

High Incidence of HPV in Minors Spotlights Need for State Legislators to Consider Amending Child “Consent to Treatment” Laws

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Introduction

A recent article in the *Houston Chronicle* tells the story of a young adult woman who contracted genital human papillomavirus (HPV), which subsequently caused her to develop HPV-related pre-cancerous complications that could lead to cervical cancer.¹ The woman shares her story and her deep regret that she ignored the opportunity during her high school years to get vaccinated against this otherwise preventable sexually-transmitted disease (“STD”). Her unfortunate story resonates concern for all teenagers and young adult women, whether sexually active or not, and stresses the need to get vaccinated.²

According to the Centers for Disease Control and Prevention (CDC), approximately 4.6 million new cases of HPV occur each year in the teenage to young adult population ages 15 through 24 years.³ This high incidence of HPV in both males and females spotlights the need for state legislators to consider amending child “consent-to-treatment” laws to include HPV vaccinations. Because minors generally cannot consent to medical treatment and vaccinations, teenage minors may not have access to HPV vaccinations unless their parents or guardians give approval. State legislators should perhaps explore and consider the options for allowing educated, informed teenage minors to give consent for HPV vaccinations.

What is the Human Papillomavirus (HPV)?

Genital human papillomavirus (HPV) is the most common sexually transmitted infection in the United States.⁴ HPV is transmitted by genital-to-genital contact, vaginal or anal sexual intercourse, or oral sex.⁵ At least 50 percent of sexually active men and women contract HPV at some point in their lives.⁶

¹ Callie Thompson, *HPV Vaccine Should Be a Priority*, HOUS. CHRON., Apr. 24, 2010, available at <http://www.chron.com/disp/story.mpl/editorial/outlook/6974648.html>.

² *Id.*

³ This statistic is inferred from the 2006 report prepared by the Advisory Committee of Immunization Practices (ACIP). See, e.g., Recommendations of the Advisory Committee on Immunization Practices, *Quadrivalent Human Papillomavirus Vaccine*, MMWR, Mar. 23, 2007, available through <http://www.cdc.gov/mmwr/preview>. See also, *infra* p. 2 and notes 14-15.

⁴ Centers for Disease Control & Prevention, *Genital HPV Infection – CDC Fact Sheet*, Nov. 24, 2009, available at <http://www.cdc.gov/STD/HPV/STDFact-HPV.htm>.

⁵ *Id.*

⁶ *Id.*

There are approximately 40 types of HPV that infect the genital area, mouth, and throat.⁷ These types of HPV are classified according to their epidemiological association with cancer.⁸ HPV infections of low-risk, or non-oncogenic types, can cause benign or low-grade abnormalities of cervical cells, genital warts,⁹ and recurrent respiratory papillomatosis (“RRP”).¹⁰ Infections of high-risk, or oncogenic types, can cause cervical cell abnormalities that are precursors to cervical cancer and, in rare cases, anogenital cancers, such as cervical, vulvar, vaginal, and anal cancers.¹¹ Fortunately, most HPV infections, whether caused by low-risk or high-risk types, are asymptomatic and have no clinical consequences.¹² In 90 percent of cases, the body’s immune system clears HPV naturally within two years.¹³

Incidence and Prevalence of HPV in the U.S.

Approximately 20 million people in the U.S., or 15 percent of the population, are currently infected with HPV, with an estimated 6.2 million new HPV infections diagnosed each year in persons between the ages of 14 through 44 years.¹⁴ Of these new cases, approximately 74 percent, or 4.6 million, occur in the teenage to young adult population ages 15 through 24 years.¹⁵ Prevalence is highest among young women between the ages of 14 through 19 years.¹⁶ Each year in the U.S. alone, approximately:

- (1) One in every 100 sexually active adults have genital warts at any one time;
- (2) 12,000 women get cervical cancer;
- (3) 1,000 women get vaginal cancer;
- (4) 3,700 women get vulvar cancer;
- (5) 1,000 men get penile cancer; and

⁷ Centers for Disease Control & Prevention, *Manual for the Surveillance of Vaccine-Preventable Diseases, Chapter 5: Human Papillomavirus*, (4th ed. 2008), available at <http://www.cdc.gov/vaccines/pubs/surv-manual/chpt05-hpv.htm>; see also *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3; *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4.

⁸ *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3.

⁹ Genital warts usually appear as a small bump or group of bumps in the genital area and can be small, large, raised or flat, or shaped like a cauliflower. They can appear within weeks or months after sexual contact with an infected partner. If left untreated, they might disappear, remain unchanged, or increase in size or number, but they will not turn into cancer. See *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4.

¹⁰ Recurrent respiratory papillomatosis is a disease of the respiratory tract in which warts grow in the throat and can block the airway, causing a hoarse voice or difficulty breathing. See *Manual*, *supra* note 7; see also *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4.

