Health Sharenting and a Child's Right to Privacy

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Abstract

The internet and social media represent a ubiquitous part of the American experience today. From birth, if not before, children are exposed to and influenced by social media. Parents turn to social media for parenting advice or to share stories about the parenting experience—fertility struggles, pregnancy, parenting children with disabilities or chronic or terminal illnesses, and much more. Some parents even make a living as parenting "influencers" or turn their children into "kidfluencers." These trends raise important questions. Should parents share intimate details about their children's lives on the internet? If so, should there be limits, and how should such limits be enforced?

The explosion of parents sharing information about their children's physical and mental health struggles online ("health sharenting") raises serious questions about consent and a child's right to privacy. Once this information becomes public, there is no going back. It can be difficult, if not impossible, to erase information from the internet. For the rest of the child's life, others can find information about the child's physical or mental health. Raising awareness and creating space for parents to find support and advice is important, but at what cost to the child? This Article queries whether the benefits of health sharenting outweigh the real and potential harms. It concludes by proposing a "presumption of privacy" in the parent-child relationship and how that presumption can be enforced.

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Introduction

Eight-year-old Hannah, on the verge of tears and visibly distressed, is shown in a YouTube video backing away from her kitchen table.[1] Her mother can be heard saying, "Come on Hannah, just come try the yogurt. . . . If you don't like it, you don't have to eat it. Just come try it."[2] Hannah cries in response, "No . . . I don't wanna eat it. . . . I don't wanna try it. . . . It smells bad."[3] In another video, Hannah sits in front of the camera at a donut shop struggling to eat a jelly donut.[4] She looks

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1 Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *This is ARFID*. (Jan. 23, 2024), https://www.instagram.com/reel/C2cxbtXRljL/ (on file with the George Washington Law Review).

2 *Id.*

3 *Id.*

4 Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Who remembers the jelly donut scene from the @dhar.mann episode I was in????* (Oct. 4, 2024), https://www.instagram.com/reel/DAtoLStySgO/ (on file with the George Washington Law Review).

disgusted, uncomfortable, and increasingly upset as she takes a minuscule bite before pushing it away.[5] In a voiceover, Hannah refers to jelly as "number three" on her "top fear food list."[6] She admits she does not like the donut and describes it as tasting like "rotten strawberries," but she says she is proud of herself for trying it.[7]

Hannah, the subject of various social media accounts under the name "MyARFIDLife," suffers from Avoidant/Restrictive Food Intake Disorder ("ARFID"), a relatively new diagnosis added to the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders.[8] As described by the National Eating Disorders Association:

> Individuals with ARFID limit the volume and/or variety of foods they consume, but unlike the other eating disorders, food avoidance or restriction is not related to fears of fatness or distress about body shape, size or weight. Instead, in ARFID, selective eating is motivated by a lack of interest in eating or food, sensory sensitivity (e.g., strong reactions to taste, texture, smell of foods), and/or a fear of aversive consequences (e.g., of choking or vomiting).[9]

Individuals with ARFID are more than just "picky eaters." ARFID manifests in significant physical and mental health consequences—such as weight loss, nutritional deficiencies, and stunted growth—as well as psychosocial interference with relationships, education, and employment.[10] Many individuals with ARFID struggle with other conditions like autism spectrum disorder, ADHD, anxiety, or sensory processing disorder.[11]

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5 *Id.*

6 *Id.*

7 *Id.*

8 Heather Ringeisen, Cecilia Casanueva, Leyla Stambaugh, Jonaki Bose & Sarra Hedden, *DSM-5 Changes: Implications for Child Serious Emotional Disturbance*, Ctr. for Behav. Stats. & Quality, Substance Abuse & Mental Health Servs. Admin. 51–52 (2016), https://www.ncbi.nlm.nih.gov/books/NBK519708/pdf/Bookshelf_NBK519708.pdf [https://perma.cc/4NM4-A2SH].

9 Kamryn Eddy, *What Is Avoidant Restrictive Food Intake Disorder (ARFID)?*, Nat'l Eating Disorders Ass'n, https://www.nationaleatingdisorders.org/avoidant-restrictive-food-intake-disorder-arfid/ [https://perma.cc/RF3C-74ZP] (last visited Mar. 19, 2026).

10 *See id.* Between the ages of four and eight, Hannah gained only ten pounds. *See* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *This is a video we posted to our YouTube channel a while ago. It explains a little bit about our family and why we started this ARFID journey, and how we got to this point.*, at 3:12–3:22 (Sep. 11, 2024), https://www.instagram.com/reel/C_x55k5PUdA/ (on file with the George Washington Law Review). To put that in perspective: Starting at age five, children generally gain about four pounds per year until puberty. *See* Hallie Levine, *Understanding Your Child's Growth: Height and Weight by Age*, Parents (Oct. 17, 2025), https://www.parents.com/toddlers-preschoolers/development/physical/age-by-age-growth-chart-for-children/#toc-kids-height-and-weight-growth [https://perma.cc/S75P-S2F3].

11 *See* Eddy, *supra* note 9; *see also* Natasha K.O. Fonseca et al., *Avoidant Restrictive Food Intake Disorder: Recent Advances in Neurobiology and Treatment*, J. Eating Disorders,

In a longer video on Hannah's YouTube and Instagram pages, which are run by Hannah's mother Michelle, Hannah sits alongside her mother as Michelle provides background about Hannah's lifelong struggles with eating.[12] Early attempts at treatment largely failed, but Michelle observed how Hannah was motivated by recording videos of herself trying new foods to send to her doctor or therapist.[13] Michelle decided to start an Instagram account where she could share these videos with family and friends.[14] The account quickly expanded beyond the small audience of family and friends to allow others—mostly strangers—to follow the page and Hannah's journey.[15] Michelle says that she has received messages thanking her for spreading awareness about ARFID.[16] Like some of her followers, Hannah also benefits, as the messages from others who face similar struggles help her not to "feel so alone."[17]

Despite the alleged benefits and motivations for the account, Hannah's young age, the serious and often stigmatized nature of ARFID and other eating disorders,[18] and the very personal and private experience of suffering from an eating disorder all raise questions about Michelle's decision to share such intimate information with over one million strangers on the internet.[19] It is unclear how much control—if any—Hannah has over the content and frequency of the posts. Further complicating things, the accounts are monetized. Hannah ends almost every video by telling her viewers to "like and follow my ARFID journey to see me try new foods." In the social media world, "likes," "follows," and "views" can all translate into payments for the account holder.[20] Her Instagram page links to a website that sells a variety of

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June 7, 2024, at 1, 3–4 (discussing the heterogenous etiology of ARFID and its comorbidity with other disorders).

12 Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), *supra* note 10.

13 *Id.* at 2:14–2:38. They did not actually send the videos. It was used solely as a motivator.

14 *Id.* at 8:05–8:17.

15 *See id.*

16 *Id.* at 11:58–12:10.

17 *Id.* at 11:50–12:10. The public Instagram account has 1.5 million followers. *See generally* MyARFIDLife (@MyARFIDLife), Instagram, https://www.instagram.com/myarfidlife/?hl=en [https://perma.cc/L3W6-4EVM].

18 *See* Jordan M. Ellis et al., *Comparing Stigmatizing Attitudes Toward Anorexia Nervosa, Binge-Eating Disorder, Avoidant-Restrictive Food Intake Disorder, and Subthreshold Eating Behaviors in College Students*, Eating Behavs., Dec. 2020, at 1, 4–5; Melinda D. Karth, *Destigmatizing Eating Disorders with Medical Writing*, Am. Med. Writers Ass'n J., Dec. 14, 2023, at 10, 12.

19 MyARFIDLife (@MyARFIDLife), *supra* note 17.

20 Members of the "TikTok Creator Fund," for example, get paid 2–4 cents per 1,000 views. Podcastle Team, *How Much Does TikTok Pay Per View? Full Breakdown*, Async (July 11, 2025), https://podcastle.ai/blog/how-much-does-tiktok-pay-per-view/ [https://perma.cc/8WZZ-VYSN]. Although this may not seem like a lot, consider that "@MyARFIDLife" has multiple videos with over or close to a million views each. *See* MyARFIDLife (@MyARFIDLife), TikTok, https://www.tiktok.com/@myarfidlife?lang=en [https://perma.cc/6W4E-DB8D].

supplements geared toward children, suggesting that Hannah and her mother earn money from sales on that site.[21] Hannah also has her own online "store" that sells "merch" like sweatshirts, t-shirts, hats, and various stress relief or fidget toys.[22]

Many comments express support for Hannah.[23] Yet others, mostly directed at Michelle, criticize the choice to make public Hannah's journey with ARFID:

- "This makes me so upset. You're exploiting your little girl and ruining her life. She will have lifelong trauma for what you're putting her through on public display for strangers to watch. You make me sick and are a terrible Mother."[24]
- "You seem to love using your child's medical issues for content[.]"[25]
- "Stop exploiting your child[.]"[26]
- "So sad when parents video there [sic] kids . . . some things should stay private?"[27]
- "They sell merch. Exploiting for $. This is an inner struggle your child is having and you're sharing it for all the world to

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21 The Instagram page also includes sponsored posts and links to "EllaOla," a wellness company selling products for children, including vitamins, minerals, and skin care products. *See* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife) and EllaOla (@EllaOlaOfficial), Instagram, *Trying new foods is one part of my therapy, but I also need to supplement in order to meet my nutritional needs. I am so excited to be partnering with @ellaolaofficial.* (Dec. 8, 2024), https://www.instagram.com/reel/DDU5d5aSk6O/ (on file with the George Washington Law Review); EllaOla, http://ellaola.com/ [https://perma.cc/GD3B-JMLD] (last visited Mar. 19, 2026).

22 *See Products*, MyARFIDLife, https://myarfidlife.com/collections/all [https://perma.cc/YXJ9-L8NR] (last visited March 19, 2026).

23 That is not to say there are not negative comments directed toward Hannah. *See, e.g.*, Comment, @ski_rat_santi16 (Jan. 22, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/4AGS-SPKB] ("How spoiled what a baby"); Comment, @nancihf (Jan. 19, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/9N8D-7WLJ] ("[K]ids these days are to [sic] soft.").

24 Comment, @mimismimosas__ (Jan. 21, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/PWN2-RP8V].

25 Comment, @stacey12stacey (May 24, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/2UCZ-PKY8].

26 Comment, @nobodybutmimi (Feb. 17, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/JZQ8-8U55].

27 Comment, @conniegallahue (Jan. 21, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/7U9L-YEHD].

see of which she will see when she gets old enough to have a say. No child should be put on display . . . ."[28]

- "I understand trying to bring awareness[,] but this is something nobody should EVER share with the world. Your daughter will grow up one day and wish her most private moments were never posted online for MILLIONS of eyes to see . . . . Shame."[29]
- "This poor kid seems to think she has an illness thanks to her mum filming her constantly about her so called eating disorder. It's borderline abuse."[30]

Hannah is one of innumerable children whose lives are broadcast online by their parents, with content ranging from chronicling daily activities to documenting the struggles of children dealing with serious or even life-threatening physical or mental health[31] conditions.[32]

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28 Comment, @thewhitman5_plus (Jan. 23, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/G2XE-KRJJ].

29 Comment, @peas_aregiid91 (Feb. 7, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/JWA2-ULTE].

30 Comment, @taylah2008 (Jan. 28, 2025), *on* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Medicine is something that I have always had a hard time taking.* (Jan. 19, 2025), https://www.instagram.com/p/DFBnBvDy7dr/ [https://perma.cc/P2HW-K9G2].

31 This Article defines "mental health conditions" broadly to include substance use disorders. Each disorder has a precise definition, but this Article uses the definition of "mental disorder" found in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders, Text Revision: "a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the . . . processes underlying mental functioning. [Such] disorders are usually associated with significant distress or disability in social, occupational, or other important activities." Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 14 (5th ed., text rev. 2022).

32 *See, e.g.*, Kendra Bird (@briestrongerthancancer), Instagram, https://www.instagram.com/briestrongerthancancer/?hl=en [https://perma.cc/8HUT-JDLD] (life of a young girl fighting stage 4 neuroblastoma); Kendy (@ed_warrior_momma), Instagram, https://www.instagram.com/ed_warrior_momma/ [https://perma.cc/Y8KZ-X9DV] (mother of a daughter with an eating disorder); Maylees Mission (@diaryt1dmom_mayleesmission), Instagram, https://www.instagram.com/diaryt1dmom_mayleesmission/ [https://perma.cc/QPW2-GZFR] (mom of a Type 1 diabetic daughter); Michelle B. Rogers / Autism Mom Coach Communications & Potty Pro (@michellebrogers), Instagram, https://www.instagram.com/michellebrogers/?g=5 [https://perma.cc/8MHL-2JXR] (mom of daughter with autism); Gia (@gias_world), Instagram, https://www.instagram.com/gias_world/ [https://perma.cc/8XBX-DFLV] (young girl with autism, global development delay, and speech apraxia); Olivia's Journey (@olivia_finches_fight), Instagram, https://www.instagram.com/olivia_finches_fight/ [https://perma.cc/55BA-YJV4] (five-year-old's journey with neuroblastoma); Kate (@findcoopersvoice), Instagram, https://www.instagram.com/findingcoopersvoice/?hl=en [https://perma.cc/J6PH-69EQ] (son with autism); Marina (@boatless_marina), TikTok, https://www.tiktok.com/@boatless_marina [https://perma.cc/CQR8-HJMT] (mom of children with ADHD and a

Today, the internet and social media are woven into daily life from the early moments of existence, if not before. Parents engage with the internet and social media for a variety of purposes, including seeking advice, accessing information and educational resources, and sharing images and narratives about their children and family life.[33]

"Sharenting" refers to the practice of parents sharing information about their children online, generally through social media platforms.[34] Viewers may include family, friends, acquaintances, and complete strangers throughout the world. Some parents may supplement their incomes through "commercial sharenting."[35] Others make entire careers as parenting "influencers" or by making their children "kidfluencers."[36]

Sharenting may seem like an innocent and enjoyable activity or a natural part of being a parent in today's digital age. But is there something different about the age-old practice of parents sharing information about their children with a limited audience—such as their family, friends, neighbors, or colleagues—and parents sharing information about their children online to a limitless audience throughout the world? What about more invasive "health sharenting," when parents share information about their children's mental or physical health struggles?

In 2017, Professor Stacey Steinberg offered one of the first in-depth legal and policy analyses "on the intersection of a parent's right to share and a child's interest in privacy and healthy development."[37] At the time, Steinberg noted that much of the discussion about children and the internet focused on how to protect children from putting *themselves*

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son struggling with substance abuse); Sarah (@sarah_080123), TikTok, https://www.tiktok.com/@sarah_080123 [https://perma.cc/7AQC-V6Q3] (mom of child undergoing gender affirming care).

33 *See, e.g.*, C.S. Mott Child.'s Hosp., *Sharing on Parenting: Getting Advice Through Social Media*, Nat'l Poll on Child.'s Health: Mott Poll Rep., Nov. 20, 2023, at 1, 1 (finding that eighty percent of parents with children ages four and under have used social media to discuss parenting topics and to seek advice and information).

34 *See* Stacey Steinberg, Growing Up Shared 18 (2020); *Sharenting*, Oxford English Dictionary, https://www.oed.com/dictionary/sharenting_n?tl=true [https://perma.cc/2V3B-GRFA] (last visited Mar. 19, 2026); *Sharenting*, Collins Dictionary, https://www.collinsdictionary.com/dictionary/english/sharenting [https://perma.cc/8USK-9EHY] (last visited Mar. 22, 2026). This Article focuses on sharenting by parents or other legal guardians. *See* Leah A. Plunkett, Sharenthood: Why We Should Think Before We Talk About Our Kids Online xxii (2019).

35 *See* Plunkett, *supra* note 34, at 55.

36 *See, e.g.*, Fortesa Latifi, *The Parenting Influencers Who Won't Stop Posting Their Children*, Cosmopolitan (Mar. 12, 2024), https://www.cosmopolitan.com/lifestyle/a60115669/why-family-influencers-post-children/ [https://perma.cc/D32D-2AC3]; Karlee Gail Bowman, *Navigating Parenting as an Influencer*, Karlee Gail Bowman (May 21, 2021), https://karleegailbowman.com/navigating-parenting-as-an-influencer/ [https://perma.cc/4X2N-WJLH]; Julie Sprankles, *"Stauffer Family" Mom Katie Anderson Is Coming Into Her Own*, Scary Mommy (Oct. 16, 2024), https://www.scarymommy.com/parenting/katie-anderson-interview-stauffer-family [https://perma.cc/JL2T-3SR5].

37 Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 Emory L.J. 839, 844 (2017).

in danger online or how to protect children from the dangers of *nonparent* third parties online, such as child predators, cyberbullies, and others who engage in unauthorized sharing of photos or information about children online.[38]

Steinberg did not argue for the prohibition of sharenting but instead sought to strike a balance and provide guidance to parents who may wish to sharent. Steinberg proposed a "public health model" that involved "health professionals disseminating best practices to parents to improve the health of their children."[39] She set forth a "package of best practices" that "reflects the importance of a parent's right to free expression but also encourages parents to consider sharing only after weighing the potential harm of the information."[40]

Nine years after Steinberg's seminal article, what is the status of sharenting? If anything, sharenting, social media influencing, and social media use in general have all increased since 2017.[41] Legal, policy, and social debates about sharenting continue.[42] Complicating the debate is a lack of empirical evidence about the short- and long-term harms that sharenting may have on children. This dearth of evidence is due, in large part, to the fact that the concept of sharenting is relatively new, and children who are the subjects of sharenting are only just beginning to reach

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38 *See id.* at 842–44.

39 *Id.* at 877.

40 *Id.* at 878. Steinberg recommends that parents (1) be familiar with the privacy policies of the sites they use to share information about their children, (2) set up notifications to alert them when their child's name appears in a Google search result, (3) consider sharing anonymously, (4) use caution before sharing their child's location, (5) give their child "veto power" over information shared about them online, (6) consider not sharing images of their children in any state of undress, no matter their age, and (7) consider the effect that sharing could have on a child's current and future sense of self and well-being. *See id.* at 879–82.

41 *See, e.g.*, *Social Media Fact Sheet*, Pew Rsch. Ctr. (Nov. 20, 2025), https://www.pewresearch.org/internet/fact-sheet/social-media/ [https://perma.cc/L783-4GPX] (showing a rising percentage of U.S. adults who say they have ever used certain social media platforms between 2017 and 2025).

42 *See, e.g.*, Steinberg, *supra* note 34, at 18; Plunkett, *supra* note 34, at xviii; Steinberg, *supra* note 37, at 844; Shreya Agarwala, Note, *Children's Privacy and the Ghost of Social Media Past*, 56 Colum. Hum. Rts. L. Rev. 298, 298 (2025); Elizabeth McIntire, Note, *Welcome to the World: Rethinking Children's Privacy Rights in the Age of Sharenting*, 38 Wis. J.L. Gender & Soc'y 268, 277–78 (2023); Marina A. Masterson, Comment, *When Play Becomes Work: Child Labor Laws in the Era of "Kidfluencers,"* 169 U. Pa. L. Rev. 577, 582–84 (2021); Melanie N. Fineman, Note, *Honey, I Monetized the Kids: Commercial Sharenting and Protecting the Rights of Consumers and the Internet's Child Stars*, 111 Geo. L.J. 847, 883 (2023); Nila McGinnis, Note, *"They're Just Playing": Why Child Social Media Stars Need Enhanced Coogan Protections to Save Them from Their Parents*, 87 Mo. L. Rev. 247, 249 (2022); Amanda G. Riggio, Comment, *The Small-er Screen: YouTube Vlogging and the Unequipped Child Entertainment Labor Laws*, 44 Seattle U. L. Rev. 493, 506 (2021); Jessica Pacht-Friedman, Note, *The Monetization of Childhood: How Child Social Media Stars Are Unprotected from Exploitation in the United States*, 28 Cardozo J. Equal Rts. & Soc. Just. 361, 376–77 (2022); Michael Shepherd, Note, *Child Privacy in the Digital Age and California's Child Deletion Statute*, 23 J. Tech. L. & Pol'y 134, 140 (2019).

an age at which long-term harms can be explored.[43] Research, along with law and policy discussions about whether and how to regulate sharenting, must continue.

Once information is shared on the internet, there is no going back. Even if information seems to be deleted or otherwise removed, someone, somewhere, may remember it or have saved it, perhaps by taking a screenshot or downloading the post. What separates sharing information online from other types of information sharing is breadth and reach. People throughout the world may be able to find information about a child whose information has been shared online, whether for good or for ill. Information that relates to the child's health may be particularly personal and sensitive. There are benefits to health sharenting, but do those benefits outweigh its risks and consequences? Should benefits to parents come at the expense of their child's privacy?

Building on prior work about predictive genetic testing in children, this Article revisits a child's right to privacy.[44] Specifically, it examines the potential harms that may result from parents sharing information on social media about their children's physical or mental health conditions, a practice this Article refers to as "health sharenting." Given the potential short- and long-term consequences, it then queries whether—and if so, how—parents should engage in health sharenting. This Article's specific focus on health sharenting fills an important gap in the literature by examining how the sensitive nature of health information renders health sharenting worthy of special consideration and particularly amenable to legal or policy solutions.

The analysis and proposals in this Article proceed with the following three goals in mind: (1) protection of children's right to privacy in their health information, (2) prevention of short- and long-term harms that may occur from health sharenting, and (3) preservation and promotion of a stable and healthy parent-child relationship (collectively, the "Three Goals"). Part I describes the emergence and growth of sharenting and then details concerns about the negative consequences of health sharenting. Part II examines whether existing or proposed laws in the United States or other countries governing children and the internet provide sufficient protection from the potential harms of health sharenting. Given the gaps in the laws discussed in Part II, Part III assesses whether other existing legal and policy mechanisms not specific to the internet could mitigate the consequences of health

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43 The term "sharenting" was likely coined in 2012, *see infra* note 54 and accompanying text, with Steinberg offering one of the first in-depth legal and policy analyses on sharenting in 2017. *See* Steinberg, *supra* note 37, at 856–82. Young children who were the subject of sharenting at the time the word was coined in 2012 would now be reaching adulthood.

44 *See* Allison M. Whelan, *Poked, Prodded, and Privacy: Parents, Children, and Pediatric Genetic Testing*, 109 Iowa L. Rev. 1219, 1282–83 (2024).

sharenting. Specifically, this Part analyzes child welfare laws, child labor laws, and tort law, and explores the strengths and limitations of using those frameworks to mitigate the harms of health sharenting. Part IV concludes by arguing that children have a right to privacy regarding their health information. To protect that right to privacy, the Article uses existing legal and ethical frameworks for health privacy as models to propose recognizing a parent-child "relationship of trust," which carries a presumption of privacy and confidentiality.

I. The Rise of Sharenting

The public and popular use of the internet began in the early 1990s,[45] representing one of the most transformational events in human history.[46] As of October 2025, an estimated 6.04 billion people used the internet, amounting to 73.2 percent of the global population.[47] In the fall of 2024, internet users spent an average of six hours and thirty-eight minutes online every day.[48] This translates to almost forty-seven hours per week and 101 days per year: "By this estimation, beginning at age 18, a person who lives to be 80 will have spent more than 17 years of their adult life using the internet."[49]

With the rise of the internet came the birth of social media, which made widespread sharenting possible. Part I first explores the growth of social media and health sharenting and then unpacks some of the concerns and risks of health sharenting.

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45 *See* Nick Couldry, Media, Society, World: Social Theory and Digital Media Practice 2 (2012); Josie Fischels, *A Look Back at the Very First Website Ever Launched, 30 Years Later*, NPR (Aug. 6, 2021, at 18:08 ET), https://www.npr.org/2021/08/06/1025554426/a-look-back-at-the-very-first-website-ever-launched-30-years-later [https://perma.cc/K2HA-67TZ]; *World Wide Web (WWW) Launches in the Public Domain*, History (May 28, 2025), https://www.history.com/this-day-in-history/april-30/world-wide-web-launches-in-public-domain [https://perma.cc/E88S-QTE3].

