



CHANGES TO IDAHO MINOR CONSENT LAW

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(4.26)

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Written Resources

- Idaho Code 32-1015 (as amended) (HB860), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2026/legislation/H0860E1.pdf>
- Stanger, *Changes to Idaho's Minor Consent Law* (4/26), <https://www.hollandhart.com/changes-to-idahos-minor-consent-law>
- Stanger, *Blanket Consents Under Idaho's New Minor Consent Law* (6/24), <https://www.hollandhart.com/blanket-consents-under-idahos-new-minor-consent-law>
- Stanger, *Idaho's New Parental Access Law v. HIPAA* (4/24), <https://www.hollandhart.com/idahos-new-parental-access-law-v-hipaa>

Idaho Law

ASSUMPTION



REALITY



Changes to Minor Consent Law



Effective March 31, 2026:

- Expanded exceptions in which provider may render care without parental consent.
- Repealed and/or changed laws that would otherwise allow minors to consent to their own care.
- Added requirements for effective blanket consent.

Overall, it is a significant improvement.

Parent's Right to Consent for Minors



Minor Consents: General Rule

- “Parents who have legal custody of any minor child have the fundamental right and duty to make decisions concerning the furnishing of health care services to the minor child.” (IC 32-1015(2))
 - *Does this apply only to parents with legal custody?*
 - *May noncustodial parents consent for their unemancipated minor children?*
- “Except as otherwise provided by this section or court order, an individual, health care provider, or governmental entity shall not furnish a health care service or solicit to furnish a health care service to a minor child without obtaining the prior informed consent of the minor child's parent.” (IC 32-1015(3))

Minor Consent: Application

- **Minor child** = “an individual under eighteen (18) years of age but does not include an individual who is an emancipated minor.” (IC 32-1015)
 - “Emancipated” not defined, but likely includes:
 - Court declared the person emancipated.
 - Married or has been married. (See, e.g., IC 39-4516(2)(c))
 - Serving in active military. (See, e.g., IC 39-4516(2)(c))
 - Living on own and self-sufficient.
 - Not pregnancy. (See, e.g., IC 18-609A)
- **Parent** = “a biological parent of a child, an adoptive parent of a child, or an individual who has been granted exclusive right and authority over the welfare of a child under state law.” (IC 32-1015(1))
 - Not limited to custodial parent.
 - Not surrogate decisionmakers under IC 39-4504, e.g., other family members, foster parent, etc.

Minor Consent: Application

- **Health care provider** = “(i) a physician, health care practitioner, or other individual licensed, accredited, or certified to perform health care services or provide counseling consistent with state law, or any agent or third-party representative thereof; or (ii) a health care facility or its agent.” (IC 32-1015)
 - *Includes radiologists, pathologists, and other providers who may not have a direct treatment relationship with the patient.*
- **Health care service** = “service for the diagnosis, screening, examination, prevention, treatment, cure, care, or relief of any physical or mental health condition, illness, injury, defect, or disease.” (IC 32-1015(1))
 - *Includes labs, radiology, pathology, and other services.*

Minor Consent: Application

- “**Responsibility for consent and documentation.** Obtaining sufficient consent for health care services is the duty of the **attending licensed independent practitioner** upon whose order or at whose direction the contemplated health care services are rendered;...
- “A licensed hospital and any employee of a health care provider, acting with the approval of such an attending licensed independent practitioner or other individual health care provider, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the person.”

(IC 39-4508)

Exceptions



Exception: Nonemergency First Aid

- “No individual acting reasonably under the circumstances shall be found in violation of this subsection by furnishing **nonemergency first aid services and care to a minor child appearing or represented to be sick or injured**. Such services and care may include dressing minor wounds, applying topical agents, providing fluids or ice, and performing checks to identify minor illnesses...” (IC 32-1015(3)(a))
- “[A] health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child's parent, if ... [t]he **service is limited to nonemergency first aid services and care to a minor appearing or represented to be sick or injured**.” (IC 32-1015(d))

