



CONSENT, ACCESS TO PATIENT INFORMATION, AND SOCIAL TRANSITIONING LAWS

Waypoint Conference

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Disclaimer



- The statutes may be politically divisive.
- My comments should not be construed as commentary on or advocacy for the politics or policy reflected in the statutes, either for or against.
- My comments address the requirements and potential problems with implementation from the perspective of an attorney who represents healthcare providers who are attempting to comply and may face significant consequences for alleged or actual violations.
- I was not involved in the legislation so have limited insight as the sponsors' intent or the process involved.

Written Resources

- Idaho Code 32-1015 (HB860)
- Stanger, *Changes to Idaho's Minor Consent Law* <https://www.hollandhart.com/changes-to-idahos-minor-consent-law>
- Stanger, *Blanket Consents Under Idaho's New Minor Consent Law*, <https://www.hollandhart.com/blanket-consents-under-idahos-new-minor-consent-law>
- Stanger, *Idaho's New Parental Access Law v. HIPAA*, <https://www.hollandhart.com/idahos-new-parental-access-law-v-hipaa>
- Idaho Code 32-1016 (HB 822), <https://legislature.idaho.gov/sessioninfo/2026/legislation/H0822/>
- Stanger, *HB 822: New Idaho Law on Pediatric Sexual and Social Transitioning*, <https://www.hollandhart.com/hb-822-new-idaho-law-on-pediatric-sexual-and-social-transitioning>

Idaho Law

ASSUMPTION



REALITY



Informed Consent



Consent: Competent Patients

“Persons who may consent to their own care. 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: Incompetent Patients

“Persons who may give consent to care for others. (1) 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; provided however, that the surrogate decision-maker shall have sufficient comprehension as required to consent to his or her own health care services ...; and provided further that the surrogate decision-maker shall not have authority to consent to or refuse health care services contrary to such person’s advance care planning document or wishes expressed by such person while the person was capable of consenting to his or her own health care services:

- “(a) The court-appointed guardian of such person;
- “(b) The person named in another person’s advance care planning document...;
- “(c) If married, the spouse of such person;
- “(d) An adult child of such person;
- “(e) A parent of such person;
- “(f) The person named in a delegation of parental authority executed pursuant to section 15-5-128, 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; or
- “(i) If the person presents a medical emergency [the attending provider may render care]...”

(IC 39-4504)

Informed Consent

“**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)

Form of Consent

“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; provided however, when the giving of such consent is recited or 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, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such health care services, and the advice and disclosures of the attending licensed independent practitioner or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.”

(IC 39-4507)

Responsibility for Consent

“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; provided however, ... 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)

Minor Consents



Minor Consents

- “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))
- “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))

*Idaho statute
trumps
professional
society
ethical rules
or Idaho
regulations*

Minor Consents: Violations

- “[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))

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)
- **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))

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: 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))

What is the difference between:

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

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?*

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: May still need consent...

Even though an exception applies such that 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.*

Informed Consent v. Blanket Consent



Informed Consent: General

“**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)

Informed Consent: Licensed Counselors

“INFORMED CONSENT AND INFORMATION DISCLOSURE TO CLIENTS. Informed consent involves a licensee's reasonable disclosure of information to clients and the discussion of such information with clients so that they are agreeing to treatment with knowledge of the material facts necessary to make the decision. Persons licensed under this chapter shall provide to each client at the beginning and at other appropriate times within the context of the counseling or therapy an accurate and informative description that allows the client to make an informed decision about the client's care....” (IC 54-3410A)

Informed Consent: Licensed Counselors

“Informed Consent and Information Disclosure. The receipt of the disclosure must be documented in writing by the client and the licensee or intern, and such disclosure of information must include: the licensee’s name, license type, license number, business address and phone number; if the licensee is a supervisee, the name of any supervisor, contact information for the supervisor, including address and phone number, and a statement that the intern is practicing under the supervision of licensee; the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the extents and limits of confidentiality; the client’s rights to participate in treatment decisions, to seek a second opinion, to file a complaint without retaliation, and to refuse treatment; the fee structure, billing arrangements, and cancellation policy; a statement that the Board regulates the licensee’s and intern’s practices and providing the Board’s phone number and address; and a statement that sexual intimacy is never appropriate with a client and should be reported to the Board.” (IDAPA 24.15.01.200.03)

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.”

