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Blanket Consents Under Idaho's New Minor Consent Law

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As discussed in our April 26, 2024, health law update, “New Limits on Minor Consents in Idaho,” **effective July 1, 2024**, the Parents' Rights in Medical Decision-Making Act will generally require healthcare providers to obtain consent from parents for any healthcare services rendered to an unemancipated minor in Idaho. (I.C. § 32-1015). Among other limited exceptions, the Act states:

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) A parent of the minor child has given blanket consent authorizing the health care provider to furnish the health care service...

(I.C. § 32-1015(4)(a), emphasis added). The Act does not define or explain the requirements for an effective “blanket consent,” but the underlined language cited above does seem to affirm that, in the case of a blanket consent, the provider is not required to obtain “informed” consent. This is a significant departure from existing Idaho law.

Idaho generally requires that consent must be sufficiently informed to be effective. Idaho Code § 39-4506 states:

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.

Healthcare providers who fail to obtain sufficiently informed consent may be subject to a lawsuit for lack of informed consent. (*See, e.g., Shabinaw v. Brown*, 131 Idaho 747, 963 P.2d 1184 (1998)).

In contrast, the new minor consent Act states that a healthcare provider who obtains a blanket consent from the parent may render healthcare services “without obtaining the informed consent of the minor child's parent...” (I.C. § 32-1015(4)(a)). Presumably, a blanket consent is one by which a parent prospectively agrees to some range of unspecified care even though they may not have all the information otherwise required for effective informed consent. The permissible scope of a blanket consent is still not defined, however. One would assume it could cover a wide range of routine primary care services, but the more serious or sensitive the healthcare service, the more likely it is that a parent may claim that they never intended to consent to such. Thus, healthcare providers should be cautious when using blanket consents: the more serious, risky, or controversial the care, the more important it is to obtain specific informed consent.

Until we have more definitive guidance from courts or the legislature, the following guidelines may help healthcare providers who intend to use or rely on blanket consents:

- Obtain the blanket consent in writing if possible. Although verbal consents may be effective (see I.C. § 39-4507), disputes may arise concerning the scope of the consent. Obtaining written consent creates a presumption that the consent is valid. (*Id.*) If a healthcare provider wishes to rely on a verbal blanket consent, the provider should carefully document that the parent gave verbal blanket consent. Don't be surprised if the parent disputes the scope of a verbal consent, especially when it comes to payment.
- Ensure the blanket consent is consistent with the type of routine care rendered by the provider. For example, a blanket consent rendered by a primary care provider may only extend to the type of healthcare services typically rendered by the primary care provider, not specialty, non-routine, or unanticipated care. Similarly, a blanket consent rendered by a dermatologist or OB/Gyn should only cover routine services provided by such specialists. Parents are likely to dispute or challenge unanticipated services.
- Ensure the parent understands that, by signing the blanket consent, the parent is waiving his or her right to obtain information concerning the specific nature of the care to be rendered. The consent may confirm the parent's right to obtain such information if requested but place the responsibility on the parent to seek such additional information if desired.
- Confirm that the consent is intended to be a blanket consent within the meaning of I.C. § 32-1015, that no further consent is required to render healthcare services, and that the healthcare provider is relying on such consent to render care. If the parent disagrees, the parent is responsible for notifying the provider.
- Consider affirming the parent's obligation to pay for services rendered under the blanket consent. Although parents are generally responsible for paying for necessary care of their children (see, e.g., I.C. § 32-1003), it is safer to have the parent agree to pay than to argue about whether the care is necessary. And remember that parents are not liable for the cost of unnecessary care or care for certain infectious, contagious, or communicable diseases unless the parent specifically agrees to pay for such care. (I.C. § 39-3801).
- Ensure the blanket consent is signed by the parent. For purposes of the Act, "Parent" means 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." (I.C. § 32-1015(1)(f)).
- When in doubt, do not rely on a blanket consent; instead, obtain specific informed consent from the parent. Although informed

consent is unlikely to be an issue in the vast majority of cases, beware the risks of relying on blanket consents for significant, controversial, or costly care.

We have prepared a sample blanket consent (available here), but we cannot guarantee whether an Idaho court would conclude that it is effective under I.C. § 32-1015 or otherwise. Healthcare providers should carefully consider the circumstances and revise or implement any consent process appropriately before simply relying on any blanket consent form.

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