¹¹ *Manual*, *supra* note 7; see also *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3.

¹² *Manual*, *supra* note 7.

¹³ *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4.

¹⁴ Centers for Disease Control & Prevention, *Self-Study STD Module – Genital Human Papillomavirus (HPV) Infection*, available at <http://www2acdc.gov/stdtraining/self-study/hpv/hpv1.asp>; *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4; *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3.

¹⁵ *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3.

¹⁶ *Id.*

(6) 2,700 women and 1,700 men get anal cancer.¹⁷

Surprisingly, despite these high statistics, HPV is not on the list of “reportable” diseases in any state nor is it required to be reported to the CDC.¹⁸ A few states, however, require reporting of genital warts.¹⁹ “Reportable” diseases are those considered to be of great public health importance, such that local, state, and national agencies require these diseases to be reported when they are diagnosed by physicians or laboratories.²⁰ Reporting allows for the collection of statistics that show how often the disease occurs, which in turn, helps researchers identify disease trends and track outbreaks.²¹

The fact that HPV is not “reportable” was the subject of debate in Congress about ten years ago and still continues among medical professionals and medical organizations.²² Those initially opposed to making HPV a reportable disease, such as the American College of Obstetricians and Gynecologists and the National Institutes of Allergy and Infectious Diseases, claimed that making HPV a reportable disease would involve every woman who gets an abnormal Pap smear, which in turn, may discourage women from getting Pap smears and putting them at greater risk for developing cancer.²³

The CDC claims that its statistics on the incidence of HPV, as listed above, are incomplete because HPV is not reportable and most infections are not diagnosed when they are asymptomatic and have no clinical consequences.²⁴

Treatment of HPV

While there is no treatment for HPV, there is treatment available for HPV-related diseases.²⁵ Genital warts and cancer precursor lesions can be removed with the usual local lesion-removal approaches, such as cryotherapy, electrocautery, laser therapy or surgical excision.²⁶ Genital warts may also be treated with topical medications.²⁷ Cervical cancer and other HPV-related cancers are most treatable when diagnosed and treated early.²⁸ RRP may be treated with surgery or medicine.²⁹ Annual medical costs for treating symptoms of genital HPV infection in the U.S. are estimated at \$1.6 billion.³⁰

¹⁷ *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4.

¹⁸ *Self-Study STD Module*, *supra* note 14.

¹⁹ *Id.*

²⁰ See U.S. Nat'l Lib. of Med., *Reportable Diseases*, MEDLINE PLUS, May 30, 2009, available at <http://www.nlm.nih.gov/medlineplus/ency/article/001929.htm>.

²¹ *Id.*

²² Cheryl Wetzstein, *HPV Emerging as the Next Epidemic*, Insight on the News, Dec. 11, 2000, available at http://findarticles.com/p/articles/mi_m1571/is_46_16/ai_72329008.

²³ *Id.*

²⁴ *Self-Study STD Module*, *supra* note 14.

²⁵ *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4; *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3.

²⁶ *Id.*

²⁷ *Quadrivalent Human Papillomavirus Vaccine*, *supra* note 3.

²⁸ *Genital HPV Infection – CDC Fact Sheet*, *supra* note 4.

Prevention of HPV

The only way to completely prevent exposure to HPV is to avoid sexual activity altogether.³¹ However, short of abstinence, there are three options for reducing the risk of contracting HPV: (1) receiving vaccinations, (2) using condoms, and (3) limiting sexual relationships to one partner.³²

Vaccines: Current vaccines on the market protect both males and females against the most common types of HPV.³³ These vaccines are given in a series of three doses and are most effective when given before the person's first exposure to HPV.³⁴

For females, the U.S. Food and Drug Administration (FDA) has approved the use of two vaccines, Gardasil and Cervarix, to protect against HPV Types 16 and 18 that cause most cervical cancers.³⁵ Gardasil also protects against HPV Types 6 and 11 that cause genital warts.³⁶ The Advisory Committee on Immunization Practices (ACIP) recommends these vaccines for girls 11 and 12 years of age, and for older females between 13 and 26 years of age if they did not receive the vaccines when they were younger.³⁷ Girls as young as nine years of age may also receive the vaccinations.³⁸ Experts recommend use of the same vaccine product for all three doses, if feasible.³⁹

For males, Gardasil is the only vaccine available to protect against genital warts.⁴⁰ It can be administered to males between the ages of 9 through 26 years.⁴¹

These vaccines are prophylactic and do not have therapeutic effect on pre-existing HPV-related diseases.⁴² If a patient is already infected with one of the HPV types in the vaccine, the vaccine will not prevent disease associated with that type.⁴³

²⁹ *Id.*

³⁰ *Self-Study STD Module, supra* note 14.