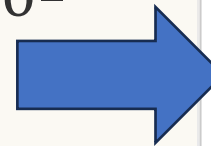
(IC 32-1015(4)(a)(i))

Is blanket consent an option for licensed counselors?

Blanket Consent

- “[Blanket] 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) _____

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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))

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))*

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 Info: Violations

- “[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))

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))

Not limited to records; includes “information ... and personal facts...”

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 [IC 33-6001(3)].” (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: Education

- “(3) A [school] policy shall not prohibit parents or legal guardians from accessing any of their children’s education and health records created, maintained, or used by the public school unless such documentation relates to physical abuse, abandonment, or neglect by the parent or legal guardian. Unless a timeline is otherwise delineated in a specific applicable state or federal law, records shall be provided to the parent or legal guardian within five (5) school days after a request to access such records is made.
- “(4) A public school shall not adopt procedures, policies, or student support forms that prohibit public school personnel from notifying a parent or legal guardian about a student’s mental, emotional, or physical health or well-being or a change in related services or monitoring or that encourage or have the effect of encouraging a student to withhold from a parent or legal guardian such information. This subsection does not prohibit a public school from adopting procedures that permit public school personnel to withhold information from a parent or legal guardian if ordered by a court of competent jurisdiction.”

(IC 33-6001)

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)

Effect on Other Laws



Confidentiality: Social Workers

- “**PRIVILEGED COMMUNICATIONS.** No [licensed social worker] shall disclose any information he may have acquired from persons consulting him in his professional capacity that was necessary to enable him to render services in his professional capacity to those persons, except:
 - “(1) With the written consent of that person or, in the case of death or disability, of his own personal representative...;
 - “(3) When the person is a minor under the laws of this state, and the information acquired by the licensee indicates that the minor was the victim or subject of a crime, the licensee may testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of such a crime is the subject of the inquiry.” (IC 54-3213)
- “A social worker **must safeguard information given by clients** in providing client services.” (IDAPA 24.14.01.200.04(1))

Confidentiality: Licensed Counselors

- “**CONFIDENTIAL COMMUNICATION.** Confidentiality of communication between any person licensed under this chapter and client shall be privileged from disclosure **as provided in [IC 9-203]...**” (IC 54-3410)

- “**Confidential relations and communications....**
“Any certificated counselor, psychologist, or psychological examiner duly appointed, regularly employed, and designated in such capacity by any public or private school in this state for the purpose of counseling students shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined *in any civil or criminal action to which such student is a party.* Such matters so communicated shall be privileged and protected against disclosure.”
(IC 9-203, emphasis added)

Effect on Other State Laws

IC 32-1015 likely preempts other conflicting state laws re minor consent or parental access.

- “[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 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))
- “This legislation repeals conflicting language, including language the Attorney General’s office had suggested.” (HB 860 Statement of Purpose)
 - 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: 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))

Effect on Other State Laws: HIPAA

- Under 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)

Effect on Other State Laws: 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.

Sex and Social Transitioning: IC 32-1016



IC 32-1016

Purpose

- “It is undoubtedly a parental purview and prerogative to have knowledge of, and the authority to deny, a child's efforts at sex transition procedures or social transitions.” (IC 32-1016(2)(c))

Therefore...

- “It is the intent of the legislature to prohibit any health care provider or educational institution from facilitating a pediatric sex transition or social transition without informing and obtaining informed consent from a minor child's parents or guardians.” (IC 32-1016(3))

IC 32-1016: “Covered Entity”

1. “Primary or secondary educational institution.”
 - Apparently not individual teachers or school employees.
2. “Child care provider.”
 - Not defined; does it include only licensed entities, or does it include family members, babysitters, others?
3. “Medical, behavioral, or mental health care provider.”
(IC 32-1016(4))
 - Not defined in IC 32-1016.
 - Under IC 32-1015,
 - “‘Health care provider’ means:
 - (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(1)(b))

IC 32-1016: “Child”

- “[A]n individual who is less than eighteen (18) years of age and who is not married or **legally** emancipated.”