46 This period is often called the third industrial revolution, the digital revolution, or the information revolution. *See* Kayla Lya Pfeifer, Comment, *Don't Lose the Remote: An Employer's Guide to Remote Employee and Trade Secret Retention Without Non-Competes*, 75 Mercer L. Rev. 955, 968 (2024); Martin Bruncko, *Beyond the Fourth Industrial Revolution*, World Econ. F. (Nov. 13, 2015), https://www.weforum.org/stories/2015/11/are-you-ready-for-the-information-revolution/ [https://perma.cc/GNU2-RRPL].

47 *Number of Internet and Social Media Users Worldwide as of October 2025*, Statista (Apr. 15, 2026), https://www.statista.com/statistics/617136/digital-population-worldwide/ [https://perma.cc/SWJ6-6QZD].

48 *Average Daily Time Spent Using the Internet by Online Users Worldwide from 3rd Quarter 2015 to 3rd Quarter 2024*, Statista (Nov. 19, 2025), https://www.statista.com/statistics/1380282/daily-time-spent-online-global/ [https://perma.cc/4NBS-YNTL].

49 Lindsey Leake, *17 Years of Your Adult Life May Be Spent Online. These Expert Tips May Help Curb Your Screen Time*, Fortune (Mar. 6, 2024, at 05:10 ET), https://fortune.com/well/article/screen-time-over-lifespan/ [https://perma.cc/2RDH-G9F9].

A. Social Media, Sharenting, and Health Sharenting

Social media is a subset of the internet that includes various platforms on which users create and share user-generated content (photos, videos, text, etc.), engage in conversations, and network with others.[50] The birth of social media came shortly after public use of the internet began in the early 1990s: Classmates.com (1995) and Six Degrees (1997) emerged first, with new platforms gaining widespread popularity in the early 2000s, including Friendster (2002), MySpace (2003), Facebook (2004), YouTube (2005), Twitter (now "X") (2006), and Instagram (2010).[51] As of October 2025, approximately 5.66 billion people, or 68.7% of the world's population, were social media users.[52] Countless social media platforms exist today, with at least sixteen reporting over half a billion monthly users.[53]

1. Sharenting: Definition and Scope

The term "sharenting" is believed to have been coined by *The Wall Street Journal* in 2012.[54] It is now included in dictionaries,[55] and it was even added to the approved list of Scrabble words in 2019.[56] Steinberg describes sharenting as "what parents do when they talk about their children outside the family circle: A post on social media with a picture, a blog post about their child, a video through a messaging platform like WhatsApp, etc."[57]

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50 *See Social Media*, Encyclopedia Britannica (Mar. 10, 2026, at 12:01 ET), https://www.britannica.com/topic/social-media [https://perma.cc/94M2-HWCU]; *Social Media*, Merriam-Webster, https://www.merriam-webster.com/dictionary/social%20media [https://perma.cc/JM93-HPL5] (last visited Mar. 19, 2026); Katie Terrell Hanna, *What Is Social Media?*, TechTarget (Jan. 23, 2025), https://www.techtarget.com/whatis/definition/social-media [https://perma.cc/GP83-3D9P].

51 *See* Matthew Jones, *The Complete History of Social Media: A Timeline of the Invention of Online Networking*, Hist. Coop. (Feb. 26, 2026), https://historycooperative.org/the-history-of-social-media/ [https://perma.cc/FY64-NGX6]; *A History Timeline About YouTube*, Hist. Timelines, https://historytimelines.co/timeline/youtube [https://perma.cc/9NTT-M3LK]. Facebook began as a social media site exclusive to Harvard students in 2004; it gradually opened to students at other universities, and in 2006 it opened to anyone over the age of thirteen. Jones, *supra*.

52 *See Number of Internet and Social Media Users Worldwide as of October 2025*, *supra* note 47.

53 *Global Social Media Statistics*, DataReportal, https://datareportal.com/social-media-users# [https://perma.cc/92TQ-GQAF] (last visited Mar. 19, 2026).

54 *See* Steven Leckart, *The Facebook-Free Baby: Are You a Mom or Dad Who's Guilty of 'Oversharenting'? The Cure May Be to Not Share at All*, Wall St. J., May 12, 2012, at D11 (coining the term "sharenting" via its novel use of the word "oversharenting").

55 *See* sources cited *supra* note 34.

56 *See* Steinberg, *supra* note 34, at 18.

57 *What You Need to Know About "Sharenting,"* UNICEF: Parenting, https://www.unicef.org/parenting/child-care/sharenting [https://perma.cc/K847-CVYZ] (last visited Sep. 27, 2025).

Parents conversing about their children with others is a practice as old as parenthood itself. Yet sharenting can be distinguished by its much broader reach. Depending on the platform used, "sharented" information can reach over one billion people.[58] And even though platform settings allow parents to limit who can view their shared content, at least one study suggests that nearly one-quarter of parents use "public" settings, "meaning that anyone can see what they post."[59] Relatedly, "[n]early eight in 10 parents have friends or followers . . . that they have never met in real life."[60]

Sharenting is now ubiquitous. A study dating back to 2010 even found that ninety-two percent of children under the age of two had a "digital footprint," meaning there were images of them posted online.[61] A decade and a half later, the number of children with a digital footprint is undoubtedly higher. The average "digital birth" occurs around six months of age, and one-third of children have information and photos posted about them within weeks of being born.[62]

According to a 2021 survey of 1,000 parents and teenagers in the United States, over seventy-five percent of parents have shared stories, videos, or images of their children or stepchildren on social media, with eighty percent of these posts including the children's real names.[63] Many children want their parents to ask their permission before posting about them,[64] yet fewer than twenty-five percent of parents always seek their child's consent before posting content about them.[65] And about

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58 *See Global Social Media Statistics*, *supra* note 53.

59 Paul Frew & Gene Petrino, *Parents' Social Media Habits: 2021*, Security.org (Oct. 10, 2025), https://www.security.org/digital-safety/parenting-social-media-report/ [https://perma.cc/QMZ8-AJMR]. Parents can limit access to their social media accounts by making their accounts "private," yet "[e]ven if parents use the most stringent privacy settings[,] . . . there are no guaranteed protections when putting information about their children online" because of risks like data breaches. McIntire, *supra* note 42, at 277–78.

60 Frew & Petrino, *supra* note 59.

61 *AVG Digital Diaries – A Look at How Technology Affects Us from Birth Onwards*, AVG Digital Diaries (2013), https://www.avgdigitaldiaries.com/post/41940227757/avg-digital-diaries-a-look-at-how-technology [https://perma.cc/A5QL-N897].

62 *Id.*; *see also* Mitchell K. Bartholomew, Sarah J. Schoppe-Sullivan, Michael Glassman & Claire M. Kamp Dush, *New Parents' Facebook Use at the Transition to Parenthood*, 61 Fam. Rels. 455, 461 (2012) (reporting results of a study on new parents' use of social media).

63 Frew & Petrino, *supra* note 59.

64 Carol Moser, Tianying Chen & Sarita Y. Schoenebeck, *Parents' and Children's Preferences About Parents Sharing About Children on Social Media*, Proc. of 2017 ACM SIGCHI Conf. on Hum. Factors in Computing Sys. 5221, 5223 (2017) ("Children believe parents should ask children for their permission before posting about them more often than parents believe they should . . . .").

65 Frew & Petrino, *supra* note 59; *see also* 1Password & Malwarebytes, Forever Connected: The Realities of Parenting and Growing Up Online 2 (2022), https://www.malwarebytes.com/wp-content/uploads/sites/2/2023/09/parenting-and-growing-up-online-10-2022.pdf [https://perma.cc/V73Y-A5KA] (finding that thirty-four percent of parents ask permission of their

one-third of parents never seek permission.[66] Moreover, thirty-two percent of teenagers surveyed reported that their parent or stepparent had shared a story, image, or video on social media after being asked not to.[67]

2. What Do Parents Share, and Why?

The content of sharenting varies based on the reasons and motivations for sharenting, which "are as varied as the [sharenters] themselves."[68] Studies suggest many reasons for sharenting, including staying in touch with friends and family, seeking social validation, obtaining and maintaining social connections, engaging in "digital storytelling," preserving memories, sharing children's milestones and accomplishments, disciplining one's child, or generating income.[69]

This Article focuses on another reason for sharenting: to share content about children with physical or mental health conditions. Parents of such children may turn to social media for advice, to find formal or informal support groups, to commiserate or vent about the frustrations and hardships of raising a child with special health needs, to raise awareness about their child's condition, to raise money for the care of their child, or as a general source of income.[70] As one blogger describes,

> Sharenting serves as an outlet for parents to express their true feelings on the realities of raising children, particularly the hardships brought on by raising children with chronic mental health or developmental needs. By sharing these stories, parents build supportive communities of similarly situated parents

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children before posting photos of them and thirty-nine percent of parents do not feel they need permission, even though seventy-three percent of Gen Z children wish to be asked).

66 *See* Frew & Petrino, *supra* note 59; 1Password & Malwarebytes, *supra* note 65, at 2.

67 Frew & Petrino, *supra* note 59.

68 Şule Betül Tosuntaş & Mark D. Griffiths, *Sharenting: A Systematic Review of the Empirical Literature*, 16 J. Fam. Theory & Rev. 525, 526 (2024).

69 *See id.* at 526–27, 545 (citing studies evaluating motivations and reasons for sharenting); *see, e.g.*, Steinberg, *supra* note 37, at 848, 851–54; Fineman, *supra* note 42, at 854, 857–58; McIntire, *supra* note 42, at 269–70.

70 Tawfiq Ammari & Sarita Schoenebeck, *Networked Empowerment on Facebook Among Parents of Children with Special Needs*, Proc. of 33rd Ann. CHI Conf. on Hum. Factors in Computing Sys. 2805, 2807–09 (2015); *see also* Vrushali Gadkari, Aileen Garcia & Elaina Knipple, *Sharenting: Risks and Remedies*, Univ. Mo.: Extension (June 2025), https://extension.missouri.edu/publications/gh6131 [https://perma.cc/C6LX-4K6U] ("[Sharenting can] raise awareness and encourage support for issues like the experiences of neurodiverse children[,] . . . [which] can further reduce the stigma and increase understanding of different types of families.").

> and advocate for greater awareness and education around the raising of children with mental and developmental needs.[71]

Health sharenting may be done in different ways, with some parents telling the story from their own point of view as a parent of a child with special health needs, limiting the amount of individual or identifiable information about the child. Others may include the child in some or most of the content, or even run the account in the child's name, as if the child is responsible for the content. Hannah's account represents the latter approach.[72] Many of these children, however, are far too young to run or control the social media account, or even to consent to the information being posted.

The rise of monetized social media accounts provides another motivation for sharenting. "Commercial sharenting"—sharing content about one's children for financial gain[73]—can happen in a number of ways, such as by monetizing the social media account, selling merchandise or other items, linking to fundraiser accounts like GoFundMe, or providing information about a payment app like Venmo, PayPal, or Cash App through which people can send money directly.[74] Social media accounts can be monetized in a number of ways, depending on the platform.[75]

Leah Plunkett, author of *Sharenthood: Why We Should Think Before We Talk About our Kids Online*, identifies three common narratives found in commercial sharenting: life stages, activities, and cause-based communities.[76] The "life stage" narrative includes content creators who share content about their lives as it relates to certain developmental phases, such as "conception, gestation, labor and delivery, newborn, infancy, early childhood, childhood, preteen, and teen."[77] The "activities" narrative typically "focus[es] on doing activities with kids or guiding kids as they engage in such activities themselves," running the gamut "from arts and crafts to zany pranks."[78]

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71 Emma Lee, *Regulating Commercial Sharenting to Protect Kidfluencers and Mitigate the Youth Mental Health Crisis*, DePaul U. Health L. Inst.: E-Pulse Blog (Apr. 26, 2024), https://blogs.depaul.edu/jhli/2024/04/26/regulating-commercial-sharenting-to-protect-kidfluencers-and-mitigate-the-youth-mental-health-crisis-by-emma-lee/ [https://perma.cc/8CDX-552A].

72 *See* MyARFIDLife (@MyARFIDLife), *supra* note 17.

73 Plunkett, *supra* note 34, at 55; Fineman, *supra* note 42, at 848 & n.5.

74 Plunkett, *supra* note 34, at 55.

75 *See id.* Financial gain through commercial sharenting "could be immediate compensation, development of business interests for future compensation, or other forms of current or potential revenue generation. Revenue may come from a variety of sources, including marketing agreements with businesses to promote a given product or service and other partnerships or deals, such as the YouTube Partner Program." *Id.*

76 *Id.* at 59.

77 *See id.* at 60.

78 *Id.* at 62.

Parents who share information about children with special health needs fall best within the third narrative: "cause-based communities."[79] Such content often "aim[s] to destigmatize experiences of chronic health conditions by sharing both the 'normal' aspects of daily life as well as the burdens of illness."[80] At their most altruistic, these accounts may donate some or all of their earnings to raise money for a foundation or nonprofit dedicated to the child's condition.[81] In other cases, the money earned may help pay for the child's treatment or other needs, which can quickly amount to millions of dollars.[82] At times, financial requests are "about survival . . . . The price of privacy is too high when health and life are on the line."[83] How the money is spent, however, may be unclear, causing viewers to question or accuse the parents of exploiting their child's suffering for financial gain.[84]

It is difficult to determine how much money influencers earn, but it continues to grow. The global influencer market increased from $16.4 billion in 2022 to over $21 billion in 2023.[85] And one estimate expects that the broader "creator market" will generate $480 billion in revenue by 2027, representing the fastest-growing sub-industry within digital media.[86] A 2023 survey reported that around forty-eight percent of creator-earners make $15,000 or less annually, and approximately thirteen percent make $100,000 or more annually.[87] The amount earned depends on a number of factors, including the content type (e.g., lifestyle, food and drink, family, health and wellness), the target audience, the number of followers and follower engagement, the platform(s) used, the number of posts, and the source of revenue (e.g., brand deals, affiliate links, ad revenue share, merchandise).[88] For the subset of influencers that would

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79 *Id.* at 67.

80 *Id.*

81 As one example, the Facebook page for "Kinsley Kicks Cancer" includes a link to a GoFundMe page that raises money to help pay for Kinsley's treatment. Kinsley Kicks Cancer, Facebook, https://www.facebook.com/share/g/15sSGpvPpD/ [https://perma.cc/TX47-ZCX5]. The page indicates that after her treatment, "all money left over will go to childhood cancer research." Kinsley's Kicking Cancer, GoFundMe, https://www.gofundme.com/f/kinsleyskickingcancer [https://perma.cc/8896-6YXH].

82 Kinsley's Kicking Cancer, GoFundMe, *supra* note 81.

83 Plunkett, *supra* note 34, at 68.

84 The comments on some of Hannah's content provide a prime example of these accusations. *See, e.g.*, *supra* notes 24–30 and accompanying text.

85 Steph Payas, Madelyn Ormond, Serena Ngin, Brianna Borik & Katie Kammerdeiner, Creator Earnings 2023, at 1 (2023), https://neoreach.com/wp-content/uploads/2023/10/2023-Creator-Earnings-Report.pdf [https://perma.cc/ATW9-DARJ].

86 *Id.* at 2.

87 *Id.* at 19.

88 *Id.*; Jennifer Dublino, *Social Media Stars: How Much Do They Really Make?*, Business.com (Jan. 6, 2026), https://www.business.com/articles/social-media-stars-how-much-do-they-really-make/ [https://perma.cc/5NH7-AEW9].

likely include "sharenters"—those focused on "family" content—the estimated annual earnings are around $65,000 to $70,000.[89]

Social media influencers can be broken down into various tiers based on their number of followers, which can significantly affect earnings. One source breaks down the tiers as follows:[90]

- **Nano-influencers:** Fewer than 15,000 followers
- **Micro-influencers:** 15,000 to 75,000 followers
- **Mid-tier influencers:** 75,000 to 250,000 followers
- **Macro-influencers:** 250,000 to 1 million followers
- **Mega-influencers and celebrities:** Over 1 million followers

Table 1 breaks down influencer compensation for each tier based on five popular platforms: Instagram, TikTok, YouTube, Facebook, and Snapchat.[91] The values listed reflect the average amount a business would pay a particular influencer for a sponsored post.[92] The amount listed is compensation per post.

TABLE 1. AVERAGE INFLUENCER COMPENSATION PER SPONSORED POST

	Instagram	**TikTok**	**YouTube**	**Facebook**	**Snapchat**
Nano	$500–$2,000	$500–$2,000	$1,000–$2,500	$500–$1,500	$200–$1,000
Micro	$2,000–$8,000	$2,000–$8,000	$2,500–$9,000	$1,500–$6,000	$1,000–$5,000
Mid-tier	$8,000–$20,000	$8,000–$20,000	$9,000–$25,000	$6,000–$15,000	$5,000–$20,000
Macro	$20,000–$45,000	$20,000–$45,000	$25,000–$49,000	$15,000–$40,000	$20,000–$35,000
Mega/Celebrity	$45,000+	$45,000+	$49,000+	$40,000+	$35,000+

89 PAYAS ET AL., *supra* note 85, at 4.

90 Olivia Savage, *2025 Influencers Rate Guide: What Content Creators Charge Per Post*, IMPACT.COM, https://impact.com/influencer/how-much-do-influencers-charge-per-post/ [https://perma.cc/35XW-Z8XN] (last visited Mar. 19, 2026).

91 Compiled using data from *id.*

92 A sponsored post is paid content that promotes products or services. "Paid sponsorships" involve brands paying "specific users (usually influencers) to make promotional posts for them." *Everything You Need to Know About Sponsored Posts*, ASPIRE, https://www.aspire.io/blog/sponsored-posts [https://perma.cc/5YPL-4PA6] (last visited Mar. 19, 2026); *see also* Indeed Editorial Team, *What Is a Sponsored Post on Instagram? (With Types and Instructions)*, INDEED (Dec. 11, 2025), https://www.indeed.com/career-advice/career-development/what-is-sponsored-post-on-instagram [https://perma.cc/32VG-7DY5].

Other estimates suggest lower earnings, with CBS News predicting that child influencers[93] with at least one million followers could earn $10,000 for each sponsored post.[94] Regardless of the estimate used, earnings can be significant.

To make this more concrete, consider Hannah's Instagram account, which has roughly 1.5 million followers.[95] This number of followers places her in the "mega-influencer" category. Assuming the averages in the chart above are accurate, if Hannah were to partner with a brand for a sponsored post on Instagram, the brand would pay Hannah—or, perhaps more accurately, her mother—$45,000 on average.[96] But Hannah has accounts on Instagram, TikTok, YouTube, *and* Facebook. Thus, if that brand wanted the post to be included on all of Hannah's accounts, Hannah could earn an average of $179,000 for just one sponsored post. Even the lower estimate of $10,000 per sponsored post would amount to $40,000 earned for a single sponsored post across all her social media accounts. Given the seemingly low overhead cost of Hannah's videos,[97] her accounts can make significant profits by partnering with just a few brands.

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93 Child influencers and health sharenting are related yet not necessarily the same. Child influencers have accounts that create child-centered content on social media. Thus, health sharenting that focuses on the *child's* journey and that includes information or images that identify the child would make the child a child influencer. In contrast, an account that focuses on a parent's experience and does not include images, videos, or identifiable information about the child would not make the child a child influencer.

94 CBS News, *Kid Influencers: Few Rules, Big Money*, at 02:14 (YouTube, Aug. 23, 2019), https://www.youtube.com/watch?v=8XkaSouYTbg (on file with the George Washington Law Review).

95 *See* MyARFIDLife (@MyARFIDLife), *supra* note 17.

96 Hannah has partnered with brands such as KateFarms, which makes nutritional shakes and formulas. *See* Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife) & Kate Farms (@KateFarms), Instagram, *Paid Partnership with Katefarms* (Aug. 16, 2024), https://www.instagram.com/reel/C-vaxRrJS0i/ (on file with the George Washington Law Review). In other posts that are not explicitly listed as sponsored, Hannah appears to be at least *seeking* a sponsorship, based on the post "tagging" the brand. *See, e.g.*, Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Today I decided to try the Orange Dream Machine from @jamba.* (May 21, 2025), https://www.instagram.com/reel/DJ7hMF8hCul/ (on file with the George Washington Law Review) (tagging Jamba); Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *Trying the Number One Candy Bar Sold in the World* (May 18, 2025), https://www.instagram.com/p/DJzj8xvSqFn/ (on file with the George Washington Law Review) (tagging Twix and Snickers); Video posted by Hannah Lea & Michelle Dorit (@MyARFIDLife), Instagram, *I lived off of strawberry @the_official_danimals for a long time.* (May 13, 2025), https://www.instagram.com/p/DJnO48SyU_y/ (on file with the George Washington Law Review) (tagging Danimals).

97 Although the costs of creating the content on Hannah's social media accounts are unknown, it seems likely that the content would not require much beyond a phone with decent recording capabilities, a microphone, some backlighting such as a "ring light," and possibly some special editing software.

The prospect of making millions of dollars as an influencer provides a strong incentive for parents to consider commercial sharenting. But is the money worth the risk?

B. Risks and Harms of Sharenting Health Information

This Article does not contest that parents and families can benefit from health sharenting.[98] Nevertheless, health sharenting raises complex legal, ethical, familial, socioemotional, and privacy concerns.[99] There is a fine line between appropriate and inappropriate sharenting, or "oversharenting." Section B unpacks three areas of harm: (1) social harms (stigma, discrimination, bullying, and harassment), (2) harms to the parent-child relationship, and (3) harms to the child's privacy and autonomy. These harms may overlap and compound, and they may occur at the time of the sharenting or in the child's future. This Section must be read with an important caveat in mind: Because widespread health sharenting is a relatively new phenomenon, there is a lack of empirical data on its long-term harms. Thus, any recommendations in this Article must be pursued in tandem with further research into the long-term harms of sharenting.

1. Social Harms: Stigma, Discrimination, Bullying, Harassment

Health sharenting is a double-edged sword. On the one hand, it can reduce stigma and discrimination by educating the public, raising awareness, increasing empathy and understanding, and breaking down stereotypes.[100] On the other hand, it can have paradoxical effects on stigma and discrimination by reinforcing stereotypes and "otherness."[101]

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98 *See* Steinberg, *supra* note 37, at 846, 855, 877 (noting certain benefits of sharenting and citing sources); Joyce Lee, *Parenting & "Sharenting": The Opportunities and Risks of Parenting in the Social Media Age*, U. Mich. Inst. for Healthcare Pol'y & Innovation (Mar. 17, 2015), https://ihpi.umich.edu/news/parenting-"sharenting"-opportunities-risks-parenting-social-media-age [https://perma.cc/673C-CQHL]. For one example of how a parent's blog post about her child's mental health crises brought support to a family, see *How Talking Openly Against Stigma Helped a Mother and Son Cope with Bipolar Disorder*, NPR (Apr. 24, 2016, at 07:57 ET), https://www.npr.org/sections/health-shots/2016/04/24/475461959/how-talking-openly-against-stigma-helped-a-mother-and-son-cope-with-bipolar-diso [https://perma.cc/NG6A-3ZM7].

99 This Article focuses on the risks of sharenting health information. Many of these risks are the same as the risks of general sharenting.

100 *See Mental Health Awareness: Breaking the Stigma with Education and Advocacy*, Park Univ.: Blog (July 31, 2024), https://www.park.edu/blog/mental-health-awareness-breaking-the-stigma-with-education-and-advocacy/ [https://perma.cc/XJ3T-TKDA].

