportunity to improve DC's laws and regulations and effectuate these privacy protections for dependents of all ages seeking to use a parent's, spouse's, or other family member's health insurance for sensitive services. Current law allows dependent beneficiaries of any age to request confidential communications from their insurer, and with further regulation the Council can, either through legislation or regulation, set up a system that facilitates these requests with the insurance companies.

The Council can follow the examples of policy-makers in California and Maryland to build on HIPAA's protections by providing additional clarity for consumers about how to protect their confidential health information.<sup>3</sup> In California, for example, these efforts included:

- legislating a clearer definition of endangerment,
- creating a single-page form for submitting requests for confidential communications,
- preemptively communicating with insurance companies to ensure their systems are prepared to comply with member requests, and
- conducting public education campaigns to ensure consumers are aware of their rights.<sup>4</sup>

In 2014, Maryland enacted a law designed to bring communications between health insurance carriers and enrollees into conformity with specific requirements of HIPAA.<sup>5</sup> The Maryland Insurance Commissioner developed a form for enrollees to use when they rely on one of the special protections of the HIPAA Privacy Rule to request confidential communications from health insurance carriers.<sup>6</sup> A similar system of administering requests for confidentiality from dependent beneficiaries of insurance policies could be set up by the DC Division of Insurance, Securities, & Banking.

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<sup>3</sup> Excerpted from an unpublished manuscript, Claire Heyison, MPH; Benjamin Brooks, JD, MPH; Daniel Bruner, JD, MPP; Katie Horton, RN, MPH, JD; Anya Vanecek, MPH; Naomi Seiler, JD; A Policy Landscape Assessment to Inform PrEP Scale Up: Results from Research in Washington, DC, Milken Institute School of Public Health, The George Washington University, Whitman-Walker Health.

<sup>4</sup> Gold, R.B., A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents, *Guttmacher Policy Review*, 16;4 (Fall 2013).

<sup>5</sup> Md. Code Ann. Insurance § 15-141

<sup>6</sup> Maryland Insurance Administration. Request For Confidential Communications. December 2014.

<https://insurance.maryland.gov/Consumer/Documents/publicnew/confidential-communication-form.pdf>. Accessed June 2020.

### CONCLUSION

Thank you for the opportunity to share our views. If you would like additional information, or if we can assist the Committee on Health or the Council of the Whole in any other way, please contact Benjamin Brooks, (202) 797-3557, [bbrooks@whitman-walker.org](mailto:bbrooks@whitman-walker.org).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "B Brooks", is written above a horizontal line.

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