Exception: First Aid

- “[IC 32-1015] shall not be construed to invalidate any protections or immunities granted to any individual administering **first aid services and care** pursuant to any provision of Idaho Code.” (IC 32-1015(3)(b))
- *May include:*
 - Good Samaritans “who in good faith and without compensation, being at, or stopping at the scene of an accident or emergency, offers and administers emergency first aid....” (IC 5-330)
 - Volunteer ambulance attendants. (IC 5-331)
 - Hospital personnel providing first aid services. (IC 39-1391)

Exception: Medical Emergency

- “[A] health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child's parent, if ... the health care provider reasonably determines that a **medical emergency** exists and:

- (i) Furnishing the health care service is necessary in order to **prevent death or address a serious bodily harm** to the minor child; or
- (ii) After a reasonably diligent effort, the health care provider cannot locate or contact a parent of the minor child and the health care service is furnished to **prevent loss of life or serious physical illness or injury** to the minor child.”

(IC 32-1015(4)(b); see also IC 39-4504(1)(i))

- *Removed “imminent” death or “irreparable” physical injury.*
- *Probably ought to seek parents as soon as able.*
- *See EMTALA interpretive guidelines.*

What is the difference between:

- *“serious bodily harm” and*
- *“serious physical illness or injury”*

Exception: Medical Emergency

See also--

- “If the person presents a medical emergency or there is a substantial likelihood of his or her **life or health being seriously endangered** by withholding or delay in the rendering of health care services to such person ..., the attending health care provider may, in his or her discretion, authorize or provide such health care services, as he or she deems appropriate, and all persons, agencies, and institutions thereafter furnishing the same, including such health care provider, may proceed as if informed valid consent therefor had been otherwise duly given.”

(IC 39-4504(1)(i))

Exception: Medical Emergency

- “**Failure to obtain consent.** Notwithstanding the provisions of section 32-1015, Idaho Code, no person licensed under this chapter [emergency medical services] or physician or hospital licensed in this state shall be subject to civil liability based solely on failure to obtain consent in rendering **emergency medical, surgical, hospital or health services to any individual regardless of age** where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care; provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under this chapter shall be governed by chapter 45, title 39, Idaho Code.”

(IC 46-909, emphasis added)

- Amended in 2025, after IC 32-1015.

Exception: Pregnancy, Prenatal, Peripartum Care

- “[A] health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child's parent, if:
 - The health care provider is furnishing the health care service for the purpose of
 - [i] detecting or diagnosing pregnancy or
 - [ii] providing prenatal or peripartum care....
 - Does not include abortion or performing or facilitating an abortion as that term is defined in section 18-8702, Idaho Code.”

(IC 32-1015(4)(c))

- *How broadly do we define or apply:*
 - *Prenatal care?*
 - *Peripartum care?*
- *Gives minors greater rights than they had before IC 32-1015.*

Exception: Care or Exam for a Crime

- “[A] health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child's parent, if:
 - [i] minor child is seeking health care or medical treatment that is directly related to an allegation of a crime of physical violence against the minor child; or
 - [ii] to collect evidence related to such crime when the collection of such evidence is time-sensitive.”

(IC 32-1015(4)(c))

- *Not limited to crimes by the parent.*
- *SANE exams, lab tests, imaging, etc.*

Exception: 988 Crisis Line

- “[A] health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child's parent, if:
 - A minor child utilizes the **988 Idaho crisis and suicide hotline** and receives immediate crisis and suicide prevention services.
 - If the Idaho crisis and suicide hotline determines that the minor child is experiencing suicidal ideation, it may offer and conduct a follow-up call within forty-eight (48) hours solely for the purposes of reassessing safety, reviewing the safety plan, and encouraging communication with the child's parent or guardian.”

(IC 32-1015(4)(e))

- *Limited to 988 crisis line*
- *Does not authorize other mental health or related care.*

Exception: Infants and Illegal Drugs

- “Nothing in [IC 32-1015] or any other provision of Idaho Code shall prevent a health care provider from screening and treating a newborn infant for illegal drugs or substances if a reasonable suspicion suggests their presence...”
- “[T]he results of the test or the fact of treatment may not be used against the parent in any criminal proceeding.”

(IC 32-1015(5))

Exception: May still need consent...