(IC 32-1016(4)(b))

- *What does “legally emancipated” mean?*
 - *Court declares them emancipated.*
 - *Serving in the armed services?*
 - *Self-supporting?*
- *Note: 32-1016(6) applies to “minor student” instead of “child”.*

IC 32-1016: “Sex Transition Procedures”

- Those defined in IC 18-1506C, i.e.,
 - “(a) Performing surgeries that sterilize or mutilate, or artificially construct tissue with the appearance of genitalia that differs from the child’s biological sex, including castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, clitoroplasty, vaginoplasty, vulvoplasty, ovariectomy, or reconstruction of the fixed part of the urethra with or without metoidioplasty, phalloplasty, scrotoplasty, or the implantation of erection or testicular prostheses;
 - “(b) Performing a mastectomy;
 - “(c) Administering or supplying the following medications that induce profound morphologic changes in the genitals of a child or induce transient or permanent infertility:
 - (i) Puberty-blocking medication to stop or delay normal puberty;
 - (ii) Supraphysiological doses of testosterone to a female; or
 - (iii) Supraphysiological doses of estrogen to a male; or
 - “(d) Removing any otherwise healthy or nondiseased body part or tissue.”

(IC 32-1016(4)(d) and 18-1506C(3))

IC 32-1016: “Sex”

- IC 32-1016 does not define “sex”.
- But IC 18-1506C incorporates the definition of “sex” at IC 73-114(n), *i.e.*, “‘Sex’ means an individual’s biological sex, either male or female.”

IC 32-1016: “Social Transitioning”

- “[T]he process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to identifying with and living as a gender different from the individual's sex and may involve social, legal, or physical changes, including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex.”

(IC 32-1016(4)(e))

- *Problem:*
 - *What is meant by “social ... changes”?*
 - *Whether a “name, ... appearance, or dress” corresponds to an individual’s sex is highly subjective and may depend on a person’s experience and cultural background.*

E.g., do these names correspond to the minor's sex?

"Female" names	Common nicknames	"Male" names	Common nicknames
Charlene, Charlotte	Charlie	Alexander	Sandy, Sasha
Alexandra	Alex	Joseph	Joey
Samantha	Sam	Lawrence	Laurie
Danielle	Danny	Nicholas	Nicky, Niki
Francesca, Frances	Frankie	Victor	Tori

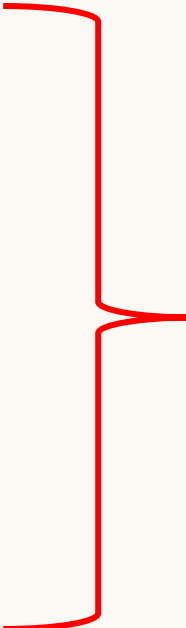
E.g., does this person's dress correspond to his sex?



E.g., do these persons' appearance correspond to their sex?



Social Transitioning

- *For purposes of determining liability:*
 - *Who determines if the “social, legal, or physical changes” constitute “social transitioning”?*
 - *Who determines whether the minor’s preferred “name, ... appearance, or dress ... correspond[s] to the individual's sex”?*
 - *Does the covered entity’s knowledge or intent matter?*
- 
- The covered entity?
 - The parent?
 - The court?
 - The jury?
 - The Attorney General?
 - A licensing agency?
 - Other?

Social Transitioning Statute: Requirements



Do Not Withhold Info from Parents



- “A covered entity shall not **withhold** information from a child's parent or guardian related to the child's expressed interest in or desire for sex transition procedures.”

(IC 32-1015(5))

- *Does this require covered entities to proactively disclose information to the parents or merely respond to a request from the parents?*
 - *Compare 32-1015(6) (must provide info if requested by parents)*
 - *Compare 32-1016(6) (must notify parents of minor's request to facilitate or participate in social transition)*

Do Not Withhold Info from Parents

- *Compare IC 32-1015(6)):*
 - “(6) 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.
 - “(7) Subsection (6) of this section shall not apply if:
 - (a) The parent's access to the requested health information is prohibited by a court order;
 - (b) 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; or
 - (c) 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.”
- *Do the exceptions in IC 32-1015(7) apply?*
- *Do the HIPAA exceptions to parental access apply?*

Notify Parents of Request for Social Transitioning



- “A **covered entity** shall notify a minor student's parent within seventy-two (72) hours of receiving any request by the minor student to participate in or facilitate the social transition of the minor student, including any request by the minor student to:
 - “(a) Be referred to by pronouns or titles that do not correspond to the minor student's biological sex;
 - “(b) Be referred to using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - “(c) Use restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - “(d) Participate on an athletic team or any other sex-separated school activity designated for the opposite sex.”

