



PARENT'S ACCESS TO MINOR'S RECORDS: NEW IDAHO LAW

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HIMSS / IdHIMA
Convention

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Written Resources

- Idaho Code 32-1015 (SB 1329),
<https://legislature.idaho.gov/sessioninfo/2024/legislation/s1329/>
- Statement of Purpose for SB 1329, <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2024/legislation/S1329SOP.pdf>
- Stanger, *New Limits on Minor Consents in Idaho*,
<https://www.hollandhart.com/new-limits-on-minor-consents-in-Idaho>.

Parent's Rights in Medical Decision-Making Act

Effective July 1, 2024:

- Must obtain parental consent to treat unemancipated minor with limited exceptions.
- Must allow parents to access unemancipated minor's records with limited exceptions.
- Parents may sue provider and recover damages for violations.

(IC 32-1015)

- “[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, <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2024/legislation/S1329SOP.pdf>)

Parent's Right to Consent for Minors



Parent's Right to Consent for Minors

- “[C]onsent for the furnishing of health care services to any person who is an unemancipated minor must be given or refused by the parent of such person.”

(SB1329, Statement of Purpose, at <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2024/legislation/S1329SOP.pdf>)

- “Except as otherwise provided by court order, an individual shall not furnish a health care service or solicit to furnish a health care service to a minor child without obtaining the prior consent of the minor child’s parent.”

(IC 32-1015(3))

Healthcare Services

- “Health care service” = “a 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)(c))

Unemancipated Minor

- “Minor child” = “an individual under eighteen (18) years of age but does not include an individual who is an emancipated minor.”

(IC 32-1015(1)(e))

– “Emancipated” not defined, but likely includes:

- Court declared the person emancipated.
- Married or has been married.
- Serving in active military.
- Living on own and self-sufficient.

– Not pregnancy. (*See, e.g.*, IC 18-609A)

Parent

- “Parent” = “biological parent ..., an adoptive parent ..., or an individual who has been granted exclusive right and authority over the welfare of a child under state law.”

(IC 32-1015(1)(f))

- *But who has “exclusive” right and authority?*
 - *Biological or adoptive parent*
 - *Court-appointed guardian*
 - *Dept of Health & Welfare?*
 - *Foster parent?*
 - *Stepparent?*
 - *Others?*

Parent's Right to Consent: Exceptions

Not required to obtain parental consent if:

- Minor is emancipated,
- “[A]s otherwise provided by court order.”

(IC 32-1015(3))

- “A parent of the minor child has given blanket consent authorizing the health care provider to furnish the health care service.
- “After a reasonably diligent effort, the health care provider cannot locate or contact a parent of the minor child and the minor child's life or health would be seriously endangered by further delay in the furnishing of health care services.

(IC 32-1015(4))

Effect on Other Laws

- “[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)

- It appears that the new act nullifies other statutes that would allow minors to consent to their own care, e.g.,
 - Exams, prescriptions, devices and info re contraception. (IC 16-604)
 - Treatment for certain infectious or communicable diseases, including STDs. (IC 39-3801)
 - Hospitalization for mental illness. (IC 66-318(b))
 - Treatment or rehab for drug abuse. (IC 37-3102)
 - Blood donations. (IC 39-3701)

Parent's Right to Access Minor's Records



Parent's Right to Access Records

“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(5))

Health Care Provider

"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(1)(b))

Health Information

"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 Records: Exceptions

May deny parent access if:

- Minor is emancipated.

(See IC 32-1015(5))

- “Parent's access to the requested health information is prohibited by a court order;” or
- “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(6))

HIPAA: Disclosures to Parents or Personal Representatives

- 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))

HIPAA: Disclosures to Parents or Personal Representatives

- “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 C.F.R.] § 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))

HIPAA: Disclosures to Parents or Personal Representatives

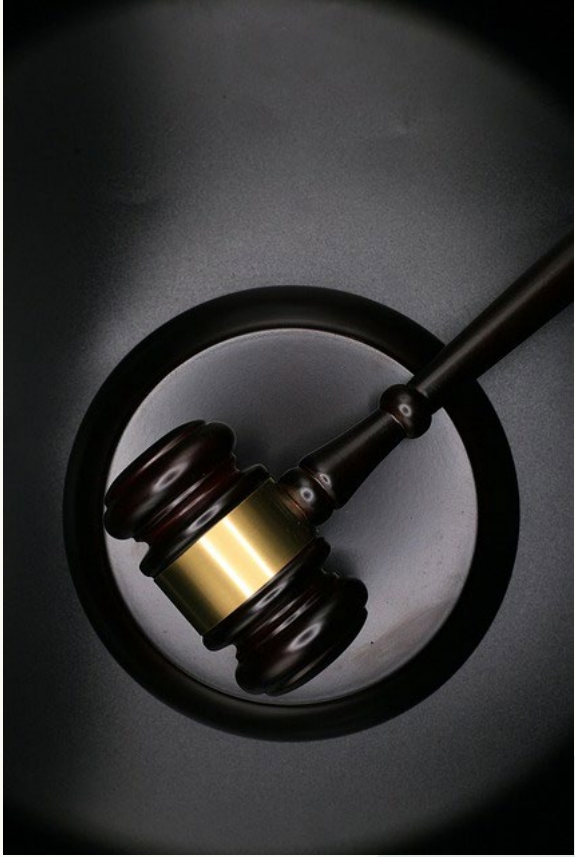
- “[N]othing in [the HIPAA privacy rule] may be construed to preempt any State law to the extent that it authorizes or prohibits disclosure of protected health information about a minor to a parent, guardian, or person acting in loco parentis of such minor.”
(45 CFR 160.202)
- “This rule does not affect parental notification laws that permit or require disclosure of protected health information to a parent.”
(65 FR 82500)

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.”
- “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(12))

- Subject to Idaho Tort Claims Act.
- 2 year statute of limitations.

(*Id.*)

Additional Consequences

- HIPAA violations, e.g.,
 - Improper denial of access to personal representative.
 - (See OCR's Right of Access Initiative)
- Additional bases for damages
 - Lack of informed consent.
 - Assault or battery.
 - Others?

To Do Before July 1, 2024



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- Educate minor patients.
- Update consent forms, policies, and practices to ensure compliance.
- Update medical record forms, policies, and practices to ensure compliance, including HIPAA policies concerning parental access.
- Review and, if necessary, update HIPAA Notice of Privacy Practices to reflect the Act's requirements.
- Update patient portal policies and/or access rights.
- Train personnel concerning the new rules, policies and practices.
- Discuss the potential for lawsuits with your insurance broker to ensure that you have adequate insurance coverage for claims brought under the Act.
- Others?

Questions?



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