



2023 Senate Bill no. 2260
House Human Services Committee
Representative Robin Weisz, Chairman
March 22, 2023

Chairman Weisz and members of the House Human Services Committee, I am Danielle Thurtle, a board-certified pediatrician and pediatric hospitalist with Sanford Health Bismarck. I testify in opposition to Senate Bill 2260. We ask that you give the bill a **Do Not Pass** recommendation.

While some of the amendments in the engrossed bill lessen some of our concerns, we still are very troubled about the negative effects this bill would have on medical care for children, including delaying care and inviting litigation against health care providers by parents. If the purpose of the bill is to deal with a concern that a specific health care provider is denying or interfering with the right of a parent to direct medical treatment for a child, then there are means to deal with that such as by the medical licensing board or the local health system or clinic office. Otherwise, I am not aware of any specific problems that this legislation is trying to address.

I understand that the intent of this bill is to put a focus on "parent rights". But I am very concerned that such a focus ignores the rights and medical needs of children. Instead of putting the child/teen first when we provide medical care, providers will have to worry more about a parent's rights. This will leave health care providers vulnerable to manipulation by parents. We have to always put the right and wellbeing of the vulnerable patient in front of us first. I, unfortunately, encounter situations where parents are not working together for the best interest of their child. Some parents are uninterested in their child's life or are completely absent. Others are more interested in causing each other frustration than in cooperating to make important decisions about their child's health care. These problems can delay care while the health care provider is left to sort out parents who are truly not acting in the best interests of their child.

I want to assure you that it is a long-established principle that, before treating a patient, a health care provider must obtain the consent of that patient. The idea that parents should have the right and responsibility to make health care decisions for their children seems eminently reasonable. Before treating a minor patient, consent must be obtained from the patient's parent or legal guardian. This seems straightforward but this bill will interfere with that long-established practice

and cause more problems than it solves. Some parts of the bill conflict with each other, some would prevent any modification to long standing North Dakota law regarding minors' ability to consent to their own treatment in certain circumstances, and other provisions of the bill are simply unworkable.

The bill has conflicting provisions regarding whether consent of both parents or just one parent is required before a health care provider may treat a minor. Section 1 creates a right of all parents to make and consent to health care decisions. Section 3 indicates that we only need the consent of a parent (not plural) before proceeding with treatment. But section 3 further creates a cause of action for a parent if they think their rights have been violated. It is unclear if two-parent consent is required. This internal inconsistency means it would be risky for a health care provider to treat a minor unless both parents give consent. To do otherwise exposes a health care provider to a lawsuit by a parent who claims the provider did not meet the requirements of Section 1.

The section regarding getting consent via telemedicine is also not workable. It states that if the parental consent is given through telemedicine, the health care provider must verify the identity of the parent at the site where the consent is given. It is unclear but it could be read to mean that, if the parent is at home during the telemedicine visit, the provider would have to go to the parent's home to verify the identity of the parent. This was probably not intended but, if that is how it is interpreted, it would defeat the purpose of having a telemedicine visit.

I believe this bill will also result in delayed care to minors. Prior consent of both parents for everything, even routine services such as when a health care provider takes a child's temperature, looks in her ears, and listens to her heart as part of a well child visit, or when seeing a child for a minor illness, is simply not practical and adds another burden to our health care system. Do we really want every single health care service, treatment, and prescription for a minor to require both parents' consent? Or, if a health care provider cannot locate both parents, what constitutes a "reasonably diligent effort" under the exception on page seven?

Section 1 of the bill would also require a substantial and concerning change regarding reporting of child abuse and neglect. As you probably know, health care providers are mandated by state law to report suspected child abuse and neglect. The bill provides that a parent has the right to be notified promptly if the government or "other institution" suspects abuse, neglect, or a criminal offense has been committed against the child. Hospitals are arguably included in the definition of "other institution" but it is not clear because the only other entities listed are government entities. It is not clear if "other institution" only refers to a government institution. If hospitals are included, how and when are they required to notify the parents of suspected abuse or neglect? Must both

parents be notified? What if both cannot be found? What if one parent is the alleged abuser, must the other parent be notified?

I am also afraid of how this will impact standard visits with teens. It is recommended by the American Academy of Pediatrics to have part of the teen wellness visit without parents in the room. We do ask sensitive questions about depression, sexual health, etc., during this part of the interview and the teen is free to ask questions. I never "force" a parent out of the room, but I would want to make sure this is still allowable.

The bill's provisions that codify the exemptions for when minors may consent to their own health care are also unclear. Would a minor have to state they are being seen for that specific purpose for us to waive the consent? Abdominal pain in teenagers (especially females) is often related to sexual health in some way - it could be pregnancy, cycle issues, or a severe sexually transmitted infection. There is NO way for the teen (or provider) to know this ahead of time. Additionally, putting the burden on the teen to say they are there for a sensitive issue seems cruel. The bill also would not allow any additional exceptions to be added. There may be other situations in which it may be more important for a young person to have access to confidential medical services than it is to require that parents be informed of the situation. We should not limit our ability to appropriately react to situations that may arise in the future.

This bill is also simply unworkable in the burden it would place on health care providers to protect themselves from potential lawsuits unless they secure prior consent from both parents to all health care services, even routine examinations or prescriptions. And while we agree that parental involvement is desirable and ideally parents and teenagers would work together to make well thought out health care decisions, the reality is that if we take away access to confidential health care in certain situations, teenagers simply will stop seeking the care they need.

For these reasons, we ask that you give the bill a **Do Not Pass** recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Danielle Thurtle, MD