Even though you may not need parental consent, you may still need either:

- *Minor's consent if the minor is competent to consent.*
 - “Any person ... who comprehends the need for, the nature of, and the significant risks ordinarily inherent in any contemplated health care services is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care services in reliance upon such a consent.” (IC 39-4503)
- *Consent from surrogate under IC 39-4504?*
- *Statutory authority to render care without consent.*
 - “If the person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of health care services to such person and the person has not communicated and is unable to communicate his or her wishes, the attending health care provider may, in his or her discretion, authorize or provide such health care services, as he or she deems appropriate, and all persons, agencies, and institutions thereafter furnishing the same, including such health care provider, may proceed as if informed valid consent therefor had been otherwise duly given. (IC 39-4504(1)(i))

Informed Consent v. Blanket Consent



Informed Consent

- Informed consent is generally required for treatment.
 - “**Sufficiency of consent.** Consent, or refusal to consent, for the furnishing of health care services shall be valid in all respects if the person giving or refusing the consent is **sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks** ordinarily attendant upon such a person receiving such services, as to permit the giving or withholding of such consent to be a reasonably informed decision.
 - “Any such consent shall be deemed valid and so informed if the health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances.” (IC 39-4506; see also IDJI 2.12.5).
- Lack of informed consent = battery. (IDJI 2.12.1)

Blanket Consent

- “[A] health care provider may authorize or furnish a health care service **without obtaining the informed consent of the minor child's parent**, if [a] parent of the minor child has given blanket consent authorizing the health care provider to furnish the health care service.”
- “A parent may revoke consent to furnish any further health care service to a Minor child at any time.”
- No parent shall be required or pressured to sign a blanket consent form as a condition of the minor child enrolling in public school or participating in any school-sponsored activity.

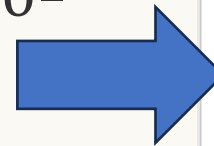
(IC 32-1015(4)(a)(i))

- *What happens if parents disagree?*

Blanket Consent

- “Such consent must be in writing on a form provided by the healthcare provider:”
 - The form shall be titled "Blanket Consent Form for Health Care Services for Minor" in bold, 30-point font.
 - On first page, the form shall "Providing blanket consent is optional and may, instead, be given on a case-by-case basis" in bold, 24-point font.
- If parent writes and signs her/his own blanket consent, those requirements do not apply.

(IC 32-1015(4)(a)(i))



BLANKET CONSENT FORM FOR HEALTH CARE SERVICES FOR MINOR

Providing blanket consent is optional and may, instead, be given on a case-by-case basis. Blanket consent may be withdrawn by a parent at anytime.

Minor Patient's Name: _____ Birthdate: ____/____/____

1. **Authority.** I am the parent, guardian or other person legally authorized by Idaho law to consent for health care services for the Minor Patient pursuant to Idaho Code § 32-1015.
2. **Consent for Treatment.** I voluntarily provide blanket consent to and authorize PROVIDER and its employed or affiliated physicians, practitioners, and staff (collectively "Providers") to render health care services to the Minor Patient as deemed reasonably necessary or appropriate by the treating Provider, including but not limited to medical evaluation, diagnosis and treatment; diagnostic services including lab tests or radiology procedures; prescription and administration of medications; counseling; and any other health care services as defined in I.C. § 32-1015.
3. **Information.** The Provider has explained the nature of the proposed health care services, alternatives, and their related risks and benefits or I have waived my right to receive such information. I understand that the practice of medicine is not an exact science and no promises or guarantees have been made nor can they be made to me concerning the outcome of the health care services.
4. **Financial Responsibility.** I agree that I am ultimately responsible for payment for the health care services rendered to the Minor Patient and agree to comply with PROVIDER's Financial Policies. I will promptly pay any co-payments, deductibles, or other amounts not covered by applicable insurance or third-party payer for all health care services rendered to the Minor Patient. I will cooperate with PROVIDER in obtaining reimbursement for the health care services from any third-party payer and assign to PROVIDER the right to submit claims for payment to third-party payers and retain such payments. To the extent allowed by law, I will remain responsible for any amount not paid by any third-party payer for health care services. If the Minor Patient's account becomes delinquent, I agree to pay interest and fees according to PROVIDER's Financial Policies.