101 *See* Beth Newcomb, *How Stereotypes Hurt*, Univ. S. Cal. Leonard Davis Sch. of Gerontology (Oct. 20, 2015), https://gero.usc.edu/2015/10/20/how-stereotypes-hurt/ [https://perma.cc/Z3PS-45KP] ("Although health messages are intended to raise awareness of health issues or trends that may affect specific communities, . . . these messages can backfire . . . . '[T]hey often communicate and reinforce negative stereotypes about certain groups of people.'" (quoting Cleopatra

These divergent outcomes must be weighed when considering whether to engage in health sharenting.

Stigma includes "stereotypes or negative views attributed to a person or groups of people when their characteristics or behaviors are viewed as different from or inferior to societal norms."[102] "Social stigma" includes "belief[s] held by a large faction of society in which persons with the stigmatized condition are less equal or are part of an inferior group."[103] Social stigma "can create barriers for persons with a mental or behavioral disorder."[104] "Self-stigma" occurs when social stigma is internalized by the person with the condition, causing the person to "feel guilty and inadequate."[105] Self-stigma "can have a deleterious effect on a person's self-esteem and self-efficacy, which may lead to altered behavioral presentation."[106]

The risk of stigma is heightened for health sharenting because it can involve sharing information about a child's mental health. Despite growing awareness and acceptance of many mental health conditions—such as depression, anxiety, and obsessive-compulsive disorder—stereotypes, prejudice, and discrimination continue, particularly for certain conditions like schizophrenia and bipolar disorder.[107]

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102 Brian K. Ahmedani, *Mental Health Stigma: Society, Individuals, and the Profession*, J. Soc. Work Values & Ethics, Fall 2011, at 4-1, 4-2.

103 *Id.* at 4-5.

104 *Id.*

105 *Id.* at 4-7.

106 *Id.*

107 *See, e.g.*, *Americans Becoming More Open About Mental Health*, Am. Psych. Ass'n (May 2019), https://www.apa.org/news/press/releases/apa-mental-health-report.pdf [https://perma.cc/E8GD-KLZ3] (finding that stigma against people with mental illness continues to be a major problem); Bernice A. Pescosolido, Andrew Halpern-Manners, Liying Luo & Brea Perry, *Trends in Public Stigma of Mental Illness in the US, 1996–2018*, JAMA Network Open, Dec. 21, 2021, at 1, 1, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787280 [https://perma.cc/F5TX-PGEE] (finding a decrease in stigma of depression but an increase in stigma of schizophrenia); Press Release, HealthPartners, Stigma of Mental Illnesses Decreasing, Survey Shows (Feb. 24, 2020), https://www.healthpartners.com/hp/about/press-releases/stigma-of-mental-illnesses-decreasing.html [https://perma.cc/T8WQ-NS9Q] (reporting that stigma of mental illnesses is still prevalent, despite a statistical decrease in stigma); Carlye S. Aird, Bennett A.A. Reisinger, Stephanie N. Webb & David H. Gleaves, *Comparing Social Stigma of Anorexia Nervosa, Bulimia Nervosa, and Binge-Eating Disorder: A Quantitative Experimental Study*, J. Eating Disorders, Jan. 27, 2025, at 1, 1 (noting those with eating disorders may be at higher risk of experiencing stigma compared to those with other psychological disorders, such as depression); Cassie M. Hazell, Clio Berry, Leanne Bogen-Johnston & Moitree Banerjee, *Creating a Hierarchy of Mental Health Stigma: Testing the Effect of Psychiatric Diagnosis on Stigma*, 8 BJPsych Open, Sep. 26, 2022, at 1, 1, 4 (ranking disorders from most to least stigmatized: schizophrenia, antisocial personality disorder, borderline personality disorder, dissociative identity disorder, bipolar disorder type 1, post-traumatic stress disorder, obsessive-compulsive disorder, generalized anxiety disorder, depression).

The consequences of stigma are many, including reduced social interaction, internalized shame, difficulty seeking help, and lower quality of care received when help is sought.[108]

Health sharenting creates a particular risk of social stigma and self-stigma. Imagine a situation in which a child's peer views the sharented content. That peer may not understand the complexities of the child's condition. This lack of knowledge may contribute to new or increased negative perceptions of the child and increase the already elevated likelihood that the child with the mental health issue will be rejected by their peers.[109] Accordingly, stigma can lead to bullying, harassment, dislike, avoidance, or rejection by peers.

Peer rejection and avoidance may be exacerbated by parents of the child's peers, who may try to keep their own children distanced from the child with the mental health condition. According to one analysis by Jack K. Martin and colleagues, parents who view a child's condition as a mental illness, as compared to a physical illness or a "normal" situation, report a greater preference for distancing their own child from the ill child.[110] The authors of the study state,

> [A] substantial minority of American adults are reluctant to interact, or to have their children interact, with children described in ways consistent with clinical symptoms. Indeed, about one in five adults is unwilling to have these children living next door, in his or her child's classroom, or as his or her child's friend.[111]

Children who are rejected by their peers tend to experience loneliness, low self-esteem, and social anxiety.[112] They "tend to participate less in class, avoid school and underachieve."[113] They are also at increased risk of dropping out of school, engaging in juvenile offending or criminal

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108 *See* Ahmedani, *supra* note 102, at 4-2, 4-6 to 4-7 (discussing the types of consequences of stigma); Nikhita Singhal, *Stigma, Prejudice, and Discrimination Against People with Mental Illness*, Am. Psychiatric Ass'n (Mar. 2024), https://www.psychiatry.org/patients-families/stigma-and-discrimination [https://perma.cc/6HES-RGZK].

109 *See, e.g.*, Sylvie Mrug et al., *Peer Rejection and Friendships in Children with Attention-Deficit/Hyperactivity Disorder: Contributions to Long-Term Outcomes*, 40 J. Abnormal Child Psych. 1013, 1014 (2012) ("52% of the children with ADHD were rejected by peers, compared to only 14% of randomly selected classmates.").

110 *See* Jack K. Martin, Bernice A. Pescosolido, Sigrun Olafsdottir & Jane D. McLeod, *The Construction of Fear: Americans' Preferences for Social Distance from Children and Adolescents with Mental Health Problems*, 48 J. Health & Soc. Behav. 50, 57, 59–60 (2007).

111 *Id.* at 61.

112 Lise M. Youngblade, Eric A. Storch & John A. Nackashi, *Peers*, *in* Developmental-Behavioral Pediatrics 152, 153 (William B. Carey et al. eds., 4th ed. 2009).

113 Janet S. Walker, *Children's Stigmatization of Peers with Common Emotional and Behavioral Disorders*, 10 Rep. on Emotional & Behav. Disorders in Youth 44, 45 (2010).

behavior, and developing new or worsening mental health problems.[114] Adults "who were rejected by peers during childhood continue to experience relatively negative outcomes, including having lower levels of educational and occupational success relative to peers who were not rejected."[115]

Stigma and discrimination can also manifest as bullying or harassment.[116] Bullying may occur in school by peers or online in the form of cyberbullying by peers or adults in a post's comment section.[117] Comment sections can be filled with negative and cruel comments, which can be harmful to anyone, especially someone already dealing with mental health issues.[118] And although social media users can turn off or "mute" comments, influencers, especially those who seek to monetize their content, rely on engagement with their content and thus may hesitate to mute comments on their posts.[119] In fact, at least one study suggests that influencers who turn off comments "are judged as less sincere," "incur

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114 *See id.*; Youngblade et al., *supra* note 112, at 153.

115 Walker, *supra* note 113, at 45.

116 *See* Sophie Stephenson, Christopher Nathaniel Page, Miranda Wei, Apu Kapadia & Franziska Roesner, *Sharenting on TikTok: Exploring Parental Sharing Behaviors and the Discourse Around Children's Online Privacy*, Proc. of 2024 CHI Conf. on Hum. Factors in Computing Sys., no. 114 (2024) (collecting studies on bullying as a result of sharenting); Paweena Manotipya & Kambiz Ghazinour, *Children's Online Privacy from Parents' Perspective*, 177 Procedia Comput. Sci. 178, 179 (2020) ("Many cases exist where parents' posts had a negative impact on their children's privacy and safety, such as . . . online harassment[] and cyber bullying."); Pam Rutledge, *How Holiday Sharenting Can Put Your Kids at Risk*, Fielding Graduate Univ. (Dec. 21, 2023), https://www.fielding.edu/how-holiday-sharenting-can-put-your-kids-at-risk/ [https://perma.cc/4URQ-6PB3] ("Cute pictures become ammunition for bullies.").

117 *See* Steinberg, *supra* note 37, at 854–55 ("Parental disclosures on social media have also caused some children to be bullied by children as a result of embarrassing pictures and stories shared by their parents. Adults also engage in this form of online bullying. There are now public Facebook groups that make fun of pictures shared by other parents."); Daniel R. Clark & Alisa B. Jno-Charles, *The Child Labor in Social Media: Kidfluencers, Ethics of Care, and Exploitation*, 201 J. Bus. Ethics 35, 53 (2025).

118 *See* Monica Anderson, *About 1 in 5 Victims of Online Harassment Say It Happened in the Comments Section*, Pew Rsch. Ctr. (Nov. 20, 2014), https://www.pewresearch.org/short-reads/2014/11/20/about-1-in-5-victims-of-online-harassment-say-it-happened-in-the-comments-section/ [https://perma.cc/9UXV-E72B] (noting that approximately twenty-two percent of internet users that were victims of online harassment reported that their last experience occurred in the comments section of a website); Arlin Cuncic, *Mental Health Effects of Reading Negative Comments Online*, Verywell Mind (Jan. 30, 2026), https://www.verywellmind.com/mental-health-effects-of-reading-negative-comments-online-5090287 [https://perma.cc/6Y6U-76TD] ("Comment sections can devolve into insults, threats, arguments, and harassment if left unchecked."); Kelly McMahan, *Don't Open the Comments Section*, Mass. Daily Collegian (Nov. 28, 2023), https://dailycollegian.com/2023/11/comment-sections-are-terrible/ [https://perma.cc/324K-GAX7] ("[C]omment sections manufacture an artificially high level of incivility.").

119 Michelle E. Daniels & Freeman Wu, *No Comments (from You): Understanding the Interpersonal and Professional Consequences of Disabling Social Media Comments*, 88 J. Mktg. 121, 121 (2022).

both interpersonal and professional consequences," "breed animosity and generate additional disapproval," "reduce influencer persuasiveness," and otherwise reduce consumer support for the influencer.[120] If reduced support leads to lower engagement, an influencer's earnings may also decrease.[121]

According to Cam Barret, the child of a sharenter, her mother's sharenting severely impacted her as a child.[122] Cam's mother frequently posted details about her life online, "including her tantrums, her medical diagnoses and the fact that she's adopted."[123] This information was used by bullies at school "to mock her, causing her anxiety and other mental health struggles."[124] Cam is not alone. According to one study of 1,000 members of Gen Z,[125] one in ten reported being stalked, bullied, or hurt in other ways because of something they or their parents posted online.[126]

Health sharenting can also result in implicit and explicit discrimination in the child's short- and long-term future. This discrimination may arise in future decisions about education, employment, and insurance. Even though there are legal protections against discrimination on the basis of physical and mental health conditions in these areas, those protections are neither comprehensive nor guaranteed.[127]

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120 *Id.* at 121–22, 128, 134–35.

121 *See id.* at 127 (describing how "[i]nfluencers typically generate a substantial portion of their income through affiliate marketing, earning a commission when consumers engage with their sponsored content through personalized affiliate links or discount codes.").

122 Faith Karimi, *The First Social Media Babies Are Adults Now. Some Are Pushing for Laws to Protect Kids from Their Parents' Oversharing*, CNN (May 29, 2024, at 08:59 ET), https://www.cnn.com/2024/05/29/us/social-media-children-influencers-cec [https://perma.cc/7TBL-2BB2].

123 *Id.*

124 *Id.*

125 "Gen Z" was defined as individuals born between the mid-1990s and early 2010s. 1Password & Malwarebytes, *supra* note 65, at 5, 17.

126 *Id.*; *see also* Paula Cocozza, *'I Was So Embarrassed I Cried': Do Parents Share Too Much Online?*, Guardian (Nov. 5, 2016, at 05:00 ET), https://www.theguardian.com/lifeandstyle/2016/nov/05/parents-posting-about-kids-share-too-much-online-facebook-paula-cocozza [https://perma.cc/9BBX-GY5N].

127 Examples of these current protections are found in various laws, including: (1) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which prohibits the use of health information by insurers to determine health insurance benefits and premiums, Pub. L. No. 104-191, § 702, 110 Stat. 1936, 1945 (codified at 29 U.S.C. § 1182); (2) the Patient Protection and Affordable Care Act ("ACA"), which prohibits health insurers from discriminating against patients because of "preexisting condition[s]" and limits the criteria upon which insurance premiums may be based, Pub. L. No. 111-148, § 1201, 124 Stat. 119, 154 (2010) (codified at 42 U.S.C. § 3060gg-3(a)); (3) the Americans with Disabilities Act of 1990 ("ADA"), which prohibits employers from discriminating against individuals with disabilities in employment decisions, Pub. L. No. 101-336, § 102, 104 Stat. 327, 331 (codified as amended at 42 U.S.C. §§ 12101–12213 and 47 U.S.C. § 225); (4) the Family and Medical Leave Act of 1993, which allows eligible employees to take unpaid, job-protected leave for certain medical conditions, Pub. L. No. 103-3, § 102, 107 Stat. 6, 9–10 (codified as amended in scattered sections of 5 and 29 U.S.C.); (5) Section 504 of the Rehabilitation Act of 1973, which

For example, the disclosure of certain health information may put a child's future educational opportunities at risk due to discrimination by those in gatekeeping positions, such as college admissions officers. In fact, "it seems clear that schools are nervous about accepting [or retaining] adolescents who divulge psychiatric histories," a perception that "is reinforced by high-profile lawsuits alleging discrimination against students with mental health disabilities" at schools like Yale and Stanford.[128] In 2019, for example, an investigation by the inspector general of Florida's university system found that the admissions policies of New College of Florida likely discriminated against applicants with mental health issues.[129]

Colleges cannot ask applicants if they have mental health issues, but students may write about them, such as in their personal statements that accompany their applications. At New College of Florida, the dean of enrollment "had admissions readers flag those applicants who wrote about mental health issues for a special review . . . . Some of them were rejected—even if they met the requirements for admission."[130] This discrimination can be difficult to prove, however, because "colleges hide behind a holistic admissions process," and "admissions offices never have to explain why a student wasn't admitted."[131]

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prohibits discrimination against individuals with disabilities in programs and activities (such as education) that receive federal financial assistance, Pub. L. No. 93-112, § 504, 87 Stat. 394 (codified at 29 U.S.C. § 794); and (6) a patchwork of state laws similar to or more comprehensive than the federal laws listed previously. *See, e.g.*, Daniel Castro, Luke Dascoli & Gillian Diebold, *The Looming Cost of a Patchwork of State Privacy Laws*, Info. Tech. & Innovation Found. (Jan. 24, 2022), https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws/ [https://perma.cc/777Y-TURT] (noting that "[i]n the absence of comprehensive federal law, a handful of large states . . . have passed or begun to enact data privacy legislation"); Gabriela Rios, *Digital Diagnosis: Health Data Privacy in the U.S.*, Law & Biosciences Blog (Feb. 26, 2025), https://law.stanford.edu/2025/02/26/digital-diagnosis-health-data-privacy-in-the-u-s/ [https://perma.cc/2NZY-K2NH] ("The States have taken on the burden of creating regulations around privacy matters.").

128 Emi Nietfeld, *I Edited Mental Illness Out of My College Applications. I'm Not Alone*, N.Y. Times (Dec. 31, 2022), https://www.nytimes.com/2022/12/31/opinion/college-applications-mental-health.html [https://perma.cc/G34Z-TX9D]; *see also* Nicki Brown & Zoe Sottile, *Yale Agrees to Settle Lawsuit Alleging Discrimination Against Students with Mental Health Disabilities*, CNN (Aug. 28, 2023, at 21:31 ET), https://www.cnn.com/2023/08/28/us/yale-mental-health-lawsuit-settlement [https://perma.cc/L99V-FYA6] (discussing the Yale lawsuit); Elena Kadvany, *In 'Historic' Settlement, Stanford Agrees to Revise Leave of Absence Policies for Students in Mental Health Crisis*, Palo Alto Online (July 9, 2025, at 20:10 ET), https://www.paloaltoonline.com/news/2019/10/07/in-historic-settlement-stanford-agrees-to-revise-leave-of-absence-policies-for-students-in-mental-health-crisis/ [https://perma.cc/245S-89QN] (discussing the Stanford lawsuit).

129 Scott Jaschik, *College Found to Discriminate on Mental Health*, Inside Higher Ed (Aug. 26, 2019), https://www.insidehighered.com/admissions/article/2019/08/27/new-college-florida-found-discriminate-against-applicants-mental [https://perma.cc/6JWT-2CGA].

130 *Id.*

131 Sarah Harberson, *Despite the ADA, Mental Health Discrimination Remains Rampant in College Admissions*, Sarah Harberson: Am.'s Coll. Counselor (Oct. 18, 2019), https://www.

There is much debate over whether a prospective student should write about physical or mental health challenges in a college application essay. Health sharenting, however, eliminates the student's ability to make their own informed choice about disclosing their health challenges because college admissions officers may turn to social media to further vet potential applicants.[132] Thus, even though colleges may not ask about an applicant's mental health, they can search the internet and social media for more information about an applicant, where they could come across personal health information shared by the applicant's parents.

In employment, research suggests that individuals with physical or mental disabilities are less likely to receive a positive response to a job application, such as being hired or offered an interview.[133] With respect to mental health conditions, psychiatrist Paul S. Appelbaum explains,

> People with mental disorders often encounter a work environment that is unsupportive and that may be actively hostile to their needs. In part, this adverse experience may account for

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saraharberson.com/blog/ada-mental-health-discrimination-college-admissions [https://perma.cc/AP4V-6H3T].

132 *See* Christopher Rim, *How Your Social Media Accounts Can Affect Your Ivy League Applications*, Forbes (Sep. 12, 2024, at 11:52 ET), https://www.forbes.com/sites/christopherrim/2024/09/12/do-ivy-league-admissions-officers-check-applicants-social-media-what-students-need-to-know/ [https://perma.cc/2XKC-PZVQ]; Rebecca Wilcox, *Do Colleges Look at Your Social Media?*, Univ. S. Fla.: Off. Admissions Blog (Mar. 5, 2025), https://admissions.usf.edu/blog/do-colleges-look-at-your-social-media [https://perma.cc/2Y9Z-K4MY] ("Some colleges have confirmed they do take your social media presence into consideration during the college application process."); Press Release, Kaplan, Kaplan Survey: College Admissions Officers Think It's OK to Visit Applicants' Social Media, But Most Don't (Jan. 29, 2024), https://kaplan.com/about/press-media/kaplan-survey-college-admissions-officers-applicant-social-media [https://perma.cc/UM2Y-MHGQ] (finding that sixty-seven percent of admissions officers think that it is "fair game" to view an applicant's social media pages when making admissions decisions, that twenty-eight percent had actually visited an applicant's social media profile, and "that when admissions officers do visit applicants' social media pages[,] . . . they are much likelier to find something that negatively impacts [the applicants'] chances of getting in than helping them.").

133 *See* Ashley B. Batastini, Angelea D. Bolaños, Robert D. Morgan & Sean M. Mitchell, *Bias in Hiring Applicants with Mental Illness and Criminal Justice Involvement: A Follow-Up Study with Employers*, 44 Crim. Just. & Behav. 777, 778 (2017) (reporting that people with psychiatric histories experience greater stigma from employers); Crosby Hipes, Jeffrey Lucas, Jo C. Phelan & Richard C. White, *The Stigma of Mental Illness in the Labor Market*, 56 Soc. Sci. Rsch. 16, 23 (2016) ("Despite identical qualifications, . . . a history of mental illness led to a significantly lower likelihood of an application being successful in eliciting a callback."); Louis Lippens, Siel Vermeiren & Stijn Baert, *The State of Hiring Discrimination: A Meta-Analysis of (Almost) All Recent Correspondence Experiments*, Euro. Econ. Rev., Jan. 2023, at 1, 10 ("[P]eople with disabilities are on average approximately 41% less likely to receive a positive response to a job application."); Larry R. Martinez, Craig D. White, Jenessa R. Shapiro & Michelle R. Hebl, *Selection BIAS: Stereotypes and Discrimination Related to Having a History of Cancer*, 101 J. Applied Psych. 122, 126 (2016) (finding that prospective applicants who disclosed a cancer diagnosis received fewer callbacks from hiring personnel).

> the low rates of employment among people with mental disorders: compared with people without disabilities, those with a "moderate psychiatric problem" are three times more likely to be out of the U.S. workforce, at rates approaching 50%. Nor do things appear to be improving. Indeed, newly released data show that complaints of workplace discrimination based on mental disorders filed with the U.S. Equal Employment Opportunity Commission (EEOC) increased from 20% of all complaints in 2010 to 30% in 2021. Anxiety and PTSD between them accounted for 60% of all complaints based on mental disorders in 2021, up from 35% in 2010.[134]

Similar to the educational context, employers generally cannot ask job applicants about their health or disability status.[135] And although applicants can voluntarily disclose information about their health, health sharenting again eliminates that choice. Employers can search the internet for information about prospective hires, and they increasingly do so. Approximately seventy percent of companies utilize social media to research potential job candidates, and roughly forty-one percent of U.S. hiring managers believe that "social media sites are among the best places to source candidates."[136] If hiring managers discover that a current or prospective employee has

> a serious illness—especially if it's one that has any stigma attached to it—that employer may not hire [or promote the employee] because they aren't willing to invest time and money in an employee who might not stay in the job long-term or whose health condition might affect his or her performance.[137]

Despite laws to protect against such discrimination, both academic research and discrimination litigation suggest it continues to occur.[138]

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134 Paul S. Appelbaum, *Workplace Discrimination Against People with Mental Disorders and the ADA*, 73 PSYCHIATRIC SERVS. 1193, 1193 (2022) (footnotes omitted).

135 *Pre-Employment Inquiries and Disability*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/pre-employment-inquiries-and-disability [https://perma.cc/KVJ2-EXAA] (last visited Mar. 19, 2026).

136 *Social Media Integral to Recruiting as Most Businesses Use It to Source, Research and Screen Candidates*, PRWEB (May 10, 2023, at 08:50 ET), https://www.prweb.com/releases/social-media-integral-to-recruiting-as-most-businesses-use-it-to-source-research-and-screen-candidates-828377504.html [https://perma.cc/JB8Q-URVW].

137 Jennifer Bridges, *The Privacy Risks of Sharing Health Info Online*, REPUTATION DEF.: BLOG (Mar. 17, 2023), https://www.reputationdefender.com/blog/privacy/privacy-risks-sharing-health-info-online [https://perma.cc/FG6Y-VX8L].

138 *See, e.g.*, Appelbaum, *supra* note 134, at 1193; *see also* Nicole Eichberger, Atoyia Harris, Jessica Guarracino & E. Sydney Cone, *Jury Awards $450,000 for Employer's Termination of Employee After Receiving Notice About Anxiety Disorder*, PROSKAUER: L. & THE WORKPLACE (May 23, 2022), https://www.lawandtheworkplace.com/2022/05/jury-awards-450000-for-employers-termination-of-employee-after-receiving-notice-about-anxiety-disorder/ [https://perma.cc/

Indeed, even though it may be illegal to be fired because of a health issue, "that doesn't mean the threat of a lawsuit will always stop [an employer] from terminating [an employee] or make it any easier to find a new job after [losing a] current one."[139]

Discrimination in health insurance "can occur at the point of enrollment, coverage design, or decisions regarding scope of coverage."[140] Laws like the Health Insurance Portability and Accountability Act ("HIPAA")[141] and the Affordable Care Act ("ACA")[142] prohibit the use of health information when making certain health insurance decisions, but "because of multiple exceptions and loopholes, these laws offer relatively limited protections."[143] Moreover, any protections in place at the time of this writing may not be guaranteed. Many Republican politicians continue to call for the repeal of all or parts of the ACA, which could eliminate the current protections for those with preexisting conditions.[144] Vice President JD Vance, for example, has suggested that insurers should be allowed to separate people into different risk pools.[145] Although "placing healthy people into one risk pool would most likely reduce their premiums, doing the same with sicker consumers would almost certainly cause their premiums to skyrocket."[146] If existing legal protections are weakened or eliminated, health information shared online could potentially be used by health insurers to raise premiums or deny coverage for those with preexisting conditions.

