How Does a Physician Comply with the New Parental Consent Law?

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While scores of bills passed the 2021 Florida Legislature, few of them have caused as much as consternation among physicians as HB 241, the "Parent's Bill of Rights." The bill started with a simple and non-controversial concept that parents should be required to consent to any health care provided to their children. Ultimately, however, the language regarding medical treatment has been seen as overreaching and draconian, and violations of the law not only subject the physician to disciplinary action, but also constitute a first degree criminal misdemeanor. For these reasons, physician compliance is critical.

Of particular concern is the new Florida Statute 1014.06, which states that a health care provider may not "provide or solicit or arrange or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent." In other words, no longer will the mere presence of a parent be deemed as implicit acquiescence to a treatment. Instead, physicians should obtain written consent from at least one parent allowing the physician and the affiliated staff to examine, treat, and (as necessary) prescribe medicinal drugs. While physicians need not obtain a new consent on each visit, the consent should explicitly allow for the "examination, treatment and prescription of medicinal drugs." Moreover, in order to clarify that the consent is ongoing, the consent should include language that it "shall remain in effect until such time as it is revoked by a parent or the child attains its majority."

Admittedly, obtaining a written consent is not always practical, and it is in such circumstances that the new law is problematic. For instance, while Florida Statute 743.064 allows for the provision of emergency care without a consent, that exception only applies in a hospital or college health setting; it does not apply if the emergency health condition applies outside of such a setting, such as an automobile accident or an athletic event. If one is to apply the law literally, the physician who provides even volunteer services risks criminal prosecution, even if the physician remains immune from civil liability under the Good Samaritan and Volunteer Protection Acts.

Fortunately, there are several exceptions to the new law. For instance, the law does not apply to clinical laboratory services, and existing laws regarding a pregnant minor's ability to consent to treatment pertaining to her pregnancy remain in place. Likewise, the civil (but not criminal or administrative) protections afforded by the Good Samaritan and Volunteer Protection Acts still exist.

Overall, the new law does create some significant logistical hurdles for physicians. Please rest assured that we have brough these concerns to the Legislature, both before and after the law's passage, and we will be working to provide legislative solutions in the next legislative session.

Until then, however, here are some frequently asked questions regarding the new law.

Frequently Asked Questions:

1. Do I need a written consent for each visit and prescription? If the original consent is properly worded, separate consents for each visit should be unnecessary. However, informed consents should still be obtained any time a significant procedure is performed, just as required by current law.
2. Do both parents need to provide the written consent? The law requires "written parental consent," which may be provided by either parent.
3. What happens if I cannot locate a parent, and the minor truly needs treatment? F.S. 1014.06 keeps in place F.S. 743.0645, which allows the physician to obtain consent for necessary medical treatment when a parent cannot be located from (in order) a health care surrogate, a step-parent, a grandparent, and adult sibling, or an adult aunt or uncle.
4. I have an Electronic Medical Record system. Must I have a separate paper consent? Consistent with existing laws, an electronic signature should suffice.

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