I have read, understand, and agree to the foregoing, and I understand and acknowledge that PROVIDER and/or its Providers will render health care services in reliance on this consent.

Parent or Legal Guardian Signature _____ Date: ____/____/____

Parent or Legal Guardian Printed Name _____ Relationship to Minor Patient _____

Phone Number _____ Patient Account Number (filled out by office) _____

Blanket Consent

- Informed consent is not required if a parent “has given blanket consent authorizing the health care provider to furnish the health care service....” (IC 32-1015(4)(a)(i), emphasis added)
 - *How specific do you need to be in the blanket consent, e.g., do you need to specify “the” service you are providing?*
 - *Consider specific informed consent for services that are—*
 - *Non-routine or unexpected*
 - *Significant or with serious consequences*
 - *Controversial*
 - *Expensive*
 - *Other?*
 - *Ask yourself: “Would the parent expect me to provide such services without further notice or discussion...?”*



Blanket Consent:

- Consider addressing the following in blanket consent form:
 - ✓ *Title and notice required by IC 32-1015(4)(a).*
 - ✓ *Name of the minor child.*
 - ✓ *Confirm name and authority of parent or guardian.*
 - ✓ *Describe broad scope of care authorized, i.e., “including but not limited to evaluation, diagnosis, treatment, diagnostic services, prescriptions, counseling and other health care services as defined in IC 32-1015.”*
 - ✓ *Parent waives right to obtain info or to consent for services unless notifies provider otherwise.*
 - ✓ *Provider will rely on this consent.*
 - ✓ *Other items?*
- And if not covered elsewhere:
- ✓ *Parent’s financial responsibility for services provided.*

BLANKET CONSENT FORM FOR HEALTH CARE SERVICES FOR MINOR

**Providing blanket consent is optional and may, instead, be given on a case-by-case basis. |
Blanket consent may be withdrawn by a parent at anytime.**

Minor Patient's Name: _____ Birthdate: ____/____/____

1. **Authority.** I am the parent, guardian or other person legally authorized by Idaho law to consent for health care services for the Minor Patient pursuant to Idaho Code § 32-1015.
2. **Consent for Treatment.** I voluntarily provide blanket consent to and authorize PROVIDER and its employed or affiliated physicians, practitioners, and staff (collectively "Providers") to render health care services to the Minor Patient as deemed reasonably necessary or appropriate by the treating Provider, including but not limited to medical evaluation, diagnosis and treatment; diagnostic services including lab tests or radiology procedures; prescription and administration of medications; counseling; and any other health care services as defined in I.C. § 32-1015.
3. **Information.** The Provider has explained the nature of the proposed health care services, alternatives, and their related risks and benefits or I have waived my right to receive such information. I understand that the practice of medicine is not an exact science and no promises or guarantees have been made nor can they be made to me concerning the outcome of the health care services.
4. **Financial Responsibility.** I agree that I am ultimately responsible for payment for the health care services rendered to the Minor Patient and agree to comply with PROVIDER's Financial Policies. I will promptly pay any co-payments, deductibles, or other amounts not covered by applicable insurance or third-party payor for all health care services rendered to the Minor Patient. I will cooperate with PROVIDER in obtaining reimbursement for the health care services from any third-party payor and assign to PROVIDER the right to submit claims for payment to third-party payers and retain such payments. To the extent allowed by law, I will remain responsible for any amount not paid by any third-party payer for health care services. If the Minor Patient's account becomes delinquent, I agree to pay interest and fees according to PROVIDER's Financial Policies.

I have read, understand, and agree to the foregoing, and I understand and acknowledge that PROVIDER and/or its Providers will render health care services in reliance on this consent.

Parent or Legal Guardian Signature _____ Date: ____/____/____

Parent or Legal Guardian Printed Name _____ Relationship to Minor Patient _____

Phone Number _____ Patient Account Number (filled out by office) _____

Blanket Consent: Oral?

May blanket consent be oral?