More robust protections against discrimination are undoubtedly needed, as is stronger enforcement of existing protections. But no legal protection will ever be perfect. A key problem with health sharenting is

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NJ73-EYBL] (reporting a jury's unanimous decision that an employee had a disability—anxiety disorders and panic attacks—and that he was fired because of that disability).

139 Tom Spiggle, *As Anxiety-Related Discrimination Complaints Rise, Here's How to Protect Yourself*, Forbes (Aug. 4, 2022, at 12:16 ET), https://www.forbes.com/sites/tomspiggle/2022/05/16/anxiety-disorders-and-mh-discrimination-in-the-workplace/ [https://perma.cc/4LJ2-MCY7].

140 Sara Rosenbaum, O'Neill Inst. for Nat'l & Glob. Health L., Insurance Discrimination on the Basis of Health Status: An Overview of Discrimination Practices, Federal Law, and Federal Reform Options 1 (2018), https://oneill.law.georgetown.edu/wp-content/uploads/2018/10/Discrimination.pdf [https://perma.cc/LP29-XBCU].

141 Pub. L. No. 104-191, 110 Stat. 1936 (1996).

142 Pub. L. No. 111-148, 124 Stat. 119 (2010).

143 Rosenbaum, *supra* note 140, at 1.

144 *See* Steve Benen, *Why It Matters When Republican Senate Hopefuls Endorse ACA Repeal*, MS NOW (Apr. 6, 2022, at 12:53 ET), https://www.msnbc.com/rachel-maddow-show/maddowblog/matters-republican-senate-hopefuls-endorse-aca-repeal-rcna23247 [https://perma.cc/W92X-N3N8].

145 Tami Luhby, *Fact Check: Vance's Promise to Cover People with Preexisting Conditions*, CNN (Sep. 30, 2024, at 15:34 ET), https://www.cnn.com/2024/09/30/politics/vance-obamacare-pre-existing-conditions [https://perma.cc/PPU8-WNUV].

146 *Id.*

that it subjects the child to stigma, discrimination, bullying, and harassment because of choices made by others.

2. *Parent-Child Relationship Harms: Exploitation, Resentment, and Lack of Trust*

Just as health sharenting can damage a child's social, educational, and employment prospects, it can also cause significant harm to the parent-child relationship.[147] This harm is particularly true if the child feels exploited or feels that their parents violated their privacy.[148] More research is needed to unveil the consequences of sharenting and how children feel about their information being shared with thousands or even millions of strangers online, but the experiences of some children who have spoken out prove illuminating.

Consider "Claire," who first went viral when she was a toddler.[149] If you perform an internet search of her real name, you will find photos, "merchandise with her face on it available for sale, . . . a YouTube channel with millions of subscribers[,] and hundreds of videos featuring Claire and members of her family."[150] Her "family's YouTube channel has over a billion views *but if it were up to Claire, none of the videos would exist*."[151]

Claire's parents left their jobs when their content started making enough money to support their family, a decision about which Claire remains conflicted: "That's not fair that I have to support everyone . . . . I try not to be resentful but I kind of [am]."[152] When she told her father she did not want to do YouTube videos anymore, her father told her that "they would have to move out of their house and her parents would have to go back to work, leaving no money for 'nice things.'"[153] Claire feels a lot of pressure to engage in the content creation, and when she turns eighteen, she is "considering going no-contact with her parents."[154] She also "plans to speak out publicly about being the star of a YouTube channel," a "stardom that she didn't choose."[155] Importantly, "she wants her parents to know: '[N]othing they do now is going to take back the years of work [she] had to put in.'"[156]

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147 *See* Fortesa Latifi, *Influencer Parents and the Kids Who Had Their Childhood Made into Content*, Teen Vogue (Mar. 10, 2023), https://www.teenvogue.com/story/influencer-parents-children-social-media-impact [https://perma.cc/CNF6-FSD8].

148 *Id.*

149 *Id.* Claire's name was changed for privacy. *Id.*

150 *Id.*

151 *Id.* (emphasis added).

152 *Id.* (alteration in original).

153 *Id.*

154 *Id.*

155 *Id.*

156 *Id.*

Other children express similar sentiments. One child of a family vlogger implores others to think twice before starting a family vlog or monetizing their children's lives. The child warns would-be sharenters: "Any money you get will be greatly overshadowed by years of suffering . . . your child will never be normal . . . I never consented to being online."[157] Another feels as if her entire worth is tied up with whether she makes good content. She states that the "most attention" her mother had given her recently was for a recording.[158] Another feels exploited and used for making money, which her parents "blew . . . on drinking, drugs and vacations they went on without [the children]."[159] Now, she barely has a relationship with her parents, whom she says she cannot forgive for taking away her privacy.[160] Yet another states that "[p]arents love to post things about you, personal information that you might not like . . . [w]hich kind of affects your relationship with them. Now, when you want to speak to them about certain things, you're worried they might post it."[161]

Health sharenting can foster a lack of trust because children may fear that health information or concerns disclosed to their parents may be posted about online. "The significant role of parents in influencing the child's development of trust is widely recognized and supported by research."[162] Learning to distrust rather than trust people may impair healthy development.[163] A child who learns early in life that they cannot trust their parents may be less equipped to establish trusting, healthy relationships in adulthood.[164] Additionally, if a child is uncomfortable sharing health concerns with their parents due to fears that the information will be shared online, it can result in delays in seeking care, which

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157 *Id.* (omissions in original).

158 Post by u/AnnonymousCarrot, Reddit (r/TrueOffMyChest), *My mom is an influencer and I hate her for it* (Aug. 21, 2023, at 02:31 ET), https://www.reddit.com/r/TrueOffMyChest/comments/15xsagq/my_mom_is_an_influencer_and_i_hate_her_for_it/ [https://perma.cc/VQ2U-TQVA].

159 Post by u/imonlineforever, Reddit (r/TrueOffMyChest), *My parents were family vloggers. It ruined my life.* (Sep. 10, 2024, at 17:03 ET), https://www.reddit.com/r/TrueOffMyChest/comments/1fdmyqa/my_parents_were_family_vloggers_it_ruined_my_life/ [https://perma.cc/C5TH-GH54].

160 *Id.*

161 Cocozza, *supra* note 126.

162 Michael S. Bernath & Norma D. Feshbach, *Children's Trust: Theory, Assessment, Development, and Research Directions*, 4 Applied & Preventative Psych. 1, 9 (1995).

163 *See id.* at 1.

164 Delphine Brown, *Childhood Experiences, Growing Up "In Care," and Trust: A Quantitative Analysis*, Child. & Youth Servs. Rev., Jan. 2023, at 1, 3 (2023) (describing research that shows how "trust is stabilized prior to adulthood and is formed according to early experience, socialization, and learning," with parental upbringing representing "the most formative experience in trust development").

can have harmful or even fatal consequences for the child depending on the severity of the health concern.

In short, parents should consider whether the benefits of sharenting outweigh the potential long-term costs, including damage to the parent-child relationship and to their child's future social, educational, and professional success. This consideration is particularly important when the child is too young to assent, consent, or understand the potential short- and long-term ramifications of sharing personal health information online for millions or even billions to view.

3. Individual Harms: Privacy and Autonomy

This Article starts from the premise that children should have a right to privacy, even if that right is not as robust as it is for adults. Court decisions,[165] as well as federal[166] and state[167] laws and regulations, make clear that minors have some right to privacy, even from their parents in certain situations, such as in matters of procreation[168] and other sensitive healthcare decisions.[169] Yet whatever the extent of a child's right to privacy, parents maintain significant control over their children's privacy.[170] A child's right to keep certain information private from the general

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165 *See, e.g.*, Carey v. Population Servs. Int'l, 431 U.S. 678, 693 (1977) ("[T]he right to privacy in connection with decisions affecting procreation extends to minors as well as to adults."); New Jersey v. T.L.O., 469 U.S. 325, 339 (1985) (recognizing that children do not waive all rights to privacy when they enter school grounds); United States v. Sherman, 268 F.3d 539, 547 (7th Cir. 2001) ("The possession, receipt and shipping of [child sexual abuse material] directly victimizes the children portrayed by violating their right to privacy, and in particular violating their individual interest in avoiding the disclosure of personal matters.").

166 *See infra* notes 176–82 and accompanying text (discussing a minor's rights under HIPAA and FERPA).

167 Many states allow adolescents over a specific age to consent to certain healthcare services, such as drug and alcohol treatment, reproductive health services, treatment for sexually transmitted infections, outpatient mental health services, emergency services, and other general services including certain vaccines. *See* Robert S. Olick, Y. Tony Yang & Jana Shaw, *Adolescent Consent to COVID-19 Vaccination: The Need for Law Reform*, 137 Pub. Health Reps. 163, 164 (2022). *See generally* Lisa Klee Mihal, Naomi A. Shapiro & Abigail English, *From Human Papillomavirus to COVID-19: Adolescent Autonomy and Minor Consent for Vaccines*, 36 J. Pediatric Health Care 607 (2022) (recommending increased access to vaccines for adolescents); *State Laws That Enable a Minor to Provide Informed Consent to Receive HIV and STD Services*, Ctrs. for Disease Control & Prevention (Oct. 25, 2022), https://web.archive.org/web/20230130052133/https://www.cdc.gov/hiv/policies/law/states/minors.html [https://perma.cc/T2TS-893S] (identifying state laws that allow minors to give informed consent for vaccines).

168 *Carey*, 431 U.S. at 693; Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 75 (1976) ("Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant.") (overruled in other areas).

169 *See* sources cited *supra* note 167.

170 *See* McIntire, *supra* note 42, at 271 ("Parents are assumed to be the guardians of their child's image and information."); Michelle FormyDuval Lynch, *Privacy Rights of Children in the*

public depends on the actions of their parents. Depending on the child's age, parents must know some or all of a child's private information. Indeed, prior to a child reaching adulthood, "parents must . . . be able to 'intrude' on their child's privacy for reasons of health and safety."[171] Parents are also given significant control over whether, when, and to whom private information about their child's health can be shared. Consider HIPAA[172] and the Family Educational Rights and Privacy Act of 1964 ("FERPA").[173] Both of these laws recognize that minor children have a right to keep certain information private from the broader public, but also that parents have the right to that information and to control who has access to it.

The HIPAA Privacy Rule sets national standards for the protection of individuals' medical records and other "protected health information" ("PHI"). The Privacy Rule applies to certain "covered entities," including health plans, healthcare clearinghouses, and healthcare providers that conduct electronic transactions, as well as the covered entities' "business associate[s]."[174] The Privacy Rule aims to balance the need for privacy with the efficient flow of health information to ensure quality care. For unemancipated minors, parents are generally given access to their child's PHI and have the authority to consent to the disclosure of the child's PHI, with some limited exceptions.[175] That said, parental access may change as the child ages and vary depending on the type of service provided. Many health systems interpret federal and state laws to require the consent of minors over a certain age before their parents can access their medical records, such as their MyChart accounts.[176]

Digital Age, N.C. Bar Ass'n: Blog (Jan. 31, 2024), https://www.ncbarblog.com/jjcr-privacy-rights-of-children-in-the-digital-age/ [https://perma.cc/LYB6-4AY8] (stating that a child's right to privacy is "not always clearly defined and often depend[s] on the actions of the parents").

171 Whelan, *supra* note 44, at 1282–83. Yet even here, there must be limits and exceptions, such as "in cases of potential abuse or for certain types of medical decisions such as reproductive health care, mental health care, and substance abuse treatment." *Id.* at 1282 n.355.

172 Pub. L. No. 104-191, 100 Stat. 1936 (1996).

173 20 U.S.C. § 1232g; 34 C.F.R. § 99.30 (2024).

174 45 C.F.R. § 160.102 (2024). For definitions of these terms, see *id.* § 160.103.

175 *See id.* § 164.502(g).

176 *See, e.g.*, *MyChart: Information Sharing for Pediatric Patients*, Wellstar (Mar. 2021), https://mychart.wellstar.org/mychart/en-us/docs/tipsheets/MyChart_TeenGuide.pdf [https://perma.cc/7YBJ-7UM7] ("Wellstar is obligated to protect the privacy rights of minors ages 12–17 and will not disclose protected information to the parent/guardian through MyChart or a request for the minor's medical record, unless the teen patient has granted parents/guardians proxy access . . . ."); *Request or Provide Proxy Access to Another Person's MyChart Account*, MyChart, https://www.mychart.org/help/proxy [https://perma.cc/865S-82CU] (last visited Mar. 19, 2026) ("Proxy access to a child's account may change as they get older."). In some cases, the child can set up their own separate account, to which they can provide proxy access to their parent if they desire. *See*, *e.g.*, *Teen Access & Consent for MyChart FAQs*, UVA Health, https://uvahealth.com/patients-visitors/mychart-teen-faqs [https://perma.cc/H3QU-87MK] (last visited Mar. 28, 2026)

This interpretation reflects the understanding that minors are entitled to some degree of privacy, including from their parents, as they mature.

FERPA protects the privacy of student education records. Like HIPAA, FERPA provides parents the right to access their children's education records, the right to have the records amended, and the right to some control over the disclosure of their child's education records to third parties.[177] "Education records" are, with certain exceptions, records that are "directly related to a student" and "maintained by an educational agency or institution" that receives funding under any program administered by the U.S. Department of Education, or by a third party acting on behalf of an educational agency or institution.[178] Educational records can include student health records, such as "health records of a public elementary or secondary school student under 18 years of age that are maintained by the school in the school's health clinic or nurse's office."[179]

Both HIPAA and FERPA thus recognize that (1) a child has a right to some privacy over certain information about their health, at least with respect to the general public, and (2) parents have significant control over the release and disclosure of that private information.

But should parental rights to access and control the disclosure of their child's health information translate to an unbounded right to disclose a child's sensitive health information to the entire world on social media? This Article answers that question in the negative. If a right to privacy is to have value, then that right must exist and be respected throughout the entirety of a person's life, because private information, once disclosed or disseminated, can never again be truly private.

Parents have long been given control over their children's private health information based on the longstanding rebuttable presumption baked into American law and society that parents act in the "best interests" of their children.[180] Yet that presumption is imperfect at best because it fails to account for the reality that parents do not always act in their child's best interest. The presumption should be viewed with

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("Starting at 13 years old, patients can create their own MyChart accounts. Parents and legal guardians can't set up these accounts on behalf of their teens.").

177 *See* 20 U.S.C. § 1232g; 34 C.F.R. § 99.30 (2024); Student Privacy Pol'y Off., U.S. Dep't of Edu., A Parent Guide to the Family Educational Rights and Privacy Act (FERPA) 2 (July 9, 2021), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf [https://perma.cc/52TU-YMEB].

178 *See* 20 U.S.C. § 1232g(a)(3)–(4).

179 Student Privacy Pol'y Off., U.S. Dep't of Educ., Know Your Rights: FERPA Protections for Student Health Records (Apr. 12, 2023), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Know%20Your%20Rights_FERPA%20Protections%20for%20Student%20Health%20Records.pdf [https://perma.cc/LV7J-SG93].

180 *See, e.g.*, Troxel v. Granville, 530 U.S. 57, 68 (2000) ("[T]here is a presumption that fit parents act in the best interests of their children."); Parham v. J.R., 442 U.S. 584, 604 (1979) (noting "the traditional presumption that the parents act in the best interests of their child").

skepticism particularly when profit motives are involved, as is often the case with sharenting.

With respect to children's privacy and the dissemination of a child's image, discussions about child sexual abuse material may be illustrative.[181] Health sharenting may be viewed as less egregious or harmful compared to child sexual abuse material, yet similarities can be drawn between the privacy harms. Like child sexual abuse materials, health sharenting reduces the child's actions and information to a record that "may haunt him in future years, long after the original [recording or posting] took place. A child who has posed for a camera must go through life knowing that the [recording or posting] is circulating within the mass distribution system."[182] For sharenting, that "mass distribution system"—the internet—is even broader and more accessible than the distribution system for child sexual abuse materials. Posting sensitive health information about the child thus violates what the Supreme Court has termed "the individual interest in avoiding disclosure of personal matters."[183]

Early evidence is emerging about how children feel when their parents post information about them online—whether related to their health or not. Many understand the everlasting nature of information on the internet. Forty-seven percent of Gen Z feel that a harmful effect of the internet is that "anything you do follows you forever."[184] The experience of one child of "family vloggers" is illustrative. She states,

> [M]y siblings and I were so paranoid there [were] cameras on us that the only place we felt comfortable changing was in the bathroom with the lights off[.] I couldn't talk to my mom about anything when my mental health began to get bad because I was too scared she'd share it online. . . . I didn't have a single

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181 The term "child sexual abuse material" is increasingly preferred over "child pornography," because the term "pornography" implies a legal, consensual category of adult sexual expression, which misrepresents what is actually depicted in such content: images and videos of children being sexually abused or exploited. *Crimes Against Children: Appropriate Terminology*, Interpol, https://www.interpol.int/en/Crimes/Crimes-against-children/Appropriate-terminology [https://perma.cc/E5FE-QV22] (last visited Aug. 10, 2026). Organizations like the Federal Bureau of Investigation, Interpol, and child protection groups (e.g., the National Center for Missing and Exploited Children) have adopted "child sexual abuse material" as the standard term for this reason. *See, e.g.*, *id.*; *Child Exploitation Notification Program*, Fed. Bureau of Investigation, https://www.fbi.gov/how-we-can-help-you/victim-services/cenp [https://perma.cc/ZPY3-27N9] (last visited Aug. 10, 2026); *Child Sexual Abuse Material: Overview*, Nat'l Ctr. for Missing & Exploited Child., https://www.missingkids.org/theissues/csam [https://perma.cc/8EDA-LDH6] (last visited Aug. 10, 2026).

182 David P. Shouvlin, *Preventing the Sexual Exploitation of Children: A Model Act*, 17 Wake Forest L. Rev. 535, 545 (1981); *see also* New York v. Ferber, 458 U.S. 747, 758 n.9 (1982) (noting that child sexual abuse materials that are recorded and distributed violate a child's privacy interests).

183 Whalen v. Roe, 429 U.S. 589, 599 (1977).

184 1Password & Malwarebytes, *supra* note 65, at 4.

> private moment. My mom woke me up with the camera on, and she often filmed right until we went to sleep[.][185]

She says that even if she had asked her mother not to share certain information, "it wouldn't have made a difference."[186] She did not "consent to [her] entire life being online," and even though her "parents have tried to erase everything[,] . . . they can't erase the entire internet so it's still out there."[187] Moreover, she says no amount of money could remedy the privacy harms she has experienced: "The justice I want is something I'll never be able to get. Money won't give me my privacy back."[188] Her relationship with her parents deteriorated due to her experience growing up online.[189]

Another important yet less tangible harm of health sharenting is harm to the minor's present and future autonomy, right to self-determination, and right to an "open future."[190] The right to an open future is a concept popularized by philosopher Joel Feinberg.[191] It represents a right to be "held in trust"—in other words, saved for the child until they can exercise and appreciate that right.[192] Essentially, the right to an open future asserts that parents should not unduly restrict a child's future options by making irreversible decisions during their childhood. Children should be afforded the opportunity to make a wide range of life choices when they become adults, free from the constraints imposed by decisions made during their childhood.

Health sharenting, which creates an entire internet identity for the child based on their health condition, reduces that child to their health condition. That child may forever be known as "the sick child," "the child with cancer," "the child with an eating disorder," "the child with autism," and so on. It is one thing when an individual *chooses* to disclose and curate a social media profile revolving around their health. But when parents share the information without the consent of the child,

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185 Post by u/throwawaylisteners, Reddit (r/TrueOffMyChest), *I was brought up by family vloggers and it ruined my life* (Nov. 14, 2022, at 12:43 ET), https://www.reddit.com/r/TrueOffMyChest/comments/yuzsno/i_was_brought_up_by_family_vloggers_and_it_ruined/ [https://perma.cc/MDW7-NNQU].

186 *Id.*

187 Comment, u/throwawaylisteners (Nov. 14, 2022, at 14:12 ET), *on* Post by u/throwawaylisteners, Reddit (r/TrueOffMyChest), *I was brought up by family vloggers and it ruined my life* (Nov. 14, 2022, at 12:43 ET), https://www.reddit.com/r/TrueOffMyChest/comments/yuzsno/i_was_brought_up_by_family_vloggers_and_it_ruined/ [https://perma.cc/NRG3-ALSA].

188 Comment, u/throwawaylisteners (Nov. 14, 2022, at 14:23 ET), *on* Post by u/throwawaylisteners, Reddit (r/TrueOffMyChest), *I was brought up by family vloggers and it ruined my life* (Nov. 14, 2022, at 12:43 ET), https://www.reddit.com/r/TrueOffMyChest/comments/yuzsno/i_was_brought_up_by_family_vloggers_and_it_ruined/iwbv81n/ [https://perma.cc/42FL-TKK4].

189 *Id.*

190 Whelan, *supra* note 44, at 1247.

191 Joel Feinberg, Freedom and Fulfillment: Philosophical Essays 76 (1992).

192 *Id.* at 92.

the child is stripped of that choice, and with it, the right to an open future and self-determination in ways that cannot be reversed.

This Part makes clear that health sharenting is not risk free. And although there currently is little empirical research on the short- and long-term harms of sharenting, emerging evidence suggests that some children feel violated, angry, and exploited because of sharenting.[193] As research continues to uncover the consequences of health sharenting, care should be taken by parents because these decisions, and their consequences, are difficult, if not impossible, to reverse.

II. Laws Protecting Children Online

A number of general federal and state privacy laws provide some privacy protections for all individuals, including minors.[194] At the federal level, HIPAA and FERPA are two of the most well-known.[195] Nevertheless, these laws "typically provide exceptions so that information can be disclosed to, or even controlled by, a parent."[196] This Part examines federal, state, non-U.S., and international approaches to regulating children's online privacy.[197] In doing so, it exposes how these laws fail to prevent or mitigate many of the harms of health sharenting.

A. Federal

The Children's Online Privacy Protection Act of 1998 ("COPPA")[198] governs the online collection and disclosure of personal information from children under thirteen years of age.[199] The law applies to "website[s] or online service[s] directed" in whole or in part to children.[200] Pursuant to COPPA, "[i]t is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates" regulations promulgated under COPPA.[201]

In short, before they collect information about children under thirteen, these regulations require website operators to (1) provide written notice "of what information is collected from children by the operator,

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193 *See supra* notes 185–89 and accompanying text.

194 Steinberg, *supra* note 37, at 869–70.

195 *Id.*

196 *Id.* at 869.

197 This is an area of law that is rapidly changing, especially at the state level. This Part illustrates the state of the law as of mid-2025, unless otherwise noted.

198 15 U.S.C. §§ 6501–6506.

199 *Id.*

200 *Id.* § 6501(10)(A).

201 *Id.* § 6502(a)(1).

how the operator uses such information, and the operator's disclosure practices for such information," and (2) "obtain verifiable parental consent for the collection, use, or disclosure of personal information from children."[202] COPPA "places the parent in the role of guardian and gatekeeper of the child's personal information,"[203] and thus does not protect or provide recourse to children under thirteen who believe they have been harmed by information shared about them by their parents.