³¹ *Genital HPV Infection – CDC Fact Sheet, supra* note 4.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Centers for Disease Control & Prevention, *HPV Vaccine – Questions & Answers, available at* <http://www.cdc.gov/vaccines/vpd-vac/hpv/vac-faqs.htm>; *see also Genital HPV Infection – CDC Fact Sheet, supra* note 4.

³⁶ *Id.*

³⁷ Advisory Committee on Immunization Practices, *ACIP Provisional Recommendations for HPV Vaccine, Dec. 1, 2009, available at* <http://www.cdc.gov/vaccines/recs/provisional/downloads/hpv-vac-dec2009-508.pdf>; *Genital HPV Infection – CDC Fact Sheet, supra* note 4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Manual, supra* note 7.

⁴³ *Id.*

Both vaccines were tested around the world and were reported as safe and effective with no serious side effects.⁴⁴ The common, mild side effects included pain at the injection site, fever, headache, and nausea.⁴⁵ The CDC, FDA, and various watchdog groups continue to monitor the safety and side effects of these vaccines.⁴⁶

Condoms: Condoms may reduce the risk of contracting HPV and developing HPV-related diseases, such as genital warts and cervical cancer, but only if used with each sexual contact.⁴⁷ Condoms, however, are not 100 percent effective protection because HPV can infect areas not covered by a condom.

Limiting Number of Partners: People can lower their risk of exposure to HPV by reducing the number of sexual partners to just one partner. But even this is not 100 percent effective if the one partner was sexually active in the past and is still infected.⁴⁸

Why the High Incidence of HPV when Vaccines are Available?

The high incidence of HPV among minors is not only alarming, but also baffling, in light of the fact that two HPV vaccines are available on the market. It is readily apparent that minors are not being vaccinated. This begs the looming questions: “Why are minors not being vaccinated for HPV?” and “What can be done to increase vaccination rates in minors?”

These two questions may be answered by looking each state’s childhood vaccination statutes. The issue of whether to mandate HPV vaccines in school-age children has been the subject of debate by state legislators for the past four years.⁴⁹ Ever since the ACIP issued its initial 2006 report recommending routine HPV vaccination for girls between ages 11 and 12 years, state legislators across the U.S. have wrestled with the issue of whether to add HPV vaccines to school vaccination requirements.⁵⁰

In February 2007, Texas was the first state to enact a mandate via governor’s executive order, that all females entering the sixth grade receive the vaccine.⁵¹ But, subsequent

⁴⁴ *HPV Vaccine – Questions & Answers, supra note 35; see also* Centers for Disease Control & Prevention, *Possible Side Effects from Vaccine: HPV - Cervarix and HPV - Gardasil*, Apr. 16, 2010, available at <http://www.cdc.gov/vaccines/vac-gen/side-effects.htm>.

⁴⁵ *HPV Vaccine – Questions & Answers, supra note 35.*

⁴⁶ *Id.*; see also Judicial Watch, *Judicial Watch Investigates Side-Effects of HPV Vaccine*, available at <http://judicialwatch.org/gardasil>.

⁴⁷ *Genital HPV Infection – CDC Fact Sheet, supra note 4.*

⁴⁸ *Id.*

⁴⁹ Nat’l Conf. of State Legislatures, *HPV Vaccine*, Apr. 2010, available at <http://www.ncsl.org/default.aspx?tabid=14381>.

⁵⁰ *Id.*

⁵¹ *Id.* Exec. Order No. RP65 – Relating to the immunization of young women from the cancer-causing Human Papillomavirus, Feb. 2, 2007, available at <http://governor.state.tx.us/news/executive-order/3455>.

legislation, Texas H.B. 1098, was signed into law, overriding the executive order.⁵² H.B. 1068 prohibited the mandatory HPV vaccine, but required schools to distribute educational materials about the vaccine to parents and legal guardians.⁵³ During 2007, at least 23 other states and Washington D.C. introduced legislation to specifically mandate the HPV vaccine for sixth-grade females or 12-13 year old girls, but only the Virginia and Washington D.C. bills were enacted.⁵⁴ Some of these states also enacted legislation to educate the public about the HPV vaccine and to fund vaccine.⁵⁵ As of April 2010, three other states have proposed legislation to require HPV vaccination or give parents the option to choose vaccination for school-age females.⁵⁶