(IC 32-1016(6))

Notify Parents of Request for Social Transitioning

- *Does the notice requirement in IC 32-1016(6) apply to healthcare providers?*
- Statement of Purpose for HB 822:
 - The statute “requires **schools** to notify parents within 72 hours if a student requests to use different names, pronouns, or sex-separated facilities....”

(<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2026/legislation/H0822SOP.pdf>).

Notify Parents of Request for Social Transitioning

- Does IC 32-1016(6) apply to healthcare providers?
 - “A covered entity shall notify a minor student's parent within seventy-two (72) hours of receiving any request by the minor student to participate in or facilitate the social transition of the minor student, including any request by the minor student to:
 - (a) Be referred to by pronouns or titles that do not correspond to the minor student's biological sex;
 - (b) Be referred to using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - (c) Use restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - (d) Participate on an athletic team or any other sex-separated school activity designated for the opposite sex.”

(IC 32-1016(6))

Notify Parents of Request for Social Transitioning

WHY IT MIGHT APPLY TO PROVIDERS

- “Covered entity” includes healthcare providers.



WHY IT MIGHT NOT APPLY TO PROVIDERS

- Statement of purpose for HB 822 states that “schools” must notify parents.
- References minor “students”; not “child”, “minor” or “minor patients”
- References school activities and school records.

Notify Parents of Request for Social Transitioning

- “A covered entity shall notify a minor student's parent within seventy-two (72) hours of **receiving any request** by the minor student **to participate in or facilitate the social transition** of the minor student....”

(IC 32-1016(6))

- “‘Social Transition’ means the process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to **identifying with and living as a gender different from the individual's sex** and may involve social, legal, or physical changes, including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex.”

(IC 32-1016(4)(e))

Notify Parents of Request for Social Transitioning

- “A covered entity shall notify a minor student's parent within seventy-two (72) hours of receiving any request by the minor student to participate in or facilitate the social transition of the minor student, **including any request by the minor student to:**
 - “(a) Be referred to by pronouns or titles that do not correspond to the minor student's biological sex;
 - “(b) Be referred to using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - “(c) Use restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - “(d) Participate on an athletic team or any other sex-separated school activity designated for the opposite sex.”

(IC 32-1016(6))

- *Examples are likely not exclusive.*

Notify Parents of Request for Social Transitioning

- *Does the statute apply retroactively, i.e., must you notify parents of requests to facilitate or participate in social transitioning if such requests occurred before July 1, 2026?*
- *I don't think so.*
 - *The statute states,*
“A covered entity shall notify a minor student's parent within seventy-two (72) hours of receiving any request...”
 - *That suggests to me that it was not intended to be retroactive.*
- *But I may be wrong...*

Do Not Aid and Abet Sex Transition Procedures



- “A covered entity shall not aid or abet a child's efforts to obtain sex transition procedures.” (IC 32-1016(8))
 - *Not even with parental consent.*
- *Expands potential liability for violations of IC 18-1506C by:*
 - *Confirming liability for aiding and abetting.*
 - *Creating private cause of action.*
 - *Applying lower burden for civil actions, i.e., “preponderance of the evidence” instead of “beyond a reasonable doubt.”*
- *But what constitutes “aiding and abetting”?*

Do Not Aid and Abet Social Transitioning



- “A covered entity shall not aid or abet a child's efforts to socially transition without first obtaining written consent from the child's parent.”
(IC 32-1016(7))
- “‘Social Transition’ means the process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to identifying with and living as a gender different from the individual's sex and may involve social, legal, or physical changes, **including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex.**”
(IC 32-1016(4)(e))
- *But what constitutes “aiding and abetting”?*

“Aid and Abet”: Criminal Context

In the criminal context, a person aids and abets if he/she:

- “intentionally **aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps** or hires another to commit a crime with intent to promote or assist in its commission....
- “Mere presence at, acquiescence in, or silent consent to, the planning or commission of a crime is not [in the absence of a duty to act] sufficient to make one an accomplice.”