The Kids Online Safety Act ("KOSA") was first introduced in February 2022 by Senator Richard Blumenthal (D-CT) and a bipartisan group of cosponsors.[204] The Act, as reintroduced in May 2025, would impose a number of requirements on "covered platforms," including "online platform[s], online video game[s], messaging application[s], or video streaming service[s] that connect[] to the internet and that [are] used, or reasonably likely to be used, by a minor," defined as a person under the age of seventeen.[205] Among other things, KOSA

- "[r]equires social media platforms to provide minors with options to protect their information, disable addictive product features, and opt out of personalized algorithmic recommendations";
- "[g]ives parents new controls to help protect their children and spot harmful behaviors";
- "[p]rovides parents and educators with a dedicated channel to report harmful behavior";
- "[c]reates a duty for online platforms to prevent and mitigate specific dangers to minors, including promotion of suicide, eating disorders, substance abuse, sexual exploitation, and advertisements for certain illegal products"; and
- "[r]equir[es] independent audits and research into how [social media] platforms impact the well-being of kids and teens."[206]

As proposed, KOSA would give significant power to parents and thus would largely not address sharenting. The bill does nothing

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202 *Id.* § 6502(b)(1)(A). Consent is not always required. See *id.* § 6502(b)(2) for list of exceptions.

203 Steinberg, *supra* note 37, at 870–71.

204 S. 3663, 117th Cong. (2022).

205 S. 1748, 119th Cong. §§ 101(3), 101(8) (2025). In the 2023–2024 session, the House had a companion bill. *See* H.R. 7891, 118th Cong. §§ 1, 101 (2024). As of March 2026, the House had not yet introduced a companion bill. *See S. 1748 - Kids Online Safety Act: Related Bills*, U.S. Cong., https://www.congress.gov/bill/119th-congress/senate-bill/1748/related-bills [https://perma.cc/V2TB-5C8P] (last visited Mar. 28, 2026).

206 *Kids Online Safety Act*, Richard Blumenthal, U.S. Sen. for Conn., https://www.blumenthal.senate.gov/about/issues/kids-online-safety-act [https://perma.cc/3FSF-U6R4] (last visited Mar. 19, 2026).

to address *parents'* use of social media. For example, the law requires platforms to "provide readily accessible and easy-to-use parental tools for parents to support a user that the platform knows is a minor with respect to the use of the platform by that user."[207] Among other things, the parental tools must allow the parent to change and control the privacy and account settings,[208] meaning the parent could make these settings *less* protective. The website operator must provide notice to minors of what parental tools are in effect, and when, and it must "safeguard[] minors against the possible misuse of parental tools."[209] The bill does not, however, indicate what would constitute "misuse."[210]

In July 2024, the Senate overwhelmingly passed KOSA, along with the Children and Teens Online Privacy Protection Act ("COPPA 2.0"), which would expand COPPA's privacy protections from minors under thirteen to minors under seventeen.[211] The legislation "languished in the House, where Republican leadership expressed reservations" about the laws' potential impact on "the flow of speech online."[212] Then, in May 2025, KOSA was reintroduced in the Senate without COPPA 2.0 and with amendments to address House Republicans' concerns.[213] The changes do not, however, address sharenting and, if anything, weaken the law's protections. Despite modest bipartisan support, the push-back against KOSA illustrates common barriers to protecting children online: concerns about protecting free speech and the free flow of information on the internet.[214]

Another bill, the "Kids Off Social Media Act," introduced by Senator Brian Schatz (D-HI) with bipartisan support in April 2024[215] and

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207 S. 1748, § 103(b).

208 *Id.* § 103(b)(2)(A)(ii).

209 *Id.* §§ 103(b)(3), 108(a)(1)(B).

210 *See id.* § 108.

211 Cristiano Lima-Strong, *How the Kids Online Safety Act Has Evolved as Negotiations Ensue*, Tech Pol'y Press (May 27, 2025), https://www.techpolicy.press/how-the-kids-online-safety-act-has-evolved-as-negotiations-ensue/ [https://perma.cc/LPM2-V2NW].

212 *Id.*

213 *Id.*

214 *See, e.g.*, Joe Mullion, *The Kids Online Safety Act Will Make the Internet Worse for Everyone*, Elec. Frontier Found. (May 15, 2025), https://www.eff.org/deeplinks/2025/05/kids-online-safety-act-will-make-internet-worse-everyone [https://perma.cc/69HQ-BLWN] ("This bill still sets up a censorship regime disguised as a 'duty of care,' and it will do what previous versions threatened: suppress lawful, important speech online, especially for young people."); Press Release, ACLU, ACLU Slams Senate Passage of Kids Online Safety Act, Urges House to Protect Free Speech (July 30, 2024), https://www.aclu.org/press-releases/aclu-slams-senate-passage-of-kids-online-safety-act-urges-house-to-protect-free-speech [https://perma.cc/XF9C-6LTH] ("[KOSA] would violate the First Amendment by enabling the federal government to dictate what information people can access online and encourage social media platforms to censor protected speech.").

215 S. 4213, 118th Cong. (2024).

reintroduced in January 2025,[216] goes further than KOSA. It would prohibit social media platforms from knowingly allowing minors under the age of thirteen to create or maintain accounts.[217] The law would require platforms to delete existing accounts held by minors under thirteen and any personal data collected from these users.[218] The Senate Commerce Committee approved the legislation in February 2025, clearing the way for consideration by the full Senate.[219] The law would not, however, prevent parents from maintaining social media sites about their children, and thus would not address the issues raised by sharenting.[220]

B. State Laws

The United States continues to lack a comprehensive federal privacy law, and existing federal privacy laws are well recognized to have "massive" gaps.[221] States have therefore sought to fill the gaps, including in areas of child privacy. Based on a fifty-state survey conducted in late 2024 and early 2025, several states have proposed or passed various internet protection laws focused on children. These laws are more protective than COPPA, which remains the primary federal law protecting children's information online.[222] That said, no state prohibits or regulates sharenting in a comprehensive manner.

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216 S. 278, 119th Cong. (2025).

217 *Id.*; S. 4213.

218 S. 4213; S. 278.

219 Press Release, U.S. S. Comm. on Com., Sci., & Transp., Commerce Committee Advances Cruz-Led Bipartisan Legislation to Improve Kids' Online Safety, Preserve AM Radio, Help Traveling Families, Combat Illegal Fishing, and Modernize Weather Forecasts (Feb. 5, 2025), https://www.commerce.senate.gov/2025/2/commerce-committee-advances-cruz-led-bipartisan-legislation-to-improve-kids-online-safety-preserve-am-radio-help-traveling-families-combat-illegal-fishing-and-modernize-weather-forecasts [https://perma.cc/JK48-PUXD].

220 *See* S. 4213; S. 278.

221 Caitriona Fitzgerald & Suzy Bernstein, *Full of Holes: Federal Law Leaves Americans' Personal Data Exposed*, Elec. Priv. Info. Ctr. (Apr. 27, 2023), https://epic.org/full-of-holes-federal-law-leaves-americans-personal-data-exposed/ [https://perma.cc/7Y8X-F3J2]; *see also* Violet Brull, Note, *Foiling Clever Hans: State-Level Data Privacy Protection as a Mitigant for AI Harms*, 34 Kan. J.L. & Pub. Pol'y 245, 269 (2025) ("Congress has made numerous fruitless efforts to pass comprehensive data privacy legislation over the past twenty years."); Douglas Verge, *Future of Comprehensive Federal Privacy Law Still Uncertain*, 33 No. 16 Cal. Emp. L. Letter 6 (2023) (discussing the lack of a uniform federal privacy law and the causes thereof).

222 Results of the fifty-state survey are on file with the Author. *See also* Natalie Runyon, *Protecting Children's Privacy Online: How to Harmonize Federal & State Laws to Ensure Internet Safety*, Thomson Reuters (May 21, 2025), https://www.thomsonreuters.com/en-us/posts/human-rights-crimes/harmonizing-laws/ [https://perma.cc/46DE-U3KE] (noting "a notable surge in [state] initiatives to enhance children's privacy protections").

Some state laws and legislation are similar to the protections proposed in the federal bills discussed above.[223] Colorado, for example, passed Senate Bill 24-041, which requires providers that offer online services to users they "actually know[] or "willfully disregard[]" to be minors to "use reasonable care to avoid any heightened risk of harm to minors caused by the online service, product, or feature."[224] Like KOSA, however, parental consent acts as an exception to those duties.[225]

Similar to the federal Kids Off Social Media Act, Florida law now prohibits social media platforms from allowing minors younger than fourteen to enter into "a contract with a social media platform to become an account holder."[226] Minors ages fourteen and fifteen must have parental consent to be an account holder.[227]

Laws such as those in Colorado and Florida focus primarily on prohibiting or restricting social media use by the minors themselves—that is, when the minors are the account holders. Such laws do not protect minors from sharenting or from being featured on other social media accounts held by adult users. There are two main categories of state laws and legislation that do address some of the risks of sharenting: (1) laws that address money earned by minors in the entertainment industry, including social media, and (2) laws that empower minors to request the deletion of online content in which they are featured.

In the first category are laws that protect earnings made through sharenting, an extension of laws that protect minors in the entertainment industry. California first took the lead with these types of protections in 1939 with the state's Coogan Law.[228] The Coogan Law, also known as the Coogan Act, was passed by California in 1939 in response to the plight of Jackie Coogan, a child actor whose parents spent almost all of his multimillion-dollar earnings by the time he reached adulthood.[229] The

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223 *See, e.g.*, S.B. 24-041, 74th Gen. Assemb., Reg. Sess. (Colo. 2024) (enacted); H.B. 1726, 95th Gen. Assemb., Reg. Sess. (Ark. 2025) (died in committee); H.B. 235, 2025 Leg., Reg. Sess. (Ala. 2025) (bans children sixteen and under from owning a social media account).

224 Colo. Rev. Stat. § 6-1-1308.5(1)(a) (2025) (enacted by S.B. 24-041). Litigation against this law is ongoing as of June 2026. *See* Alex Pickett, *11th Circuit Renews Scrutiny Over Florida's Social Media Ban for Minors*, Courthouse News Serv. (Mar. 10, 2026), https://www.courthousenews.com/11th-circuit-renews-scrutiny-over-floridas-social-media-ban-for-minors/ [https://perma.cc/Q7P3-VT86].

225 Colo. Rev. Stat. § 6-1-1308.5(3)(a)(II)(A) (2025) (enacted by S.B. 24-041).

226 Fla. Stat. § 501.1736(2)(a).

227 *Id.* § 501.1736(3)(a). Other states have also proposed similar laws. *See* Stephen Simpson, *Bill That Would Have Banned Texas Minors from Social Media Misses Key Deadline*, Tex. Trib. (May 28, 2025, at 23:12 CT), https://www.texastribune.org/2025/05/28/texas-social-media-ban-legislature-abbott/ [https://perma.cc/USR9-G666].

228 Cal. Fam. Code §§ 6750–6753 (West 2026).

229 Jennifer González, *More Than Pocket Money: A History of Child Actor Laws*, Lib. of Cong. Blogs (June 1, 2022), https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws/ [https://perma.cc/NSZ9-PVQB].

law regulates certain contracts involving artistic employment between an unemancipated minor and third parties, including employment as an actor, dancer, musician, comedian, singer, stuntperson, voice-over artist, other performer or entertainer, or sports participant.[230] The law establishes that earnings of minors pursuant to those contracts are the property of the minor, not their parents.[231] The law also requires that fifteen percent of a child's earnings—or more if requested by the minor's parent or guardian—from such work be placed in a blocked trust account, commonly known as a "Coogan Account."[232]

In response to the growth of minors engaged or featured in "content creation," California's Coogan Law was amended to further protect minors. Assembly Bill 1800 was signed into law in June 2024 to define "content creator" and subject content creators to the requirements of the Coogan Law.[233] The law defines "content creator" as "an individual who creates, posts, shares, or otherwise interacts with digital content on an online platform and engages in a direct contractual relationship with third parties."[234] Content creators include, but are not limited to, vloggers, podcasters, social media influencers, and streamers."[235]

Also in 2024, California signed Senate Bill 764 into law, which extends the protections of the Coogan Law to require "vloggers" that feature minors under the age of eighteen in at least thirty percent of their content to deposit sixty-five percent of the minor's gross earnings in a trust.[236] A "vlog" is defined as "content shared on an online platform in exchange for compensation."[237] Specifically, the law provides:

> A minor is considered engaged in the work of vlogging when the following are met at any time during a given month:
>
> (a)(1) At least 30 percent of the vlogger's compensated video content or the vlogger's compensated image content includes the likeness, name, or photograph of the minor.
> (2) The percentage pursuant to paragraph (1) is measured by the amount of time the likeness, name, or photograph of the minor visually appears or is the subject of an oral narrative in a video segment, as compared to the total length of the segment.
> (b) The number of views received per image or video segment on any online platform met the online platform's threshold for

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230 CAL. FAM. CODE § 6750(a) (West 2026).

231 *Id.* § 6752.

232 *See id.* §§ 6752(b)(1), 6753(a) (establishing the "Coogan Trust Account").

233 *See* A.B. 1880, 2023–2024 Leg., Reg. Sess. (Cal. 2024) (codified at CAL. FAM. CODE § 6750).

234 CAL. FAM. CODE § 6750(c)(1).

235 *Id.*

236 *See* S.B. 764, 2023–2024 Leg., Reg. Sess. (Cal. 2024) (codified at CAL. FAM. CODE §§ 6650–6656).

237 CAL. FAM. CODE § 6650(g).

> compensation or the vlogger received actual compensation for image or video content equal to or greater than ten cents ($0.10) per view.
> (c) The vlogger received actual compensation for image or video content of at least one thousand two hundred fifty dollars ($1,250) in the month.[238]

This law thus explicitly affects sharenting, as it defines "vlogger" as "a parent, legal guardian, or family residing in California that creates image or video content that is performed in California in exchange for compensation."[239] The term does not, however, include any person under eighteen who produces their own content, which may provide a loophole around this law.[240] A parent, for example, could create an account in the child's name, yet still control much of the content or profits earned by the account. The law authorizes the minor to enforce the law in court, and the court may award the minor actual damages, punitive damages, and the cost of the action, including attorney's fees and litigation costs.[241]

As of May 2025, states including Illinois,[242] Louisiana,[243] Minnesota,[244] Missouri,[245] Montana,[246] Nevada,[247] New Mexico,[248] New York,[249] North Carolina,[250] Tennessee,[251] Texas,[252] and Utah[253] have Coogan-like laws that require or allow for the establishment of trusts for minors engaged or featured in certain types of entertainment or media content. State legislative sessions from 2023 through 2025 were productive in increasing minors' rights to money earned through online

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238 *Id.* § 6651.

239 *Id.* § 6650(h).

240 *See id.*

241 *Id.* § 6654.

242 820 Ill. Comp. Stat. 206/90 to /100 (2024).

243 Child Performer Trust Act, La. Stat. Ann. §§ 51:2131–:2135 (2025).

244 Child Labor Standards Act, Minn. Stat. §§ 181A.01–.12 (2024).

245 Mo. Rev. Stat. § 294.022 (2016).

246 Child Digital Protection Act, Mont. Code Ann. §§ 30-25-301 to -307 (West 2025).

247 Nev. Rev. Stat. § 609.540 (2024).

248 N.M. Stat. §§ 50-6-18 to -19 (2024).

249 N.Y. Est. Powers & Trusts Law § 7-7.1 (McKinney 2025).

250 N.C. Gen. Stat. § 48A-14 (2025).

251 Tennessee Protection of Minor Performers Act, Tenn. Code Ann. §§ 50-5-201 to -222 (2026).

252 Tex. Est. Code Ann. § 1356.054 (West 2025).

253 Utah Code Ann. §§ 34-23-501 to -504 (West 2025).

content creation. As of this writing, in addition to California, Arkansas,[254] Illinois,[255] Minnesota,[256] Montana,[257] Utah,[258] and Virginia[259] all have "Coogan-Plus"[260] laws that provide explicit protections for children in vlogs created by an individual or family, other than the minor themselves, in exchange for compensation. Other states are actively considering similar legislation.[261]

Laws that protect the earnings of minors featured in certain social media content represent an important step in acknowledging their participation in the content creation. Nevertheless, the laws do little, if anything, to protect children's privacy. They do not require consent of the minor before they are featured in shared content, and they typically place responsibility for enforcement on the minor.[262] Placing the onus on the minor to enforce the law is, for obvious reasons, problematic. First, many minors will be too young to initiate an action on their

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254 H.B. 1975, 95th Gen. Assemb., Reg. Sess. (Ark. 2025). The law went into effect on July 1, 2026, and applies to parent or legal guardian "content creators" who create content in exchange for compensation. The trust requirement applies to minors under eighteen featured in content creation that meets certain criteria. *Id.*

255 S.B. 1782, 103d Gen. Assemb., Spring Sess. (Ill. 2023). The law applies to minors under sixteen engaged in vlogging but does not apply to minors who produce their own vlogs. 820 ILL. COMP. STAT. 206/95 (2024).

256 H.F. 3488, 93d Leg., Reg. Sess. (Minn. 2024). The law applies to "content creators," including family members. *Id.* The trust requirement applies to minors under eighteen featured in certain content creation. MINN. STAT. ANN. § 181A.03 (2024).

257 H.B. 392, 69th Leg., Reg. Sess. (Mont. 2025). The law applies to content creators, including family members, who create content performed in the state that generates compensation. *Id.* The trust requirements apply to minors under eighteen featured in certain content creation. *Id.*

258 H.B. 322, 66th Leg., Gen. Sess. (Utah 2025). The law applies broadly to child actors under eighteen, including those featured by content creators (including parents or guardians) in social media content. *Id.*

259 H.B. 2401, 163d Gen. Assemb., Reg. Sess. (Va. 2025). The law applies to "content creators," including family members, who create video content in exchange for compensation. *Id.* The trust requirements apply to children under sixteen engaged in certain content creation. *Id.*

260 This Article uses the term "Coogan-Plus" to describes laws that require the establishment of trusts for children featured in certain online content.

261 *See, e.g.*, H.B. 2815, 57th Leg., 1st Reg. Sess. (Ariz. 2025) (requiring vloggers to compensate minor children included in video content); H.B. 1453, 447th Gen. Assemb., Reg. Sess. (Md. 2025) (requiring vloggers whose content features minor children and is posted on social media to compensate the child under certain circumstances); S. 144, 194th Gen. Ct. (Mass. 2025) (requiring trusts for minor children featured in vlogging content); H. 2135, 194th Gen. Ct., Reg. Sess. (Mass. 2025) (similar); A.B. 4302, 221st Leg., Reg. Sess. (N.J. 2025) (requiring family members and caregivers who operate vlogs on social media for compensation and use children or minors in their care in the vlog to compensate the children); H.B. 1016, 60th Leg., 1st Sess. (Okla. 2025) (requiring compensation or creation of trust for minors appearing in compensated video content); H.B. 939, 2025 Gen. Assemb., Reg. Sess. (Penn. 2025) (requiring trust account with compensation for minors in online content).

262 *See, e.g.*, CAL. FAM. CODE § 6654 (West 2026) ("If a vlogger knowingly violates this part or should have known they were in violation of this part, *a minor . . . may commence an action* to enforce the provisions of this part." (emphasis added)).

own or even know they have a right to their earnings in the first place. Second, by the time the minor reaches adulthood or learns about their rights, there is no guarantee the parents or other creator will have set aside sufficient funds to compensate the minor if no trust was ever created. Additional laws and regulations are thus needed to further protect children's privacy and financial interests.

The second category of state laws and legislation goes beyond protecting a child's earnings and seeks to close the privacy gaps in the first category of laws. These laws empower minors to request the deletion of content in which they are featured if certain criteria are met. In May 2025, for example, Montana passed the Child Digital Protection Act, which includes a "right to be forgotten."[263] Specifically, the law provides that upon reaching the age of majority, an individual previously covered by the law's trust requirement "may request the permanent deletion of a video segment that includes [their] likeness, name, or photograph."[264] The law requires online platforms to "take all reasonable steps to permanently delete the video segment for which a request . . . is made."[265] The law does not require the requester to provide a reason for wanting the content deleted.[266] Utah has a similar law, and a number of states are considering bills with similar provisions.[267]

Deletion laws go further than compensation laws to protect children from the potential social, emotional, reputational, and privacy harms discussed in Part I. Yet they do not *prevent* harmful disclosures nor provide complete protection for a child's privacy. The laws do not require consent or even assent before content is posted.[268] Moreover, many of the laws do not provide a right to request deletion until the individual reaches the age of majority.[269] By that time, damage from the disclosures may have already occurred. Once information is released on the internet, it is difficult if not impossible to delete it entirely. Screenshots of posts can be taken, videos can be downloaded and stored, and the content may be viewed by millions, or even billions, before it is removed. As the child of one family vlogger stated, although her mom

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263 H.B. 392, 69th Leg., Reg. Sess. § 5 (Mont. 2025) (codified at MONT. CODE ANN. § 30-25-305 (West 2025)).

264 *Id.*

265 *Id.*

266 *See id.*

267 UTAH CODE ANN. § 34-23-504 (West 2025); *see* H.B. 2815, 57th Leg., 1st Reg. Sess. (Ariz. 2025); H.B. 1453, 2025 Gen. Assemb., Reg. Sess. (Md. 2025); S. 144, 194th Gen. Ct. (Mass. 2025); H.B. 1016, 60th Leg., Reg. Sess. (Okla. 2025).

268 *See* UTAH CODE ANN. § 34-23-504.

269 *See id.*; H.B. 2815, 57th Leg., 1st Reg. Sess. (Ariz. 2025).

tried to get the video of her and her siblings in the bathtub taken down, "it's downloaded and online forever."[270]

C. *Foreign and International Approaches*

Privacy scholars recognize that many other countries, particularly European countries, have stronger and more comprehensive data privacy laws and protections than the United States.[271]

At the highest level, the United Nations Convention on the Rights of the Child ("CRC") provides an international foundation for recognizing a child's right to privacy that could be applied to health sharenting.[272]

First, Article Three establishes that "[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration."[273]

Second, Article Eight requires parties to the CRC "to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."[274]

Third, Article Twelve of the CRC states that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."[275]

Fourth, Article Sixteen provides that "[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."[276]

Fifth, and last, Article Nineteen of the CRC requires that States Parties:

> take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of

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270 Post by u/throwawaylisteners, *supra* note 185; *see also* Comment, u/throwawaylisteners, *supra* note 187 ("My parents have tried to erase everything but they can't erase the entire internet so it's still out there.").

271 *See* Stephen Mash, *Data Privacy Rankings – Top 5 and Bottom 5 Countries*, PrivacyHQ, https://privacyhq.com/news/world-data-privacy-rankings-countries/ [https://perma.cc/5S8D-YLX7] (last visited Mar. 19, 2026) ("The European Union is arguably home to the countries with the best data privacy . . . . The [United States] . . . has some of the least integrated data privacy regulations."); *Internet Privacy Index (2024)*, BestVPN (Dec. 31, 2023), https://bestvpn.org/privacy-index/ [https://perma.cc/29SA-8L6K].

272 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

273 *Id.* art. 3(1).

274 *Id.* art. 8(1).

275 *Id.* art. 12(1).

276 *Id.* art. 16(1).

> physical or *mental violence*, injury or abuse, neglect or negligent treatment, maltreatment or *exploitation*, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.[277]

Taken together, these Articles can be interpreted as providing children with certain rights that protect them against sharenting while also establishing a governmental obligation to protect children against the harms of sharenting, such as exploitation. The CRC does not, however, address sharenting specifically, nor does it indicate how the rights and protections in the previously mentioned Articles should be recognized and implemented with respect to sharenting. Thus, it leaves the interpretation and implementation up to the individual states party to the Convention. Moreover, the United States has signed *but not yet ratified* the CRC, meaning the CRC cannot be relied upon to establish an obligation on the United States to protect children from the harms of sharenting.[278]

The European Union ("E.U.") recognizes "the protection of natural persons in relation to the processing of personal data" as a fundamental right.[279] The General Data Protection Regulation ("GDPR") is an E.U. data privacy and security law that became enforceable on May 25, 2018.[280] It represents one of the "toughest privacy and security law[s] in the world."[281] The law imposes obligations on organizations that "target or collect data related to people in the EU."[282] It grants individuals extensive rights over their personal data, including rights to access, rectify, erase, and transfer data.[283]

Yet even the GDPR fails to protect children from the harms of sharenting. As is often the case, the GDPR "views children as vulnerable parties and places their online protection in the hands of their parents."[284] In fact, the GDPR includes an exemption for "household

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277 *Id.* art. 19(1) (emphasis added).