- “Such consent must be in writing on a form provided by the health care provider...” (IC 32-1015(4)(a)(1)(a))
- Compare IC 39-4507:
 - “**Form of Consent.** It is not essential to the validity of any consent for the furnishing of health care services that the consent be in writing or any other specific form of expression; ...[W]hen such consent is ... documented in writing and expressly authorizes the health care services to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent ... is presumed to be valid for the furnishing of such health care services, and the advice and disclosures of the attending licensed independent practitioner ..., as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.”

(IC 39-4507)

Parent Refuses Care



Parent Refuses Care

- “Parents who have legal custody of any minor child have the fundamental right and duty to make decisions concerning the furnishing of health care services to the minor child.” (IC 32-1015(2))
- Consent to treatment = “agreement an individual makes to receive health care services. Consent to treatment also includes:
 - (a) “Refusal to consent to treatment; and
 - (b) “Consent to withholding or withdrawal of health care services.”(IC 39-4502(8))

Parent Refuses Care

- IC 32-1015 “does not make legal and in no way condones any abuse, abandonment, or neglect, including any act or omission described in section 16-1602, Idaho Code.” (IC 32-1015(9))
- Report child neglect per IC 16-1605.
 - Neglected = “a child ... [w]ho is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them.” (IC 16-1602(31))
- Seek emergency court order per IC 16-1627.
 - Court may order care if “[a] physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent.” (IC 16-1627)

Parent Refuses Care

- *What if one parent consents but other parent refuses?*

- *Likely may rely on consent of one parent:*

References to
“parent” are
singular

- Cannot render a health care service “without obtaining the prior informed consent of **the minor child's parent.**” (IC 32-1015(3))
- “**A parent** of the minor child” may give blanket consent. (IC 32-1015(4)(a)(i))
- “**A parent**” of a minor child may give consent for the child. (IC 39-4504(1)(e))

- *As a practical matter:*

- *If nonurgent, require parents to work it out and agree.*
- *If urgent or the provider is willing to accept the risk, provider would likely be able to rely on consent of single parent, but make sure it is reasonable under the circumstances. (See IC 39-4504(3))*

Effect on Other Laws



Effect on Other State Laws

IC 32-1015 likely preempts other state laws that would allow minors to consent.

- “[T]he Act is intended to supersede any current provisions of Idaho law that may otherwise conflict with the Act.” (SB 1329 Statement of Purpose)
- “This legislation repeals conflicting language, including language the Attorney General’s office had suggested.” (HB 860 Statement of Purpose)
- “This section shall be construed in favor of a broad protection of parents’ fundamental right to make decisions concerning the furnishing of health care services to minor children.” (IC 32-1015(7))
- Repealed law that allowed minors to consent for STDs and other communicable diseases (former IC 39-3801 et seq.).
- Repealed law that prevented disclosure of mental health services to parent. (former IC 16-2428).
- Amended law concerning involuntary treatment of minors. (IC 16-2424).
- Amended law that allowed minors to consent to inpatient mental healthcare. (IC 66-318, -320).

Effect on Other State Laws

- *HB 860 did not change certain other laws.*
 - Exams, prescriptions, devices and info re contraception if the patient “is sufficiently intelligent and mature to understand...” (IC 16-603)
 - Application for inpatient treatment or rehab for alcohol or drug abuse. (IC 39-307 and IDAPA 16.05.01.250.02.)
 - Blood donations for minors aged 17. (IC 39-3701)
 - Abortion resulting from rape or sex with certain family members, guardian or foster parent. (IC 18-609A(7) and -622(2)(b)(ii))
 - Others?
- *Does their survival mean that the legislature intended that they should remain effective?*
- *Providers who rely on these statutes do so at their own risk...*

Effect on Other State Laws

- “Consent for the furnishing of health care services to any person who is not then capable of giving such consent ... **or who is a minor** may be given or refused in the order of priority set forth hereafter...;
 - (a) The court-appointed guardian of such person...;
 - ...
 - (e) A parent of such person;
 - (f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;
 - ~~(g) Any relative of such person;~~
 - ~~(h) Any other competent individual representing himself or herself to be responsible for the health care of such person...~~”

(IC 39-4504)

- *For minors, don't rely on consent from surrogate decision-maker under IC 39-4504.*
- *Likely can rely on valid delegation of parental authority since that would seem to respect parent's decision-making authority.*

Effect on Federal laws?

