

HB 1498-FN – AS INTRODUCED

2008 SESSION

08-2064

01/09

HOUSE BILL **1498-FN**

AN ACT relative to notification of a parent or guardian by medical professionals when treating a minor.

SPONSORS: Rep. Mooney, Hills 19; Rep. Rowe, Hills 6; Sen. Bragdon, Dist 11; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits any person from providing or performing any medical procedure, including dentistry, upon any unemancipated minor without written notification to a parent or guardian, except in a medical emergency. A minor may seek court approval for such a procedure, if the minor does not wish to notify the parent or guardian. Any person who violates such a law shall be guilty of a misdemeanor.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

08-2064

01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eight

AN ACT relative to notification of a parent or guardian by medical professionals when treating a minor.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Parental Notification for Certain Procedures Rendered to Minors. Amend RSA 132 by inserting after section 28 the following new subdivision:

Parental Notification Prior to Certain Procedures Rendered to Minors

132:29 Definitions. In this subdivision:

I. "Guardian" means the guardian or conservator appointed under RSA 464-A.

II. "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical or dental condition of a minor as to necessitate the immediate rendering of medical or dental services to avert the death of the minor or for which a delay will create serious risk of

substantial and irreversible impairment of major bodily function.

III. "Minor" means any person under the age of 18 years.

IV. "Parent" means one parent of the minor if one is living or the guardian or conservator if the minor has one.

V. "Unemancipated minor" means any minor who is not or has not been married or has by court order or otherwise not been freed from the care, custody, and control of his or her parents.

132:30 Notification Required.

I. No medical procedure shall be performed or provided, including dentistry, upon any unemancipated minor without the written notification to a parent or guardian of such minor, as provided in paragraph II and III, except in the case of a medical emergency.

II. The written notice shall be addressed to the parent or guardian at the usual place of abode of the parent or guardian and delivered personally to the parent or guardian by the contracting party or party providing services or an agent of said party.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent or guardian at the usual place of abode of the parent or guardian with return receipt requested and with restricted delivery to the address, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which mail delivery takes place, subsequent to mailing.

132:31 Waiver of Notice.

I. If an unemancipated minor elects not to seek the consent or does not receive the consent of one of the minor's parents or guardian, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize the medical procedure if the judge determines that the minor is mature and capable of giving informed consent to the proposed procedure. If the judge determines that the minor is not mature, or if the minor does not claim to be mature, the judge shall determine whether the performance of the procedure without consent of the minor's parent or guardian would be in the minor's best interests and shall authorize the procedure without such consent if the judge concludes that the minor's best interests would be served if the procedure were performed. Access to a judge for the purpose of this paragraph shall be afforded such a minor 24 hours a day, 7 days a week. All proceedings conducted pursuant to this section shall be confidential.

II. A minor may participate in proceedings in the court on the minor's own behalf, and the court may appoint a guardian ad litem for the minor. The court shall, however, advise the minor that the minor has a right to court-appointed counsel, and shall, upon the minor's request, provide the minor with such counsel.

III. Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the minor.

In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

IV. An expedited confidential appeal shall be available to any such minor from whom the court denies an order authorizing the contract without notification. The court shall make a ruling within 7 days from the time of the docketing of the appeal. An order authorizing the contract without notification shall not be subject to appeal. No filing fees shall be required of any minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for the purposes of making an appeal from denial of the same, shall be afforded such minor 24 hours a day, 7 days a week.

132:32 Penalty. Any person who knowingly provides or performs any medical procedure upon any unemancipated minor in violation of RSA 132:29 shall be guilty of a misdemeanor and such violation shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:33 Severability. If any provision of this subdivision or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the subdivision which can be given effect without the invalid provision or application, and to this end the provisions of this subdivision are severable.

2 Effective Date. This act shall take effect January 1, 2009.

LBAO

08-2064

11/29/07