278 *Frequently Asked Questions on the Convention on the Rights of the Child*, UNICEF, https://www.unicef.org/stories/child-rights-convention-faq [https://perma.cc/HG79-2CEQ] (last visited Apr. 4, 2026).

279 Council Regulation 2016/679, art. 1, 2016 O.J. (L 119) 1, 1; *see* Charter of Fundamental Rights of the European Union art. 8, Dec. 18, 2000, 2000 O.J. (C 364) 1, 10; Consolidated Version of the Treaty on the Functioning of the European Union art. 16(1), June 7, 2016, 2016 O.J. (C 202) 47, 55.

280 Ben Wolford, *What Is GDPR, the EU's New Data Protection Law?*, GDPR EU, https://gdpr.eu/what-is-gdpr/ [https://perma.cc/8KBT-ZTSE] (last visited Apr. 4, 2026).

281 *Id.*

282 *Id.*

283 Council Regulation 2016/679, arts. 15–20, 2016 O.J. (L 119) 1, 43–45.

284 Sheila Donovan, *'Sharenting': The Forgotten Children of the GDPR*, 4 Peace Hum. Rts. Governance 35, 39 (2020).

and online personal activities."[285] Yet through sharenting, "parents may use their children's images," which "has the potential to create serious issues regarding the privacy and identity of children."[286]

As a result, just as U.S. states have sought to fill gaps left by inadequate federal protections, individual E.U. member countries have sought to bolster protections for children online, including child influencers.[287] In March 2024, France adopted the Children's Image Rights Law, which seeks to protect children's privacy by recognizing a child's right to their image.[288] This law applies "directly to children's parents or guardians," and thus goes further than laws like the United Kingdom's Age Appropriate Design Code, which only "appl[ies] to data controllers or processors."[289] The French law gives children "a right of access, rectification, erasure, and a right to object in relation to their personal data that can be exercised on their own or by a legal representative."[290] The law "emphasises the joint responsibility of both parents in protecting a minor's image rights," and the child must be involved in decisions about how their images are used "according to his or her age and level of maturity."[291] If both parents cannot agree about the use of the child's image, a judge can step in to prevent the sharing of the child's image unless and until authorization is obtained from the other parent.[292] In the most extreme cases, parents can lose their authority over the rights to their child's image if publication of the child's image "is deemed to compromise the child's dignity or moral integrity."[293]

Italy has also considered a similar law to protect children's privacy and to provide children with the right to their own image.[294] Among other things, the law would require parents to officially declare the

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285 *Id.* at 40.

286 *Id.*

287 This overview of international laws is not intended to be exhaustive.

288 Loi 2024-120 du 19 février 2024 visant à garantir le respect du droit à l'image des enfants [Law 2024-120 of February 19, 2024 on Guaranteeing Respect for Children's Rights to Their Image], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Feb. 20, 2024; Magalie Dansac Le Clerc & Juliette Leportois, *France Introduces New Law to Enhance the Protection of Children's Rights in France*, Baker McKenzie: Connect on Tech (Mar. 19, 2024), https://connectontech.bakermckenzie.com/france-introduces-new-law-to-enhance-the-protection-of-childrens-rights-in-france/ [https://perma.cc/7RGG-NPJW].

289 Le Clerc & Leportois, *supra* note 288.

290 *Id.*

291 Sacha Bettach & Alexandre Vuchot, *New Legal Framework for Children's Privacy*, Bird & Bird (Mar. 25, 2024), https://www.twobirds.com/en/insights/2024/france/new-legal-framework-for-childrens-privacy [https://perma.cc/T8BJ-ZKQF].

292 *Id.*

293 *Id.*

294 Chiara Castro, *Italy Considers Law Against Sharenting to Protect Children's Privacy*, TechRadar (Apr. 5, 2024), https://www.techradar.com/computing/cyber-security/italy-considers-law-against-sharenting-to-protect-childrens-privacy [https://perma.cc/WCQ6-4HBD].

online use of their children's image to the Italian Communications Regulatory Authority.[295] The law would also require parents to transfer any direct profits gained from the use of their child's image to a bank account in the child's name that the child can access upon turning eighteen years of age.[296] And the law would grant minors the right to request "digital oblivion" after they turn fourteen.[297]

Whether a comprehensive privacy law that addresses the issues of health sharenting is possible remains unclear. With respect to health sharenting, the law's failure to address its potential harms is likely due, in part, to the presumption that parents act in the best interests of their children. Indeed, many existing laws that aim to protect children online rely on this presumption. The GDPR, for example, relies "on parents as 'gatekeepers' of their children's digital safety and privacy" and fails to recognize that "not all parents may be computer literate and technologically aware," or worse, may *not* have their children's best interest at heart.[298] Thus, although most existing laws, codes, and regulations "*favour[]* parents in taking measures to protect the privacy of the child, sharenting creates an inverse situation" in which the law needs to "protect against the actions of parents and impose obligations on parents."[299]

These legal and policy gaps raise the question: Are there other existing legal frameworks that could mitigate the harms of health sharenting? If not, what new legal or policy mechanisms could be developed?

III. Alternative Legal Frameworks

Part II unpacked the current landscape of state, federal, and international laws that seek to protect children on the internet. The analysis exposed important gaps in coverage and an overall failure to address the risks and harms of health sharenting. Part III turns to examine whether other legal and regulatory frameworks not specific to the internet can prevent or mitigate the harms of health sharenting. Section A explores child abuse and neglect laws. Section B examines child labor laws. Finally, Section C considers the use of tort law.

A. Child Abuse and Neglect

Federal and state laws provide a framework for identifying, reporting, and addressing child abuse and neglect. At the federal level, the

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295 *Id.*

296 *Id.*

297 *Id.*

298 Donovan, *supra* note 284, at 38.

299 Gergely Ferenc Lendvai, *Sharenting as a Regulatory Paradox – A Comprehensive Overview of the Conceptualization and Regulation of Sharenting*, Int'l J.L., Pol'y & Fam., Aug. 2024, at 1, 9.

Child Abuse Prevention and Treatment Act ("CAPTA"),[300] as amended, provides federal funding and guidance to states for the prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect, contingent upon compliance with federal requirements.[301] CAPTA defined "child abuse and neglect" to mean, "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or *emotional harm*, sexual abuse or exploitation . . . or an act or failure to act which presents an imminent risk of serious harm."[302] Amendments in 2015 expanded this federal definition of "child abuse and neglect" and "sexual abuse" to include a child identified as a victim of human trafficking.[303] CAPTA sets federal minimum standards, while states maintain significant authority to define and enforce laws and procedures related to child abuse and neglect.[304]

The consequences of health sharenting could be regulated as a form of emotional abuse or neglect in certain contexts if the parent becomes so consumed by content creation that they neglect their parental duties to a significant degree.[305] As Steinberg notes, if the state can "show that the parental expression caused substantial harm to the child's well-being, [it] could intervene to protect children from harm occurring in online forums."[306] In her article "Beyond Sharenting," Steinberg proposes a model for protecting children's privacy online that "separate[s] legal parental sharenting from online abuse and exploitation perpetrated by parents."[307]

At its most extreme, sharenting may constitute child abuse or neglect, or it may worsen existing child abuse or neglect. Consider, for

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300 Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended in scattered sections of 42 U.S.C.).

301 42 U.S.C. §§ 5101, 5106. The law also provides grants to public and private agencies or organizations, including Indian Tribes and Tribal organizations, for programs and projects relating to child abuse and neglect. *Id.* § 5106(a).

302 42 U.S.C. § 5101 (1996), *amended by* Pub. L. No. 111-320, § 142(a), 124 Stat. 3482 (2010) (emphasis added).

303 *Id.* § 5106g(b)(1).

304 *See id.* § 5106a; Allison M. Smith, Cong. Rsch. Serv., RL31201, Family Law: Congress's Authority to Legislate on Domestic Relations Questions 1 (2012) (noting the state's primary role in child welfare); *see also* Emilie Stoltzfus, Cong. Rsch. Serv., R43458, Child Welfare: An Overview of Federal Programs and Their Current Funding 1 (2017) (describing how the federal government funds states' child welfare efforts).

305 As the child of a sharenter explained, "[t]he most attention [her mother has] given [her] recently was recorded." Post by u/AnnonymousCarrot, *supra* note 158. She states further that she envies her mother's followers, who her mother gives "so much more attention" than her. *Id*. She writes of her mother: "Shes turned me down so many times I stopped even trying to hangout with her, since if i do get her around shes on her phone. . . . She livestreams so much that I sometimes have to skip meals because she cant have the background noise and she livestreams in the middle of the kitchen." *Id.* (errors in original).

306 Steinberg, *supra* note 37, at 872.

307 Stacey Barell Steinberg, *Beyond Sharenting*, 99 S. Cal. L. Rev. 556, 568 (2026).

example, the story of Ruby Franke, a "momfluencer" from Utah who pleaded guilty to child abuse in 2023.[308] Her YouTube channel documented family life with her husband and six children. The abuse was discovered when Franke's twelve-year-old son ran to a neighbor's home to ask for help and was observed to have duct tape on his "ankles and wrists, severe wounds, and malnourishment."[309]

Franke's case, however, is far more egregious than the typical sharenter. Indeed, the act of "sharenting" was not in and of itself an abusive act, even though Franke's obsession with filming their lives exacerbated the abuse. In a memoir published after her mother's arrest, Franke's eldest child, Shari, described how her mother's obsession with "striking content gold" and amassing followers and views "led her to view her children as employees who needed to be disciplined, rather than children who needed to be loved."[310] Shari also described how "her mother directed the children 'like a Hollywood producer' and subjected them to constant video surveillance."[311] Shari's sister, eleven-year-old Eve, expressed feeling exploited, stating, "kids deserve to be loved, not used by the ones that are supposed to love them the most."[312]

Franke's children explained how "their house turned into a set. They had to constantly clean the house and change every lightbulb in the home to bright white for filming purposes . . . ."[313] Any complaints about the constant filming were met with backlash, with their mother yelling, "Do you know that this is what we do? And everyone gets $10 for a video that they help with. Do you want $10?"[314] The worst of the abuse occurred off camera, but the extreme discipline and abusive

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308 Wash. Cnty. Att'y's Off., *Utah vs Franke/Hildebrandt*, Wash. Cnty. Utah, https://www.washco.utah.gov/departments/attorney/case-highlights-media/utah-vs-franke-hildebrandt/ [https://perma.cc/5W5T-L6ZQ] (last visited Mar. 19, 2026); Cerys Davies, *Inside the Downfall of Mommy Vlogger Ruby Franke: 8 Takeaways from the Hulu Docuseries*, L.A. Times (Mar. 5, 2025, at 03:00 PT), https://www.latimes.com/entertainment-arts/story/2025-03-05/ruby-franke-doc-hulu-devil-in-the-family-abuse-biggest-revelations [https://perma.cc/F8XD-F2ND]; Tyler Piccotti, *The Story of Ruby Franke's Chilling Spiral from Popular "Momfluencer" to Convicted Felon*, Biography (Dec. 29, 2025, at 16:42 ET), https://www.biography.com/crime/a60319774/ruby-franke-story [https://perma.cc/Q2E8-EKCF].

309 Wash. Cnty. Att'y's Off., *supra* note 308.

310 *In Wake of Ruby Franke Abuse Case, Utah Adds Protections for Children of Social Media Influencers*, CBS News (Mar. 26, 2025, at 09:40 ET), https://www.cbsnews.com/news/utah-children-influencer-protections-ruby-franke-child-abuse/ [https://perma.cc/Q9G9-FF3E].

311 *Id.*

312 *See* Daniel Woodruff, *Franke Family Speaks in Support of New Protections for Child Actors, Influencers*, KSL TV (Feb. 18, 2025, at 18:52 ET), https://ksltv.com/politics-elections/utah-legislature/c-influencers/740732/ [https://perma.cc/9MMJ-2GDR].

313 Davies, *supra* note 308.

314 *Id.*

behavior were used to create controversial, eye-catching content for views.[315]

The Franke story, however, does not answer the broader question: Can the act of health sharenting *itself* be abusive or neglectful? Or, is it only abusive when sharenting leads to or exacerbates existing abuse or neglect?

Part I described the various harms that children may experience when their parents engage in health sharenting that could fall within various state definitions of child abuse. Consider Georgia, which defines "child abuse" to include "[e]motional abuse of a child"; "[a]n act or failure to act that presents an imminent risk of serious harm to the child's physical, mental, or emotional health"; or "[t]rafficking a child for labor servitude."[316] "Emotional abuse" is then defined as:

> acts or omissions by a parent, guardian, legal custodian, or other person responsible for the care of a child that cause any mental injury to such child's intellectual or psychological capacity as evidenced by an observable and significant impairment in such child's ability to function within a child's normal range of performance and behavior or that create a substantial risk of impairment.[317]

"Labor servitude" is defined as "work or service of economic or financial value which is performed or provided by another individual and is induced or obtained by coercion or deception."[318]

Because of the potential consequences of sharenting, which can include stigma, harassment, bullying, discrimination, and embarrassment, sharenting could constitute "emotional abuse" or create an "imminent risk of serious harm to the child's" mental or emotional health, thus meeting Georgia's definition of child abuse.[319] Moreover, when the parent profits from online content, it could potentially meet the definition of "labor servitude" if coercion is involved.

But should child abuse and neglect laws be interpreted to include the consequences of health sharenting? Steinberg suggests that in some cases, sharenting can be abusive and exploitative, even if unintentional.[320] But using the child welfare framework—a system many scholars view as inherently problematic, destructive, and in need of significant

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315 *See id.*

316 Ga. Code Ann. § 19-7-5(b)(5) (2025).

317 *Id.* § 19-7-5(b)(8).

318 *Id.* § 19-7-5(b)(9). Georgia law states: "A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects another person to or maintains another person in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude." *Id.* § 16-5-46(b).

319 *Id.* § 19-7-5(b)(5)(f).

320 Steinberg, *supra* note 307, at 69–70.

reform or even abolition—would likely cause more harm than good in the vast majority of cases. Indeed, the system is so deeply problematic and harmful to families and children that many scholars and advocates now refer to it as the family policing system.[321] There are several reasons to avoid using child abuse and neglect laws to mitigate the harms of health sharenting.

First, because child welfare laws are enforced largely at the state level, it would result in a piecemeal approach to protecting children from sharenting's harms, similar to the current piecemeal approach used by states enacting online and data privacy protections discussed in Part II. A fragmented, state-level approach would be inadequate and create inconsistencies that leave children more or less protected depending on where they live.

Second, and relatedly, child welfare laws require enforcement by the state, leaving the child with little control over whether and when the state steps in to remove or prevent harmful online content. Enforcement by the state also raises complicated First Amendment questions: Would state action that prevents health sharenting or requires parents to remove information shared about their child's health violate parental autonomy or the parents' right to free speech?[322] Any framework that requires state enforcement and restriction of content raises thorny constitutional questions that warrant additional analysis.[323]

Third, the state would often step in only after some degree of abuse, neglect, or harm has already occurred. This issue raises a similar problem to those posed by deletion laws and laws providing a "right to be forgotten."[324] Deleting content "can't make anyone forget anything."[325]

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321 *See* Dorothy Roberts, Torn Apart: How the Child Welfare System Destroys Black Families—and How Abolition Can Build a Safer World 2 (2022); Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 Yale J.L. & Feminism 37, 43–44 (2022); Taleed El-Sabawai & Sarah Katz, *Deinstitutionalizing Family Separation in Cases of Parental Drug Use*, 134 Yale L.J.F. 1022, 1023–24 (2025); Cynthia Godsoe, *Racing and Erasing Parental Rights*, 104 B.U. L. Rev. 2061, 2064 n.1 (2024); Allison M. Whelan, Dobbs *and the Destabilization of Clinical Trials*, 77 Vand. L. Rev. 1381, 1426–27 (2024).

322 *See* Charlotte Yates, *Influencing "Kidfluencing": Protecting Children by Limiting the Right to Profit from "Sharenting,"* 25 Vand. J. Ent. & Tech. L. 845, 854–56 (2023) (discussing First Amendment and parental rights issues raised by regulation of sharenting); Steinberg, *supra* note 37, at 869 ("At the heart of sharenting is the difficult task of balancing a parent's right to free expression (and parental rights generally) against a child's privacy interest. These concepts are intertwined and can conflict with each other.").

323 Because this Article's proposal takes a more balanced approach and does not require the State to act as the primary enforcer, a detailed First Amendment analysis is beyond the scope of this Article.

324 *See* Evan Selinger & Woodrow Hartzog, *Google Can't Forget You, But It Should Make You Hard to Find*, Wired (May 28, 2014, at 15:44 ET), https://www.wired.com/2014/05/google-cant-forget-you-but-it-should-make-you-hard-to-find/ [https://perma.cc/FSN6-2T4D].

325 *Id.*

This is the "Pandora's Box" issue created by the internet: Once material is shared on the internet, it can be downloaded, saved, and shared by third parties. This makes it difficult, if not impossible, to ever truly delete information once posted online.

Fourth, and perhaps most important, is the long list of inherent problems with the family-policing system.[326] The family-policing system operates within a context of entrenched systemic biases and racism, high caseloads, a lack of resources to effectively address poverty and other system issues that impact families and are often deemed—inappropriately—to constitute child abuse or neglect, ineffective prevention and reintegration, unstable or even abusive placements, and much more.[327]

As law professor Dorothy Roberts explains, "'[p]olicing' is the word that captures best what the system does to America's most disenfranchised families. It subjects them to surveillance, coercion, and punishment."[328] According to Roberts, the family policing system

> is designed to serve the US racial capitalist power structure, governed by profit, wealth accumulation, and market competition for the benefit of a wealthy white elite, by regulating and disrupting the most disenfranchised populations in place of meeting human needs. Family policing targets Black families and relies on racist beliefs about Black family dysfunction to justify its terror. Regulating and destroying Black families—in addition to Latinx, Indigenous, and other impoverished families—in the name of child protection has been essential to the "ongoing white supremacist nation building project," to quote Mariame Kaba, as much as prisons and police. Like the prison system, the family-policing system frays social bonds and strains the ability of community members to resist oppression and organize politically.[329]

As scholars and advocates like Roberts fight to abolish or reform and rebuild the family-policing system, giving the state more power to surveil and police families would likely do more harm than good. Determining what constitutes excessive or abusive sharenting would be difficult and likely give the state significant discretion in deciding whether and when to take action against sharenters. Such discretion creates a framework ripe for bias and overreach. If the existing family-policing system provides any guide, this discretion would result in disproportionate policing of historically marginalized and

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326 *See* sources cited *supra* note 321.

327 *See id.*

328 Dorothy Roberts, *Building a World Without Family Policing*, Law & Pol. Econ. Proj. (July 17, 2023), https://lpeproject.org/blog/building-a-world-without-family-policing/ [https://perma.cc/3M23-ADG9].

329 *Id.*

disenfranchised populations.[330] Expanding the family-policing system's scope to regulate sharenting would only further exacerbate the system's problems and unleash new, destructive "tentacles of the family-policing system" into homes throughout the United States.[331]

B. Child Labor Laws

Child labor laws provide another existing framework to consider when thinking through whether and how to regulate health sharenting, particularly commercial health sharenting. As Part II explains, some states already regulate commercial sharenting using Coogan-Plus laws.[332]

Like child abuse and neglect laws, child labor laws have both federal and state components. At the federal level, child labor for individuals under eighteen is governed primarily by the Fair Labor Standards Act ("FLSA").[333] FLSA sets standards on safety, health, discrimination, and benefits that apply to workers of all ages; sets minimum age requirements; restricts working hours for minors under the age of sixteen; prohibits employment in hazardous occupations for youth under the age of eighteen; and establishes subminimum wage standards for certain employees under the age of twenty, full-time students, student learners, apprentices, and workers with disabilities.[334] States also have their own fair labor standards that apply to adult and youth workers. FLSA generally sets the floor, and states can provide additional protections, such as requiring work permits or parental consent for certain hours.[335]

Using existing child labor laws to regulate health sharenting would likely result in underregulation. At the federal level, "national child labor laws were never concerned with less traditional forms of labor and intentionally leave children exposed in certain industries," including the entertainment industry.[336] When FLSA was enacted, its focus was to prevent "oppressive" child labor.[337] Traditionally, a child's earnings have been recognized as those of their parents,[338] and FLSA exempts chil-

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330 *See id.*

331 Whelan, *supra* note 321, at 1426.

332 *See supra* Section II.B.

333 29 U.S.C. §§ 201–219.

334 *Workers Under 18*, U.S. Dep't of Lab., https://www.dol.gov/general/topic/hiring/workersunder18 [https://perma.cc/AY86-S7M3] (last visited Mar. 19, 2026).

335 *Id.*; Staff Report, *Child Labor Laws by State + Federal (2025)*, Workforce.com (Dec. 27, 2024), https://workforce.com/news/minor-labor-laws-by-state [https://perma.cc/7SLL-2N3X].

336 Masterson, *supra* note 42, at 585.

337 *See* 29 U.S.C. § 212; *id.* § 203(l) (defining "oppressive child labor").

338 *See, e.g.*, Eustice v. Plymouth Coal Co., 13 A. 975, 976 (Pa. 1888) ("It is a rule as old as the common law that the father is entitled to the custody and control of his minor children, and to receive their earnings."); Virginian Ry. Co. v. Armentrout, 158 F.2d 358, 363 (4th Cir. 1946) ("Under the West Virginia law which governs the case, the earnings of a minor child are the property of its

dren employed by their parents from child labor regulations.[339] FLSA's "parental exemption" regulation reads:

> [A] parent . . . may employ his own child or a child in his custody under the age of 16 years in any occupation other than the following: (a) Manufacturing; (b) mining; (c) an occupation found by the Secretary to be particularly hazardous or detrimental to health or well-being for children between the ages of 16 and 18 years. This exemption may apply only in those cases where the child is exclusively employed by his parent or a person standing in his parents' place. Thus, where a child assists his father in performing work for the latter's employer and the child is considered to be employed both by his father and his father's employer, the parental exemption would not be applicable.[340]

Thus, in the vast majority of health sharenting cases, even if the child were considered "employed" by their parent, this parental exemption regulation would apply. Moreover, FLSA's child labor provisions "shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions."[341]

This entertainment exemption, along with the presumption that a minor's earnings belonged to their parents, provided the impetus for the first Coogan Law passed by California in the late 1930s.[342] As discussed in Part II, some states have passed Coogan-Plus laws to ensure that children included in social media content are covered by the requirements of the state's Coogan laws. Most states, however, lack such laws, leaving millions of minors without any rights to the profits earned from their parent's health sharenting. To address this issue, either all states would need to enact Coogan-Plus laws, or FLSA would need to be amended to provide a uniform policy for addressing earnings made by children in social media content.

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parents."); Beaudoin v. Beaudoin, 386 A.2d 1261, 1263 (N.H. 1978) ("It has long been the established law in this state that parents are entitled to the earnings and services of their unemancipated minor children."); Hines v. Cheshire, 219 P.2d 100, 106 (Wash. 1950) ("[T]he parents are legally entitled to the earnings of a minor child, unless there has been an emancipation.").

339 *See* 29 U.S.C. § 213(c)(2) (excluding from the definition of "employee" children employed by an employer engaged in agriculture if the employer is their parent); *id.* § 203(l) (excluding children employed by their parent from the definition of "oppressive child labor"); *id.* § 203(s)(2) ("Any establishment that has as its only regular employees the owner thereof or the parent, spouse, *child*, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise." (emphasis added)).