EMTALA

- *EMTALA likely preempts state law.*
 - CMS interpretive guidelines states, “A minor (child) can request an examination or treatment for an EMC. The hospital is required by law to conduct the examination if requested by an individual or on the individual’s behalf to determine if an EMC exists. Hospital personnel should not delay the MSE by waiting for parental consent. If after screening the minor, it is determined than no EMC is present, the staff can wait for parental consent before proceeding with further examination and treatment.” (CMS, State Operations Manual App. W (7/19), for 42 CFR 489.24(a)(1)(i)).
 - *IC 32-1015 has an emergency exception.*
- *But no cases confirming same...*

Effect on Federal laws?

Title X

- Federal regs generally prohibit Title X grantees (e.g., FQHCs, private clinics, recipients, health departments, Planned Parenthood affiliates, etc.) from
 - Requiring parental consent for family planning services (e.g., contraceptive services, STD, pregnancy testing and counseling, etc.); and
 - Disclosing info about services to parents.(42 CFR part 59.10)
- *Deandra v. Becerra* (5th Cir. 2024) held that Title X regulations did not preempt Texas parental consent law.
 - Only applies in 5th Cir.; other circuits have reached contrary decisions.
 - HHS has stated they will not enforce Title X limits in Texas.

Parent's Access to Minor's Info



Parent's Access to Minor's Info

- “No health care provider or governmental entity shall deny a minor child's parent access to health information that is:
 - “(a) In such health care provider's or governmental entity's control;
and
 - “(b) Requested by the minor child's parent.”

(IC 32-1015(6))

- *Apparently, must allow access to all records of health services, even that which was provided before July 1, 2024, on the assumption of confidentiality.*

Parent's Access to Minor's Info: Applicability

Health information = “information or data, collected or recorded in any form or medium, and personal facts of information about events or relationships that relates to:

“(i) The past, present, or future physical, mental, or behavioral health or condition of an individual or member of the individual’s family;

“(ii) The provision of health care services to an individual; or

“(iii) Payment for the provision of health care services to an individual.”

(IC 32-1015(1)(d))

Parent's Access to Minor's Info: Exceptions

- May deny parent access if:
 - Minor is emancipated. (*See* IC 32-1015(1)(e))
 - “Parent's access to the requested health information is prohibited by a court order.” (IC 32-1015(7)(a) and (12))
 - “The health information is a record that relates to physical abuse, abandonment, or neglect by the parent, as provided in section 33-6001(3), Idaho Code.” (IC 32-1015(7)(b))
 - “The parent is a subject of an investigation related to a crime committed against the child, and a law enforcement officer requests that the information not be released to the parent.” (IC 32-1015(7)(c))
 - “If a minor child does not have an affirmative right of access to a specific treatment, service, or procedure...” (IC 32-1015(11))

Parent's Access to Minor's Info: HIPAA

- HIPAA preempts contrary state law unless the law is more stringent.

(45 CFR 160.203)

- “*More stringent* means, in the context of a comparison of a provision of State law and a standard ... adopted under [the HIPAA privacy rule], a State law that meets one or more of the following criteria...

“(6)provides greater privacy protection for the individual who is the subject of the individually identifiable health information.”

(45 CFR 160.202)

Parent's Access to Minor's Info: HIPAA

- “If, and to the extent, permitted or required by an applicable provision of State or other law ... a covered entity may disclose, or provide access in accordance with [45 CFR] § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis.”

(45 CFR 164.502(g)(3)(ii)(A))

Parent's Access to Minor's Info: HIPAA

- May deny patient and personal rep access if:
 - PHI outside designated record set.
 - Psychotherapy notes.
 - PHI obtained under promise of confidentiality and disclosure would reveal source of info.
 - Licensed provider determines that disclosure is “reasonably likely to endanger the life or physical safety of the individual or other person.”
 - Subject to review.

(See 45 CFR 164.524)

Parent's Access to Minor's Info: HIPAA

- Under HIPAA, must treat personal rep as the patient, *e.g.*, personal rep has right to access PHI.
- “Personal rep” = person with authority to consent to care of patient under state law.
- Exception:
 - “Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:
 - (i) The covered entity has a reasonable belief that:
 - (A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - (B) Treating such person as the personal representative could endanger the individual; and
 - (ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal representative.”