(ICJI 311)

- “Mere knowledge of a crime and assent to or acquiescence in its commission does not give rise to accomplice liability, and the failure to disclose the occurrence of a crime to authorities is not sufficient to constitute aiding and abetting.”

(ICJI 311, Commentary)

“Aid and Abet”: 32-1016 Context

- “A covered entity shall not **aid or abet** a child's efforts to socially transition without first obtaining written consent from the child's parent.”
(IC 32-1016(7))
- Must report request by a minor to **participate in or facilitate** social transitioning, including:
 - Referring to minor by pronouns or titles that do not correspond to the minor student's biological sex;
 - Using names other than the minor student's legal name, or a nickname or derivative thereof, either in school records or otherwise;
 - Using restrooms, locker rooms, changing rooms, or overnight lodging designated for the opposite biological sex; or
 - Participating in athletic team or any other sex-separated school activity designated for the opposite sex.
(IC 32-1016(6))

Are these “aiding and abetting”?

- Referring the patient to a healthcare provider out of state who can perform sex transition procedures?
- Sending the minor’s records to such a provider?
- Providing literature that is supportive of, encourages, or validates social transitioning?
- Providing literature discussing social transitioning, pro or con?
- Informing the patient of events or groups that support social transitioning?
- Donating money or support to organizations that promote social transitioning of minors?
- Displaying a gay pride flag?
- Disclosing that a provider is transgender?

“Aid and Abet”: 32-1016 Context

- *Is intent to aid and abet required for a violation?*
 - “A covered entity shall not aid or abet a child's efforts to socially transition without first obtaining written consent from the child's parent.” (IC 32-1016(7))
 - “A covered entity shall not aid or abet a child's efforts to obtain sex transition procedures.” (IC 32-1016(8))

Consent for Aiding and Abetting Social Transitioning

- “It is the intent of the legislature to prohibit any health care provider or educational institution from facilitating a pediatric sex transition or social transition without informing and obtaining **informed consent** from a minor child's parents or guardians.”

(IC 32-1016(3))

- “A covered entity shall not aid or abet a child's efforts to socially transition without first obtaining **written consent** from the child's parent.”

(IC 32-1016(7))

- *Written informed consent generally required to aid and abet social transitioning.*

Informed Consent v. Blanket Consent

INFORMED CONSENT REQUIRED

- “Informed consent” required per 32-1016(3).
 - *But this is in the purpose section.*
- “Written consent” required per 32-1016(7))
 - *Does not reference informed consent.*
 - *Does not refer to blanket consent in 32-1015(4).*

BLANKET CONSENT PERMISSIBLE

- Informed consent not required if parents give effective blanket consent per 32-1015(4)(a).
 - *Does not reference or except consent for social transitioning under 32-1016.*

Informed Consent v. Blanket Consent

- Safer to obtain written, informed consent from parent(s) or guardian if intend to aid and abet social transitioning.
 - Be fairly specific as to circumstances and permissible actions to avoid disputes.
- If rely on blanket consent:
 - Do so at your own risk.
 - Ensure blanket consent satisfies requirements in 32-1015(4).
 - Specifically reference “social transitioning as defined in I.C. 32-1016.”
 - Be careful about significant change in circumstance that may affect scope of blanket consent.
- Consider having parents waive right to notice under 32-1016(6).
 - Not clear if parents can waive the right, but doing so would be consistent with respecting parents’ rights under 32-1016.

Funds for Social Transitioning

- “Nothing in this section shall be construed to authorize or permit the use of public funds, public property, or the time or services of public employees to aid or abet a child's efforts to socially transition.”

(IC 32-1016(7))

- *Does this prohibit use of Medicaid or other state funds?*

IC 32-1016: Private Lawsuits

- “An aggrieved person may commence an action at law or equity in a court of competent jurisdiction against a covered entity for violations of this section.”

(IC 32-1016(9))

- “‘Aggrieved person’ means the parent or guardian of a child subjected to sex transition procedures or social transitions.”