340 29 C.F.R. § 570.126 (2024).

341 29 U.S.C. § 213(c)(3).

342 *See supra* Part II.

Yet even if all states passed Coogan-Plus laws, the protections would still apply only to commercial health sharenting and would remedy only the financial harms of sharenting. The harms of health sharenting are far more than financial.[343] As a result, relying on the existing child labor framework would not protect children from other harms of health sharenting, such as stigma, harassment, discrimination, invasions of privacy, and harms to the child's autonomy and sense of self.

C. Tort Law

Tort law is a branch of civil law concerned with providing remedies for injuries or harms caused by one person's wrongful acts or omissions toward another.[344] With few exceptions, "tort law is largely a matter of state rather than federal law."[345] Additionally, tort law has historically "been a matter of common law rather than statutory law," meaning that judges rather than legislatures have developed most of tort law's fundamental principles on a case-by-case basis.[346] Common remedies provided by tort law include compensatory damages, injunctions, and declaratory judgments.[347]

At first glance, tort law seems to provide a viable mechanism for remedying the privacy and emotional harms of health sharenting. Yet there are significant limitations. Section 1 examines the tort of negligent infliction of emotional distress, and Section 2 analyzes the use of privacy torts.

1. Emotional Distress

Intentional infliction of emotional distress ("IIED") and negligent infliction of emotional distress ("NIED") are two torts relevant to the emotional harms that children may experience because of health sharenting. These harms may arise from the stigma, discrimination, bullying, and harassment that children may experience because of the information shared by their parents. As previously discussed, many parents engage in health sharenting with good intentions, meaning IIED would not typically apply.[348]

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343 *See supra* Section I.B (discussing the harms of health sharenting).

344 *See* Marshall S. Shapo, Principles of Tort Law 4 (4th ed. 2016).

345 Andreas Kuersten, Cong. Rsch. Serv., IF11291, Introduction to Tort Law (2023), https://www.congress.gov/crs-product/IF11291 [https://perma.cc/FA4U-44HM].

346 *Id.*

347 Restatement (Third) of Torts: Remedies § 1 (A.L.I., Tentative Draft No. 1, 2022).

348 IIED requires showing that the tortfeasor "by extreme and outrageous conduct *intentionally* or *recklessly* causes severe emotional distress to another." 86 Corpus Juris Secundum Torts § 57 (John Kimpflen & Karl Oakes eds., 2025) (emphasis added); *see also* Restatement (Second) of Torts § 46 cmt. d (A.L.I. 1965) ("Liability has been found only where the conduct has been so

"[T]he story of liability for negligently inflicted emotional harms is one of ever changing pragmatic liabilities and limitations."[349] The Restatement (Third) of Torts describes it as involving "[a]n actor whose negligent conduct causes serious emotional harm to another" with conduct that "(a) places the other in danger of immediate bodily harm and the emotional harm results from the danger; or (b) occurs in the course of specified categories of activities, undertakings, or relationships in which negligent conduct is especially likely to cause serious emotional harm."[350] Subsection (b) could be relevant for health sharenting, as it creates a situation in which the actor's—the parent's—negligent conduct creates a risk of causing emotional, rather than physical, harm to the person—the child—seeking recovery.[351]

Yet there are many limitations to relying on NIED to prevent or remedy the harms of health sharenting. The recognition or success of NIED claims will vary considerably by state and by court.[352] And although many courts have moved to ease restrictions on NIED claims, some continue to impose various limitations on a plaintiff's ability to recover.

First, some jurisdictions utilize the "impact rule," which denies plaintiffs recovery for negligently caused emotional distress absent a showing of physical impact.[353] The impact rule aims to prevent the likelihood of "exaggeration, and even of actual fraud, in the ordinary action for physical injuries from negligence . . . . [If courts] open[] the door to this new invention the result would be great danger, if not disaster, to the cause of practical justice."[354] That said, the definition of "physical" impact is typically expansive, and may include proof of "severe emotional distress," meaning "any emotional or mental disorder, such as . . . neurosis, psychosis, chronic depression, phobia, or any other type

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outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.").

349 Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, Hornbook on Torts 713 (2d ed. 2000).

350 Restatement (Third) of Torts: Liab. for Phys. & Emot. Harm § 47 (A.L.I. 2012).

351 *See id.*

352 Some courts continue to not recognize NIED claims. *See* Gideon v. Norfolk S. Corp., 633 So.2d 453, 453–54 (Ala. 1994).

353 *See, e.g.*, Daley v. LaCroix, 179 N.W.2d 390, 395 (Mich. 1970) ("[W]here a definite and objective physical injury is produced as a result of emotional distress proximately caused by defendant's negligent conduct, the plaintiff in a properly pleaded and proved action may recover in damages for such physical consequences to himself notwithstanding the absence of any physical impact upon plaintiff at the time of the mental shock."); R.J. v. Humana of Fla., Inc., 652 So.2d 360, 362–63 (Fla. 1995) (upholding the impact rule in Florida); Lee v. State Farm Mut. Ins. Co., 533 S.E.2d 82, 85–87 (Ga. 2000) (upholding the impact rule in Georgia).

354 Niederman v. Brodsky, 261 A.2d 84, 91 (Pa. 1970) (quoting Huston v. Freemansburg Borough, 61 A. 1022, 1023 (Pa. 1905)).

of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so."[355]

Second, "[w]ith limited exceptions, most courts hold that the plaintiff can recover [for NIED] only if a normally constituted person would suffer, and the plaintiff in fact suffered *severe* distress. In some instances, courts may require not only severe distress but medical evidence of it or physical manifestation of it."[356] Courts may also "demand[] not merely that a reasonable person would foresee the general type of harm, but also *serious* emotional harm in particular."[357]

Third, in the "direct victim" context—i.e., subsection (b) of the definition above[358]—"courts may restrict recovery to cases in which the plaintiff has been placed in *immediate* danger of bodily harm," or when "distress occurs within the confines of particular undertakings or special relationships."[359] The first part of this requirement is akin to the "zone of danger" rule, which some courts continue to follow. In a zone-of-danger case, a plaintiff will have narrowly escaped imminent and serious harm to their own physical well-being and suffered a mental or emotional disturbance as a result.[360] That requirement would not cover most health sharenting cases.

Under the "special relationship" requirement, it might seem that the requisite special relationship exists between a parent and a child for an NIED claim. Nevertheless, the persistence of the parental immunity doctrine in some jurisdictions would greatly inhibit the ability to rely on tort law to remedy the mental and emotional harms of health sharenting. The parental immunity doctrine has historically served as a barrier to children filing suit against their parents for negligence.[361] The reasoning for the doctrine includes "the fear of disturbing domestic tranquility, the risk of fraud and collusion, depletion of family resources, the potential for the parent to recover via inheritance, and interference

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355 Johnson v. Ruark Obstetrics & Gynecology Assocs., 395 S.E.2d 85, 97 (N.C. 1990).

356 Dobbs et al., *supra* note 349, at 714 (emphasis added) (footnotes omitted).

357 *Id.* (emphasis added).

358 *See supra* note 350 and accompanying text.

359 Dobbs et al., *supra* note 349, at 713–14 (emphasis added) (footnote omitted).

360 *See, e.g.*, King v. Bogner, 624 N.E.2d 364, 367 (Ohio Ct. App. 1993) ("Ohio case law has recognized negligent infliction of emotional distress only where the plaintiff is cognizant of real physical danger to herself or another. Where there is no such cognizance, there can be no claim for negligent infliction of emotional distress." (citations omitted)).

361 *See* Allegra Padula, Note, *23AndMe . . . and You: Examining the Existence of a Patient's Duty to Inform Family Members of Genetic Test Results and Establishing a New Cause of Action*, 87 Alb. L. Rev. 423, 435 (2024); John W. Toomey, *The Causes of Minor Suicide: How the Restatement Approach to Foreseeability & Scope of Liability Fails to Act as a Deterrent*, 49 Am. J. L. & Med. 396, 401 (2023). However, "[t]here now appears to be nearly universal consensus that children may sue their parents for personal injuries caused by *intentionally* wrongful conduct." Zellmer v. Zellmer, 188 P.3d 497, 501 (Wash. 2008) (en banc) (emphasis added).

with 'parental care, discipline, and control.'"[362] As the Supreme Court of Washington noted in *Zellmer v. Zellmer*,[363] "the primary objective of the modern parental immunity doctrine is to avoid undue judicial interference with the exercise of parental discipline and parental discretion. . . . Parents have a right to raise their children without undue state interference."[364] Parental immunity is further justified by the "long-standing assumption . . . that parents act in the best interest of their children," an idea "still frequently espoused, despite statistics reporting the spiralling amount of child abuse" and other behaviors not "motivated by the 'best interest of the child.'"[365]

Some jurisdictions have abolished the parental immunity doctrine in whole or in part. According to the Restatement (Third) of Torts, seventeen jurisdictions have abandoned it completely, another eight have abrogated it for motor vehicle accidents, and another twelve have adopted the "reasonable parent" standard.[366] Most states have also developed one or more exceptions to the parental immunity doctrine "when they believed that the policies supporting it were inapplicable or were outweighed by the benefit of allowing a tort claim," such as in cases of intentional or reckless actions, when the parent-child relationship has been terminated prior to the initiation of the suit (e.g., by death of the parent or child or both), and when the defendant is a stepparent who has not adopted the child.[367]

The patchwork of approaches to NIED and parental immunity create significant barriers to relying solely or primarily on NIED claims to address the harms of health sharenting. Indeed, "it is often impossible to predict whether an NIED claim will succeed in a particular jurisdiction,

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362 Toomey, *supra* note 361, at 401; *see also* Broadbent v. Broadbent, 907 P.2d 43, 45 (Ariz. 1995) (en banc) ("[N]o American child had sought recovery against a parent for tortious conduct until the late nineteenth century."); Elizabeth Ashley Baker, Note, *Closing One Door on the Parent-Child Immunity Doctrine: Legislature Rejects the Decision of* Coffey v. Coffey, 13 CAMPBELL L. REV. 105, 115–18 (1990) (describing the North Carolina Supreme Court's rationale for keeping the parent immunity doctrine). The idea that children cannot sue their parents has deep historical roots, dating back to when children were considered possessions of their fathers. *See* Florence W. Kaslow, *Children Who Sue Parents: A New Form of Family Homicide?*, 16 J. MARITAL & FAM. THERAPY 151, 151 (1990).

363 188 P.3d 497 (Wash. 2008) (en banc).

364 *Id.* at 502.

365 Kaslow, *supra* note 362, at 152 (citing KEE MACFARLANE & JILL WATERMAN, SEXUAL ABUSE OF YOUNG CHILDREN: EVALUATION AND TREATMENT (1986); KIM OATES, CHILD ABUSE AND NEGLECT: WHAT HAPPENS EVENTUALLY? (1986); DIANE H. SCHETKY & ARTHUR H. GREEN, CHILD SEXUAL ABUSE: A HANDBOOK FOR HEALTH CARE AND LEGAL PROFESSIONALS (1988)).

366 RESTATEMENT (THIRD) OF TORTS: MISCELLANEOUS PROVISIONS § 2 Reporter's Notes cmt. a (A.L.I., Tentative Draft No. 1, 2022).

367 VICTOR E. SCHWARTZ, DAVID F. PARTLETT, W. JONATHAN CARDI & ALEXANDRA LAHAV, PROSSER, WADE, AND SCHWARTZ'S TORTS: CASES AND MATERIALS 800–01 (15th ed. 2024).

because the existing rules are applied in a variety of ways."[368] NIED shares additional barriers with those of privacy torts, which are discussed together in the next Section.

2. *Privacy Torts*

Health sharenting implicates "information privacy," which represents "the right of individuals to control information about themselves."[369] The right to information privacy arises from a number of sources, including "tort law, state and federal privacy protections, and various constitutional protections, such as those guaranteed by the Fourth Amendment."[370]

In his seminal 1960 article "Privacy," William J. Prosser, then Dean of UC Berkeley School of Law, explained:

> The law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff, in the phrase coined by Judge Cooley, "to be let alone."[371]

Prosser delineates these four privacy torts as follows:

1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs.
2. Public disclosure of embarrassing private facts about the plaintiff.
3. Publicity which places the plaintiff in a false light in the public eye.
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.[372]

a. *Privacy Torts Generally*

Privacy torts (1), (2), and (4) are most relevant to the privacy harms arising from health sharenting. A focus on health sharenting helps distinguish cases in which the court failed to find an invasion of the child's

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368 J. Mark Appleberry, *Negligent Inflection of Emotional Distress: A Focus on Relationships*, 21 Am. J.L. & Med. 301, 317 (1995).

369 Neil M. Richards, *The Information Privacy Law Project*, 94 Geo. L.J. 1087, 1089 (2006); *see also infra* notes 410–14 and accompanying text (discussing information and decisional privacy further).

370 Whelan, *supra* note 44, at 1272–73.

371 William L. Prosser, *Privacy*, 48 Calif. L. Rev. 383, 389 (1960) (quoting Thomas M. Cooley, A Treatise on the Law of Torts, or, the Wrongs Which Arise Independent of Contract 29 (2d ed. 1888)).

372 *Id.*

privacy, such as *Sakala v. Milunga*.[373] There, the plaintiff took photographs of the defendants' child and posted them on Facebook, and in their counterclaim, the defendants alleged that the plaintiff infringed on their right of privacy by posting the pictures without their consent.[374] The district court determined that the alleged invasion of privacy did not fall into one of the four forms of the invasion of privacy tort recognized by the jurisdiction, which were analogous to those delineated by Prosser.[375] According to the court, the pictures posted were "utterly prosaic," capturing things like "a visit to the White House, a ride on a subway, a trip to the beach, and nondescript candid shots in a home."[376] Because the photos "disclose[d] nothing about the [defendants'] children that is not readily observable by the public whenever the children go out into the world with their parents[,] [t]he pictures cannot support an invasion-of-privacy" claim.[377]

For the first privacy tort, both Prosser and the *Sakala* court require the intrusion to be more than mundane. It must "be offensive or objectionable to a reasonable man" and must target something that is "entitled to be[] private."[378] As Prosser explains, a person "has no right to be alone" in a public place, and no invasion of privacy results for merely "follow[ing]" a person about in public or taking their picture in public, as "this amounts to nothing more than making a record, not differing essentially from a full written description, of a public sight which any one present would be free to see."[379]

Health sharenting, however, goes beyond sharing photos or videos taken in public or disclosing information about a child that is obvious to the public. Indeed, as Prosser explains, when a person "is confined to a hospital bed," or "in all probability when he is merely in the seclusion of his home, the making of a photograph without his consent is an invasion of a private right, of which he is entitled to complain."[380] Most mental health conditions, and even many physical health conditions, are not immediately "observable by the public."[381] Moreover, the intimate details of living with a mental or physical health condition that occur in

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373 No. PWG-16-790, 2017 WL 2986364 (D. Md. July 13, 2017).

374 *Id.* at *4.

375 The case involved Maryland law, which recognizes four types of privacy invasions: "(1) unreasonable intrusion upon seclusion; (2) appropriation of another's name or likeness; (3) unreasonable publicity given to another's private life; and (4) false light." *Id.*

376 *Id.*

377 *Id.*

378 Prosser, *supra* note 371, at 390–91; *see Sakala*, 2017 WL 2986364, at *4.

379 Prosser, *supra* note 371, at 391–92.

380 *Id.* at 392.

381 *Sakala*, 2017 WL 2986364, at *4.

one's home or at a healthcare facility are generally not "a public sight which any one present would be free to see."[382]

The second privacy tort enumerated by Prosser—public disclosure of embarrassing private facts—also seems applicable to many instances of health sharenting. This is particularly true for health information that relates to "invisible" conditions, which include many mental and even some physical health conditions.[383] As Prosser explains, "no one can complain when publicity is given to information about him which he himself leaves open to the public eye."[384] The information disclosed must also "be offensive and objectionable to a reasonable man of ordinary sensibilities."[385] At its heart, the interest protected "is that of reputation, with the same overtones of mental distress that are present in libel and slander."[386] Given the stigma and discrimination that continue to plague individuals with certain health conditions, many would likely agree that the nonconsensual sharing of a person's health information to large numbers of people would "be offensive and objectionable to a reasonable man of ordinary sensibilities."[387]

The fourth privacy harm, appropriation of the plaintiff's likeness for the defendant's advantage, is relevant to all forms of commercial sharenting, as it involves parents using their child's image and likeness for their economic advantage. Even sixty years ago, before the advent of the internet and social media, there were "a great many decisions in which the plaintiff . . . recovered when his name or picture, or other likeness, [was] used without his consent to advertise the defendant's product, or to accompany an article sold, to add luster to the name of a corporation, or for other business purposes."[388] Unlike the first two torts, the interest here is not primarily a mental or emotional one, but "a proprietary one, in the exclusive use of the plaintiff's name and likeness as an aspect of his identity."[389]

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382 Prosser, *supra* note 371, at 392.

383 Maureen Salamon, *Invisible Illness: More Than Meets the Eye*, HARV. HEALTH PUBL'G (May 1, 2023), https://www.health.harvard.edu/diseases-and-conditions/invisible-illness-more-than-meets-the-eye [https://perma.cc/KF5C-CFA5].

384 Prosser, *supra* note 371, at 394.

385 *Id.* at 396.

386 *Id.* at 398.

387 *Id.* at 396. *See, e.g.*, Jackson v. Mayweather, 217 Cal. Rptr. 3d 234, 251 (Cal. Ct. App. 2017) (holding that a man's posting of his ex-girlfriend's sonogram photo on social media after she terminated her pregnancy was sufficient to support a claim for invasion of privacy by publication of private facts); *In re* BPS Direct, LLC, 705 F. Supp. 3d 333, 360 (E.D. Pa. 2023) (suggesting that evidence of disclosure of "highly sensitive personal information such as medical diagnosis information" could sustain a common law privacy claim).

388 Prosser, *supra* note 371, at 401–02 (footnotes omitted).

389 *Id.* at 406.

b. Privacy Tort Limitations

Analyzing these privacy torts makes it clear that health sharenting could give rise to a claim under one or more of them. That said, reliance on these torts to prevent or remedy the harms of health sharenting comes with limitations.

It would be relatively unprecedented for a child to sue their parent(s) for invasion of privacy.[390] Moreover, parental immunity may again act as a barrier to recovery.[391] There is a dearth of case law discussing parental immunity and privacy torts specifically. Courts may be hesitant to allow a child to sue their parent for an invasion of privacy based on the parent's decision to share information about the child on social media, as that would "interfere[] with parental discipline, care and control."[392]

Other limitations of privacy torts are shared by NIED, including the significant state and jurisdictional variation in the requirements for bringing such claims and the likelihood of success.[393] Any legal framework or remedy that varies so significantly by jurisdiction means that children across the United States will face disparate levels of protection from the harms of sharenting.

Another shared limitation is that tort law is a form of private law.[394] This means that the person who believes they have been wronged—the plaintiff—must initiate an action against the alleged tortfeasor—the defendant.[395] This dynamic creates significant barriers when the plaintiff is a minor, and the defendant is the plaintiff's parent. Even assuming the minor overcomes barriers imposed by parental immunity, minors generally cannot initiate lawsuits on their own because of their lack of legal capacity.[396] Instead, minors must be represented by an adult,

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390 *See generally* Claire Bessant, *Could a Child Sue Their Parents for Sharenting?*, Lond. Sch. Econ. & Pol. Sci.: Blogs (Oct. 11, 2017), https://blogs.lse.ac.uk/parenting4digitalfuture/2017/10/11/could-a-child-sue-their-parents-for-sharenting/ [https://perma.cc/S6DG-JPX7] (discussing whether it would be possible for a child to sue their parents, even if "it seems unlikely" they would do so).

391 *See* sources cited *supra* note 361.

392 2 Stuart M. Speiser, Charles F. Krause & Alfred W. Gans, American Law of Torts § 6:51 (Monique C.M. Leahy ed., 2025).

393 *See* Comparison of US State Privacy Laws: Defining Covered and Sensitive Data, Ctr. for Info. Pol'y Leadership 4 (Nov. 2025) (comparing the various state privacy law requirements); *see also* Castro et al., *supra* note 127 (discussing state involvement); Rios, *supra* note 127 (same).

394 Jeffrie G. Murphy & Jules L. Coleman, Philosophy of Law: An Introduction to Jurisprudence 145 (rev. ed. 1990) ("The standard way of drawing [distinctions between torts and crimes] is to say that duties imposed by tort law cover *private* harms, and those imposed in the criminal law cover *public* harms.").

395 *Id.* ("[I]n torts, the standards are enforced *privately*, in the sense that the burdens of detection and initiation of litigation fall on victims.").

396 Lisa V. Martin, *Litigation as Parenting*, 95 N.Y.U. L. Rev. 442, 446 (2020).

typically a parent or legal guardian, who acts on their behalf.[397] In the health sharenting context, the parent—the defendant—cannot act on the minor's behalf, unless there is a non-sharenting parent who would be able and willing to do so.[398] A guardian ad litem would generally need to be appointed to represent the child and protect their best interests throughout the legal process. Unless another adult party steps in to raise concerns about the health sharenting, many if not most children will lack the knowledge or resources—including financial resources—to seek out a court-appointed guardian to initiate a tort suit.

In the absence of an adult who initiates the suit on the minor's behalf, the minor would need to wait until they reach the age of majority to initiate a tort claim against their parents. By that time, significant amounts of the child's personal health information may have been disseminated on the internet; the harm will have been done. And even though the social media platforms could be required to delete the posts,[399] it is difficult, if not impossible, to completely erase things from the internet, let alone the minds of others who saw those posts.[400] The harms of health sharenting cannot be erased by deleting the posts or compensating the child financially. A system of remedies must be in place for those harmed by health sharenting, but the goal should be *preventing* health sharenting in the first place.

A child's decision to sue their parent—whether before or after reaching the age of majority—will also be fraught with emotion and will lead to further deterioration of the parent-child relationship. As Dr. Florence Kaslow, Director of the Florida Couples and Family Institute, writes: "[I]f one chooses to pursue legal remedies to family conflicts, . . . the legal battle exacerbates rather than decreases the schism and pathology often to the level where it becomes irreparable, regardless of the decision rendered and the 'justice done.'"[401] And "[w]hen the bonds are irreparably destroyed through devastating legal action, . . . the lifelines in the family are severed. All members suffer . . . and experience a profound sense of confusion, loss and grief when the legal battle is over. The family, as a viable entity for all members, is killed."[402]

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397 *Id.*

398 For example, there may be cases where a non-sharenting parent disagrees with sharenting and is willing to act on their child's behalf in such a lawsuit.

399 *See, e.g.*, Child Digital Protection Act, MONT. CODE ANN. § 30-25-305 (West 2025). *But see* 47 U.S.C. § 230 (granting social media platforms immunity from liability for content posted by third parties); UTAH CODE ANN. § 34-23-504 (West 2025) (avoiding § 230 preemption by placing duty to remove on content uploader rather than on the platform).

400 *See* Selinger & Hartzog, *supra* note 324.

401 Kaslow, *supra* note 362, at 155.

402 *Id.* at 162.

A final limitation of privacy torts and NIED involves the goals of tort law and its success in achieving them. A key purpose of tort law is to provide remedies for individuals who have been harmed by the tortious conduct of others, e.g., through compensation.[403] In doing so, tort law also seeks to deter harmful behavior and, in some cases, punish tortfeasors for their conduct.[404] Professor Stephen Sugarman explains the deterrent function of tort law as follows:

> The argument for tort law as a deterrent can be simply stated. It is first assumed that, absent tort law, people would selfishly pursue their own interests, putting their personal desires ahead of the safety of others. As a result, people (and property) would be unreasonably damaged. By contrast, since tort law threatens people with having to pay for the harms they cause, it is seen to force them to take the interests of others into account. In other words, it is assumed that in order to avoid tort liability, people will alter their behavior in a socially desirable, less injury-producing way.[405]

That said, scholars continue to debate whether the prospect of liability deters tortious conduct.[406] Moreover, "[h]ard empirical evidence of deterrence is indeed difficult to come by."[407] No law, regulation, rule, or policy can prevent harmful behavior all the time, but a regime that

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403 *See* Haines v. Comfort Keepers, Inc., 393 P.3d 422, 429 (Alaska 2017) ("[T]he primary purpose of tort law is to provide just compensation to the tort victim." (quoting Anderson v. State *ex rel*. Cent. Bering Sea Fishermen's Ass'n, 78 P.3d 710, 717 (Alaska 2003) (Mathews, J., concurring in part and dissenting in part))); KUERSTEN, *supra* note 345.