It is significant to note that, over the past three years, all legislation introduced and passed requiring the HPV school vaccination programs, includes parental “opt-out” provisions or exemptions for medical, moral, or religious beliefs.⁵⁷ Thus, regardless of whether a state requires the HPV vaccine for age-appropriate minor females, it appears the ultimate decision of whether a minor will receive the HPV vaccine will be left squarely up to the parent or legal guardian. Those parents or guardians who oppose the vaccine, do so based on a number of reasons. Aside from medical reasons or religious beliefs, some parents oppose the HPV vaccine, in general, because they believe vaccines are not helpful, important, or effective.⁵⁸ Others oppose vaccines out of fear of unknown side effects,⁵⁹ while others fear the vaccine would encourage sexual promiscuity in their children.⁶⁰

While states have focused their efforts on passing legislation to either mandate, educate, or fund the HPV vaccine, legislators have perhaps overlooked what seems like the glaring issue: What to do about the teenage minors who want the HPV vaccine, but whose parents or guardians refuse to consent to the vaccine? What about the minors who really want the vaccine, not because they are sexually active, but because they want to be protected in the future? After all, it’s these teenage minors—not their parents—who would have to “live with” HPV-related lesions and suffer through diagnosis and treatment of cancers that could have been easily preventable with the vaccine.

A few states, specifically allow minors to consent to vaccination or disease preventative treatment without conditions.⁶¹ In most states, minors may consent to medical care and

⁵² TEX. EDUC. CODE ANN. § 38.001(b-1), as amended by Act 2007, 80th Leg., Ch. 94, §2. eff. May 15, 2007; Nat’l Conf. of State Legislatures, *supra* note 49.

⁵³ TEX. EDUC. CODE ANN. § 38.001(b-1) (Vernon 2007).

⁵⁴ Nat’l Conf. of State Legislatures, *supra* note 49.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Rebecca Gudeman and Chiara Grabill, *Targeting Adolescents for a STD Vaccine*, Youth Law News, July-Sept. 2006, available through <http://www.youthlaw.org>.

⁵⁹ *Id.*

⁶⁰ See, e.g., Shobha S. Krishnan, M.D., *HPV Vaccine: Why It Won’t Promote Sexual Promiscuity*, Article Dashboard, 2008, available at <http://www.articledashboard.com>.

⁶¹ See N.C GEN. STAT. § 90-21.5; ALA. CODE § 22-8-4.

treatment, depending on certain qualifying conditions, such as minimum age standard, defined level of maturity, a special status, living situation, or specific medical condition.⁶² For instance, in Texas, Section 32.003 of the TEXAS FAMILY CODE provides that a minor may consent to treatment of an infectious “reportable” disease, as follows:

A child may consent to medical, dental, psychological and surgical treatment for the child by a licensed physician or dentist if the child:

...

(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or rule to be reported by the licensed physician or dentist to a local health officer of the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code.⁶³

Since HPV is not a “reportable” STD in Texas, under this law, minors cannot consent to treatment of HPV. Ironically, however, minors in Texas can consent to treatment for gonorrhea,⁶⁴ or other “reportable” STDs. It seems illogical that a minor can consent to treatment of gonorrhea, but not HPV, when the annual incidence of new HPV cases in the U.S. is estimated at 6.2 million and by far greater than the incidence of gonorrhea cases estimated at 718,000.⁶⁵

Although Texas has a statute that allows minors to consent to treatment of “reportable” diseases, there is no corollary provision that allows minors to consent to vaccination against “reportable” diseases, when such exist. If minors can consent to treatment after they contract a certain “reportable” disease, it stands to reason, they should be allowed to consent to the vaccination that would prevent that same disease.

Conclusion

The high incidence of HPV in teenagers warrants closer scrutiny of existing child “consent to treatment” laws. The fact that HPV is not a “reportable” STD should not preclude a minor from seeking treatment. HPV is a STD, and minors should be able to consent to treatment for HPV in the same manner they would for any other STD. Moreover, if minors can consent to treatment for a STD, then logically, they should be able to consent to the vaccination that would prevent that STD. To give the appropriate consent, minors should be educated and well-informed about HPV, HPV-related diseases and the preventative vaccine. The educational materials about HPV that are being

⁶² See ARK. CODE ANN. § 20-9-602(7); CAL. FAM. CODE § 6922; TEX. FAM. CODE § 32.003 (Vernon 2007).

⁶³ TEX. FAM. CODE ANN. §32.003(a)(3) (Vernon 2007).

⁶⁴ Gonorrhea is a sexually transmitted disease, caused by a bacterium that can thrive in the reproductive tract, uterus, cervix, or urethra. If this disease goes untreated, it can cause serious and permanent health problems, such as pelvic inflammatory disease, epididymitis, or spread to the blood and joints. Centers for Disease Control & Prevention, *Gonorrhea- CDC Fact Sheet*, available at <http://www.cdc.gov/std/gonorrhea/stdfact-gonorrhea.htm>.

⁶⁵ *Self-Study STD Module*, *supra* note 14.

distributed to parents and guardians should likewise be given to pre-teens and teenagers through school sexual education programs.

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