(IC 32-1016(4)(a))

IC 32-1016: Private Lawsuits

- “If an aggrieved person proves that a covered entity violated the provisions of this section, such aggrieved person is entitled to recover:
 - “(a) Declaratory relief;
 - “(b) Injunctive relief;
 - “(c) Compensatory damages; and
 - “(d) Reasonable costs and attorney's fees as allowed by statute or court rule.”

(IC 32-1016(10))

- *Problems*
 - *Unclear if improper intent is required.*
 - *Covered entity must incur defense costs even if ultimately prevail.*
 - *May not be covered by insurance.*
 - *It appears only the plaintiff may recover fees.*

IC 32-1016: Attorney General Lawsuits

- “(12) In addition to any relief granted to aggrieved persons under a civil action, the attorney general may seek, and a court may award, civil penalties of up to one hundred thousand dollars (\$100,000) against a covered entity for violation of this section. Such civil penalties shall be proportionate to the violation as determined by the court based on the facts and circumstances of the violation, including the seriousness of the violation, the state of mind of the violator, and the damages actually caused by the violation of this section....
- “(14) The attorney general may file suit for a writ of mandamus compelling covered entities to comply with the provisions of this section.”

(IC 32-1016(12), (14))

IC 32-1016: Adverse Licensure Actions

- “The attorney general may refer a covered entity that has violated this section to any licensing board that has issued a professional license to the covered entity. A licensing board is authorized to discipline a covered entity that has been referred to it pursuant to this subsection in a manner that it deems appropriate for a violation of this section.”

(IC 32-1016(13))

Responding to Record Requests, Subpoenas, and Court Orders



Requests from the Patient or Personal Representative

- Patients and personal representatives generally have a right to access health information maintained in a designated record set except:
 - Psychotherapy notes.
 - Info 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.”
(45 CFR 164.502(g) and 164.524)
- Parents generally have right to access minor’s records with very limited exceptions. (IC 32-1015)

Requests from Third Parties

Generally, need either:

- Patient or personal representative's HIPAA-compliant authorization (45 CFR 164.508), or
- HIPAA exception, e.g.,
 - Disclosure for treatment, payment or health care operations. (45 CFR 164.506)
 - Disclosure to avert serious and imminent threat of harm. (45 CFR 164.512(j))
 - Disclosure required by law (45 CFR 164.512(a)), e.g.,
 - Mental health provider's duty to warn. (IC 6-1903)
 - Child abuse, abandonment or neglect. (IC 16-1605)
 - Hospital treats victim of a crime. (IC 39-1390)
 - Disclosure for certain public health or oversight activities. (45 CFR 164.512(b)-(d))
 - Certain others

Judicial and Administrative Proceedings

- May disclose PHI if—
 - Order signed by judge or administrative tribunal.
 - Subpoena, discovery request, or legal process not accompanied by court order if:
 - Obtain written assurances from party issuing subpoena that either:
 - Patient has been notified and had chance to object, or
 - Reasonable steps taken to obtain a protective order.
- Take reasonable steps to notify the patient yourself.



Best
Option

(45 CFR 164.512(e))

Law Enforcement: Legal Process

- May disclose PHI per
 - Court order, warrant, subpoena or summons issued by a judicial officer (i.e., judge or magistrate).
 - Grand jury subpoena.
 - Administrative request, subpoena, summons or demand if response is required by applicable law and:
 - PHI relevant and material to legitimate law enforcement inquiry;
 - Request is reasonably specific and limited to purpose; and
 - De-identified info could not be used.

(45 CFR 164.512(f)(1))

Law Enforcement: No Legal Process

- May disclose PHI to law enforcement if:
 - Report crime on the premises.
 - Request by law enforcement to identify or locate suspect, fugitive, witness or missing person, but can disclose only limited PHI.
 - Request by law enforcement about victim of crime, and
 - Victim agrees, or
 - Victim unable to agree and law enforcement represents that PHI needed to determine violation of law by someone other than the patient and PHI will not be used against person, info needed immediately, and disclosure in best interests of individual.
 - Person in custody and info needed:
 - To provide healthcare to person, or
 - For health and safety of others.

(45 CFR 164.512(f)(1))

Questions?



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