404 KUERSTEN, *supra* note 345.

405 Stephen D. Sugarman, *Doing Away with Tort Law*, 73 CALIF. L. REV. 555, 560 (1985).

406 *Compare* GUIDO CALABRESI, THE COST OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS 28–29 (1970) (discussing deterrence as a mechanism to prevent accidents), *and* Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 31 (1972) (arguing that negligence is best understood as an economic mechanism for achieving optimal accident avoidance by giving actors incentives to take safety precautions to avoid liability that costs more than harms that would occur in the absence of precautions), *and* Gary T. Schwartz, *Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice*, 75 TEX. L. REV. 1801, 1803 (1997) ("[T]he work of Guido Calabresi and Richard Posner precipitated what has proved to be an explosion of scholarship analyzing tort law in economic terms and emphasizing deterrence as a primary tort objective." (footnotes omitted)), *with* Richard L. Abel, *A Critique of Torts*, 37 UCLA L. REV. 785, 816 (1990) ("Tort law fails as a deterrent."), *and* Sugarman, *supra* note 405, at 560 ("There is, unfortunately, little reason to believe that tort law today actually serves an *important* accident avoidance function."), *and* John G. Fleming, *Is There a Future for Tort?*, 44 LA. L. REV. 1193, 1197 (1984) ("Although the twin purposes of punishment and deterrence have furnished the classic rationale of tort liability, their credibility has increasingly declined under the changing conditions of modern society.").

407 Michele M. Mello & Troyen A. Brennan, *Deterrence of Medical Errors: Theory and Evidence for Malpractice Reform*, 80 TEX. L. REV. 1595, 1604 (2002); *see also* Benjamin van Rooij & Megan Brownlee, *Does Tort Deter? Inconclusive Empirical Evidence About the Effect of Liability in Preventing Harmful Behavior*, *in* THE CAMBRIDGE HANDBOOK OF COMPLIANCE 311, 319 (Benjamin van Rooij & D. Daniel Sokol eds., 2021) (reviewing literature and concluding that in six of seven

focuses on remediating rather than preventing harm should not be the primary mechanism for regulating sharenting, as it is difficult to redress the harms that result from sharenting. A principal harm of sharenting health information is that once the information is shared and learned by others, it cannot be unshared or unlearned. "Pandora's box cannot be closed."[408]

In sum, relying on tort law will largely not achieve the Three Goals set forth at the beginning of this Article. First, the evidence is mixed on whether tort law deters tortious conduct, including invasions of privacy. Second, if it does not prevent tortious conduct, tort law cannot prevent the harms that result from the tortious conduct. And last, tort law will not promote and preserve a healthy parent-child relationship if the child must sue their parent in tort.

Moving forward, a framework is needed that focuses on *preventing* public disclosure of private health information. What would such a framework look like? Part IV proposes an answer to that question.

IV. Presumption of Privacy: The Parent-Child Relationship of Trust

Scholars routinely describe U.S. privacy protections as fragmented, piecemeal, inconsistent, and inadequate.[409] This is doubly so for minors whose privacy depends upon not only this fragmented legal system but also the decisions of their parents, with whom significant control over the protection or disclosure of their personal information remains. It is easier than ever for a parent to share a child's health information; it can be spread to millions or even billions of strangers worldwide with the mere click of a "post" button. Social media makes it easy to overshare with little thought of the potential consequences of doing so.[410]

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domains of torts reviewed, there is no "clear evidence that higher tort liability creates more deterrence").

408 Whelan, *supra* note 44, at 1248.

409 *See, e.g.*, Dorothy Glancy, *At the Intersection of Visible and Invisible Worlds: United States Privacy Law and the Internet*, 16 Santa Clara High Tech. L.J. 357, 359–60 & 559 n.6 (2000) ("Almost every imaginable imagery of a heterogenous mixture has been used to describe United States privacy law. Many of these metaphors seem to be based on food—from hodgepodge (stew) to succotash (mixed vegetables)."); Alex Pearce, *Time for a National Privacy Law?*, Del. Law., Spring 2020, at 6, 6 (referring to the "increasing trend of fragmented regulation of consumer privacy in the United States"); Gilad Yadin, *Virtual Reality Surveillance*, 35 Cardozo Arts & Ent. L.J. 707, 716 (2017) (calling U.S. privacy protections "fragmented, idiosyncratic, inconsistent, and incoherent").

410 *See generally* Christy Cheung, Zach W.Y. Lee & Tommy K.H. Chan, *Self-Disclosure in Social Networking Sites: The Role of Perceived Cost, Perceived Benefits and Social Influence*, 25 Internet Rsch. 279 (2015) (finding that users focus more on the benefits rather than the risks of posting information online); John Suler, *The Online Disinhibition Effect*, 7 CyberPsychology

More empirical research is needed to uncover the consequences of health sharenting. That said, myriad harms may occur that existing legal and regulatory approaches will fail to address adequately or comprehensively. It may prove impossible to create a framework that addresses health sharenting in a comprehensive and satisfactory way. This Article lays the groundwork and starts small by focusing specifically on *health* sharenting. Health information is widely considered a special type of private information due to its sensitive nature and the potential for harm if disclosed or misused. A focus on the sharing of health information thus raises a unique opportunity to think about approaches modeled on other health privacy laws, regulations, and policies.

Using HIPAA and other health-privacy legal and ethical frameworks as a model, this Part proposes recognizing a "parent-child relationship of trust" and a "presumption of privacy" within that relationship. It does so with the Three Goals in mind: (1) protecting children's right to privacy of their health information, (2) preventing the harms that may occur from sharenting children's health information, and (3) preserving and promoting a stable and healthy parent-child relationship.

A. Health Privacy and Confidentiality Model

The "Privacy Rule" represents a key component of HIPAA, providing national standards to protect certain personal health information. HIPAA applies to "covered entities" and their "business associates" that perform services involving "protected health information," or PHI.[411] PHI includes *individually identifiable health information* transmitted or maintained in any form. Individually identifiable health information, in turn, includes demographic information collected from an individual that:

> (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
> (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health

& Behav. 321 (2004) (discussing reasons why people disclose more information online than they would in person).

411 *See* 45 C.F.R. §§ 160.102–.103 (2024).

> care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
>
> (i) That identifies the individual; or
>
> (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.[412]

The Privacy Rule codifies the long-standing ethical principle of provider-patient confidentiality, which is based on the importance of fostering a relationship of trust between patients and healthcare providers. This confidentiality is crucial for fostering trust and honesty between patients and providers, which allows patients to feel comfortable sharing the personal details necessary for proper diagnosis and treatment. When patients trust their providers, they "have better clinical outcomes, are more satisfied with their care, are more likely to follow their [provider's] medical advice, and are more likely to see an improvement in their symptoms."[413]

Privacy and confidentiality go hand in hand yet represent distinct concepts. As described by philosophers Thomas A. Mappes and David DeGrazia:

> A person enjoys *privacy* when other individuals do not without permission invade what may be called his or her "sphere of privacy": a realm of intimate or sensitive information about the person that he or she generally does not wish to share with others or wishes to share with only a small circle of persons. Thus, sensitive medical information about [a medical patient] lies within his sphere of privacy. Since he would approve of his attending physician and other health professionals closely involved in his care learning details of his medical history, [the medical patient] would not consider their examining his medical record a violation of his privacy. By contrast, if another patient examined [the medical patient's] medical record without his permission, [the medical patient] would no doubt

412 *Id.* § 160.103.

413 John G. Bruhn, *The Lost Art of the Covenant: Trust as a Commodity in Health Care*, 24 Health Care Manager 311, 313 (2005); *see also* Rhymme Dickens, Piet Leroy, Walter Eppich & Maria Brenner, *Trustful Relationships Between Healthcare Professionals and Children: A Concept Analysis Using Rodgers' Evolutionary Approach*, Euro. J. Pediatrics, July 3, 2025, at 1, 9 (citing studies that found that "the risk of malpractice or medical errors decreases when there is a relationship of trust").

> regard this intrusion as a violation of his privacy (an unauthorized entering of his sphere of privacy).[414]

In contrast,

> [C]*onfidentiality* involves those who have legitimate access to private information not bringing it out of that sphere and sharing it with others without permission. Thus, a doctor may legitimately enter (or access) large segments of a patient's sphere of privacy . . . . If a doctor lacking permission discloses sensitive information to individuals other than health professionals who are closely involved with the patient's care, such disclosure constitutes a breach of confidentiality.[415]

The importance of privacy and confidentiality in the patient-provider relationship dates back to the Hippocratic Oath written in the fifth century B.C.[416] The Oath states, in relevant part, "What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about."[417] This and other principles were introduced to modern society in 1803 with Thomas Percival's publication of *Medical Ethics*.[418] Today, the principle remains a "core value" codified in the America Medical Association's Code of Medical Ethics,[419] which states:

> Patients need to be able to trust that physicians will protect information shared in confidence. They should feel free to fully disclose sensitive personal information to enable their physician to most effectively provide needed services. Physicians in turn have an ethical obligation to preserve the confidentiality of information gathered in association with the care of the patient.[420]

The Code also explains whether and how providers may disclose a patient's personal health information, stating:

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414 Thomas A. Mappes & David DeGrazia, Biomedical Ethics 168 (6th ed. 2006).

415 *Id.*

416 *See id.* at 70–72.

417 *Id.* at 71.

418 *See* Thomas Percival, Medical Ethics or, A Code of Institutes and Precepts Adapted to the Professional Conduct of Physicians and Surgeons 30 (London, R. Bickerstaff 1803).

419 *Code of Medical Ethics Chapter 3: Patient Privacy and Confidentiality*, Am. Med. Ass'n, https://code-medical-ethics.ama-assn.org/chapters/patient-privacy-and-confidentiality [https://perma.cc/CG8R-BBDN] (last visited Apr. 5, 2026).

420 *Code of Medical Ethics Opinion 3.2.1: Confidentiality*, Am. Med. Ass'n, https://code-medical-ethics.ama-assn.org/ethics-opinions/confidentiality [https://perma.cc/83U3-4ZZM] (last visited Apr. 5, 2026).

> In general, patients are entitled to decide whether and to whom their personal health information is disclosed. However, specific consent is not required in all situations.
>
> When disclosing patients' personal health information, physicians should:
>
> (a) Restrict disclosure to the minimum necessary information; and
> (b) Notify the patient of the disclosure, when feasible.
>
> Physicians may disclose personal health information without the specific consent of the patient (or authorized surrogate when the patient lacks decision-making capacity):
>
> (c) To other health care personnel for purposes of providing care or for health care operations; or
> (d) To appropriate authorities when disclosure is required by law.
> (e) To other third parties situated to mitigate the threat when in the physician's judgment there is a reasonable probability that:
>
> (i) the patient will seriously harm themself;
> (ii) the patient will inflict serious physical harm on an identifiable individual or individuals.
>
> For any other disclosures, physicians should obtain the consent of the patient (or authorized surrogate) before disclosing personal health information.[421]

Important analogies can be drawn between the patient-provider relationship and the parent-child relationship regarding health information privacy and confidentiality. First, both relationships include two parties: the first party, typically viewed as holding a position of authority—the healthcare provider or parent—who is presumed and expected to make decisions in the best interests of the second party—the patient or child—who is expected to trust the first party's judgment.[422] Today, the model for both relationships has evolved to recognize a more active role for the second party,[423] but the general idea that the first party

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421 *Id.*

422 *See* James F. Childress & Mark Siegler, *Metaphors and Models of Doctor-Patient Relationships: Their Implications for Autonomy*, *in* Mappes & DeGrazia, *supra* note 414, at 76, 76 (describing the paternalism model of the physician-patient relationship).

423 *See* Barbara Bennett Woodhouse, *"Who Owns the Child?":* Meyer *and* Pierce *and the Child as Property*, 33 Wm. & Mary L. Rev. 995, 1039 (1992) ("[B]y the end of the nineteenth century . . . children, formerly private economic assets of parents, increasingly were viewed as individuals and proper subjects of public concern."); Lloyd deMause, *The Evolution of Childhood*, *in* The History of Childhood 1, 51–52 (Lloyd deMause ed., 1974) (describing a "taxology" of child-rearing models throughout history, with the most recent involving "the proposition that the child

acts in the second party's best interests remains. Second, the success of these relationships and the well-being of the second party require a foundation of trust, which is fostered by confidentiality of personal information shared within the relationship. An expectation of *confidentiality* is arguably even more important in the parent-child relationship because children do not have a choice in whether their parent enters their *sphere of privacy*.[424] In contrast, patients typically have some choice about which healthcare providers to allow into their sphere of privacy and whether to allow any in at all.

Parents, particularly of young, pre-adolescent children, are automatically and by necessity within the child's sphere of privacy and are justified in sharing "sensitive medical information" about their child with others "closely involved in [the child's] care," such as the child's healthcare providers, teachers, and other caretakers.[425] But when a parent "discloses sensitive information to individuals other than [those] who are closely involved with the [child's] care, such disclosure constitutes a breach of confidentiality," which can damage the foundation of trust necessary for a healthy parent-child relationship.[426] Health sharenting with thousands, millions, or even billions of internet strangers should constitute a breach of confidentiality, as those strangers cannot be considered "closely involved with the [child's] care."[427]

Recognizing and promoting a relationship of trust between a parent and child that draws on the same principles and rationales for the relationship of trust between patients and providers—both of which require a presumption of privacy and confidentiality of the child's, or patient's, personal health information—advances the Three Goals of regulating health sharenting. First, it protects children's right to privacy of their health information by restricting access to their "sphere of privacy." Second, restricting access to their sphere of privacy and maintaining the confidentiality of their sensitive health information helps prevent the harms that may occur from health sharenting discussed in Part I. And third, respecting the child's right to privacy and maintaining confidentiality of their health information helps preserve and promote a stable and healthy parent-child relationship in which the child can

knows better than the parent what it needs at each stage of its life"); Steven Mintz, *How Parent-Child Relations Have Changed*, Psych. Today (Apr. 7, 2015), https://www.psychologytoday.com/us/blog/the-prime-life/201504/how-parent-child-relations-have-changed [https://perma.cc/LMW5-NJUE]. *See generally* R. Kaba & P. Sooriakumaran, *The Evolution of the Doctor-Patient Relationship*, 5 Int'l J. of Surgery 57 (2007) (describing evolution of the doctor-patient relationship from paternalism to one that gives the patient a more active and autonomous role).

424 *See* Mappes & DeGrazia, *supra* note 414, at 168.

425 *Id.*

426 *Id.*

427 *Id.*

trust their parent and feel comfortable sharing sensitive information within the relationship.[428]

The benefits of a parent-child relationship with a strong foundation of trust extend beyond health information. Research shows that children "who have better relationships with their parents and view their parents as more trustworthy may . . . be less likely to engage in problem behaviors, like drinking alcohol, hanging around with undesirable peers, and engaging in drug use."[429] The trust developed by adhering to the parent-child "relationship of trust" and presumption of health privacy and confidentiality will foster trust in the broader relationship. As summarized by Victoria W. Dykstra and colleagues, "[t]rust is vital for positive parent-child relationships, and a lack of trust has been found to predict a variety of negative developmental outcomes such as poor relationship satisfaction, low self-esteem, and increased rates of depression."[430] In sum, children who trust their parents are more likely to share all types of information with their parents—from sensitive information to more mundane daily activities—and, in turn, parents are more likely to trust their children when their children disclose information.[431]

B. Promoting the Presumption of Privacy and Confidentiality

Recognizing the parent-child relationship of trust with health sharenting raises the complicated questions of whether and how it can be enforced. The law can be a blunt and problematic instrument, especially when protecting one individual's privacy requires restricting another individual's speech or expression. That becomes even more complicated when seeking to protect a child from the actions of their parents.

The presumption of privacy could be enforced by the state, similar to child abuse and neglect laws, or through private law, similar to

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428 Judith G. Smetana, *The Role of Trust in Adolescent-Parent Relationships: To Trust You Is to Tell You*, *in* Interpersonal Trust During Childhood and Adolescence 223, 240 (Ken J. Rotenberg ed., 2010) ("[A]dolescents' perceived trust in their parents . . . is central to adolescents' willingness to disclose information about their activities to their parents.").

429 *Id.* at 241; *see also* Fengqiang Gao, Chunze Xu, Yufei Zhao & Lei Han, *Parent-Child Communication and Educational Anxiety: A Longitudinal Analysis Based on the Common Fate Model*, BMC Psych., Oct. 28, 2024, at 1, 5–6 (discussing literature and research on the importance and role of trust in parent-child relationship); Michael S. Bernath & Norma D. Feshbach, *Children's Trust: Theory, Assessment, Development, and Research Directions*, 4 Applied & Preventive Psych. 1, 9–10 (1995) (discussing how parental modeling of trust influences child's trust development).

430 Victoria W. Dykstra, Teena Willoughby & Angela D. Evans, *A Longitudinal Examination of the Relation Between Lie-Telling, Secrecy, Parent-Child Relationship Quality, and Depressive Symptoms in Late-Childhood and Adolescence*, 49 J. Youth & Adolescence 438, 438 (2020) (citations omitted).

431 *See supra* notes 428–30; *see also* Margaret Kerr, Håkan Stattin & Kari Trost, *To Know You Is to Trust You: Parents' Trust Is Rooted in Child Disclosure of Information*, 22 J. Adolescence 737, 737 (1999) (reaffirming that trust is connected to honesty).

tort law. Yet Part III made clear that those methods come with significant problems and perversities and ultimately do not achieve the Three Goals. This Section thus considers mechanisms to enforce and promote the parent-child relationship of trust in health sharenting. Before doing so, the scope of what is sought to be regulated must be determined. For purposes of this Article, the parent-child relationship of trust and concomitant presumption of privacy and confidentiality applies to sharing a child's *individually identifiable health information* on the internet, with or without compensation. Here, "individually identifiable health information" includes:

> Information about an individual under the age of eighteen that
>
> (1) is created or received by a parent or guardian and
> (2) relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual that
>
> (i) identifies the individual; or
> (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Any disclosure of the child's individually identifiable health information would require the parent to overcome the presumption of privacy and confidentiality, which would involve balancing the value of disclosure against the importance of maintaining, respecting, and encouraging the parent-child relationship of trust that is vital for a child's healthy physical, mental, and social development. Enforcing and encouraging the presumption of privacy and confidentiality with health sharenting requires a multipronged approach.

Prong one involves education and aligns with Steinberg's public health and child development model.[432]

Prong two requires the involvement of social media and online platform companies. This prong would involve sophisticated technologies that are beyond the scope of this Article to explain in detail. In short, it would involve a system of consents and verifications. First, before a person can publish a post on the online platform, they would need to answer a series of questions:

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432 *See* Steinberg, *supra* note 37, at 877–83.

1) Is information (including a still image, video, audio, or text) about a child under the age of eighteen included in this post?
2) If yes to (1), does the information involve the disclosure of the child's individually identifiable health information?

If the answer to both of those questions is "yes," then the platform could lock the ability of the user to publish that post. Of course, users can easily answer these questions dishonestly to bypass the lockout feature, so enhancements will be needed. Social media companies should therefore use sophisticated software to analyze and flag posts that include images, videos, audio, or text about children and that contain health information.[433] In the event of a violation, the social media platform could suspend the account on a temporary or permanent basis. There would be a process for appealing a decision. Because influencers typically have accounts on multiple platforms where they share the same or similar posts, social media companies should also form a consortium through which information about suspended or terminated accounts on one platform can be shared with other platforms. For example, if Instagram were to catch a violation, it would inform other platforms like Facebook, TikTok, or YouTube about the user's violation.

Prong three involves the passage of robust state and federals laws similar to those discussed in Section II.B. These laws would (1) require the establishment of trusts in which a percentage of the account's earnings would be held for the minor to access upon adulthood, and (2) empower minors or others involved in the care of the minor to request that the account holder delete the online content in which they are featured. This third prong is necessary to remedy violations of social media company policies that are not caught or that occurred

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433 For example, software is being developed that can estimate a person's age based on physical characteristics in a photo, which could "be used as a gatekeeper for activities that have an age restriction." *NIST Reports First Results from Age Estimation Software Evaluation*, Nat'l Inst. of Standards & Tech. (Feb. 4, 2025), https://www.nist.gov/news-events/news/2024/05/nist-reports-first-results-age-estimation-software-evaluation [https://perma.cc/7YGX-AWVD]. Software has also long been used in the legal field for tasks like document review and e-discovery, which could be repurposed for identifying key phrases or words to flag that a child's health condition is being discussed. *See Software for Document Review*, DWR eDiscovery, https://www.digitalwarroom.com/software-document-review [https://perma.cc/92QY-E3VY] (last visited Mar. 19, 2026); *see also* Sergio David Becerra, *The Rise of Artificial Intelligence in the Legal Field: Where We Are and Where We Are Going*, 11 J. Bus., Entrepreneurship & L. 27, 39–41 (2018) (discussing use of artificial intelligence in e-discovery and predictive coding); Nan L. Grube, *Data Analytics and Artificial Intelligence in Litigation*, 78 J. Mo. Bar 12, 13–14 (2022) (discussing role of data analytics and artificial intelligence in litigation); Sharon D. Nelson & John W. Simek, *Running with the Machines: Artificial Intelligence in the Practice of Law*, Or. St. Bar Bull., Dec. 2017, at 22, 24 (discussing use of artificial intelligence for contract analysis).

before the policy took effect. The law would allow a minor of any age to make the request and would also empower other adults involved in the child's care to make the request on the minor's behalf. This could include other parents or legal guardians, or even teachers or health-care providers who are concerned about the content posted about the child. A request from the child who is the subject of the post would be granted immediately. Requests made by other adults could require more information and justification for why the post should be removed to provide an additional layer of protection for the posting parent. This requirement would be important in cases involving, for example, acrimonious divorces in which the non-posting parent may be attempting to sabotage the posting parent in a child custody battle.

The goal of this three-pronged approach is not to eliminate a parent's ability to share information online or violate their parental rights and rights to free speech. Instead, it carves out a subset of information—individually identifiable health information—that parents should not share about their children online.

Conclusion

The internet and social media are powerful tools for good but can also cause significant, long-lasting harm. This Article explored the practice of health sharenting and the serious questions it raises about consent and a child's right to privacy. Once this information is released into the public domain, there is no going back. It can be difficult if not impossible to erase information from the internet. Health sharenting has the potential to disclose a child's individually identifiable health information to thousands, millions, or even billions of strangers across the world.

American law and tradition have long recognized the rights of parents to maintain control over their children's upbringing, including the authority to consent to disclosure of a child's personal information. But parental rights have never been deemed absolute and can be limited "to protect the welfare of children."[434] Indeed, just as the U.S. Supreme Court expounded that parents cannot "make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves,"[435] parents also cannot hide behind the guise of freedom of speech to use their children's sensitive health information to gain followers, internet fame, and financial profit. A parent's free speech should end where their child's right to privacy and right to an open future begins. It is time for American law and society to recognize and respect a child's right to privacy. This Article lays

434 Prince v. Massachusetts, 321 U.S. 158, 165 (1944).

435 *Id.* at 170.

the groundwork and proposes a mechanism to protect the privacy of a child's health information, some of the most deeply personal and sensitive information about a person that exists.