(45 CFR 164.502(g))

Parent's Access to Minor's Info: SUD Info (42 CFR Part 2)

- 42 CFR part 2 applies to:
 - Federally assisted substance use disorder (SUD) programs
 - Info that would identify a person as having, having had, or having been referred for a SUD.
- 42 CFR part generally prohibits disclosing SUD info unless (i) the person provides written consent, or (ii) an exception applies.

Parent's Access to Minor Info: SUD Info (42 CFR Part 2)

- If minor ~~may~~ consent to SUD care under state law, ~~minor~~ controls disclosure of their SUD info.
 - Program may not disclose SUD info to parent/guardian without minor's consent, including disclosures to obtain payment.
 - Program may refuse to provide care unless consent is given.
- If minor may not consent to care under state law:
 - May not disclose minor's request for treatment to parent/guardian unless:
 - Minor gives written consent to disclose to parent/guardian, or
 - Minor lacks capacity to make rational decisions.
 - Any consent for disclosure to others must be given by minor and parent/guardian.
- Facts relevant to substantial threat to minor or other person may be disclosed to parent/guardian if:
 - Minor lacks capacity to make rational decision due to age or mental or physical condition; and
 - Disclosure may reduce substantial threat to well-being of minor or other person.

(42 CFR 2.14)

Parent's Access to Minor's Info Title X Programs

- Federal regs generally prohibit Title X grantees (e.g., FQHCs, private clinics, recipients, health departments, Planned Parenthood affiliates, etc.) from
 - Requiring parental consent for family planning services (e.g., contraceptive services, STD, pregnancy testing and counseling, etc.); and
 - Disclosing info about services to parents.

(42 CFR part 59.10)
- *Deandra v. Becerra* (5th Cir. 2024) held that Title X regulations did not preempt Texas parental consent law.
 - Only applies in 5th Cir.; other circuits have reached contrary decisions.
 - HHS has stated they will not enforce Title X limits in Texas.

Parent's Access to Minor's Info: Non-Custodial Parent Access

- “Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to, medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child’s custodial parent.
- “[I]nformation concerning the minor child’s address shall be deleted from such records to a parent, if the custodial parent has advised the records custodian in writing to do so.”

(IC 32-717A)

Violations



Lawsuits by Parents

- “[A]ny parent who is deprived of a right as a result of a violation of this section shall have a private right of action against the individual, health care provider, or governmental entity.” (IC 32-1015(13)(a))
- “A parent who successfully asserts a claim or defense under this section may recover declaratory relief, injunctive relief, compensatory damages, reasonable attorney's fees, and any other relief available under law.” (IC 32-1015(13)(c))
- Action must be brought within 2 years after the harm occurred or 2 years after the discovery, by the parent, of the facts constituting the claim, whichever is later. (IC 32-1013(6))
- For government entities, claims subject to the Idaho Tort Claims Act. (IC 32-1015(13)(a))

Immunity and Protections: First Aid Services and Care



- IC 32-1015 “shall not be construed to invalidate any protections or immunities granted to any individual administering first aid services and care pursuant to any provision of Idaho Code.” (IC 32-1015(3)(b))
- *May include:*
 - Good Samaritans “who in good faith and without compensation, being at, or stopping at the scene of an accident or emergency, offers and administers emergency first aid or emergency medical attention....” (IC 5-330)
 - Hospital personnel providing “first aid services and care” as may be indicated “to any person appearing or represented to be seriously sick or injured....” (IC 39-1391)
 - Volunteer ambulance attendants. (IC 5-331)
 - Others?

Immunity and Protections: Emergency Care by Certain Providers

- Emergency care by physicians, hospitals, and EMS personnel.
 - “**Failure to obtain consent.** Notwithstanding the provisions of section 32-1015, Idaho Code, no person licensed under this chapter or physician or hospital licensed in this state shall be subject to civil liability based solely on failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care; provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. (IC 46-909, emphasis added)

Questions?



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