MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2308

2005 SENATE HUMAN SERVICES

SB 2308

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2308

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
1	x		5800-end
1		x	1-1770
3	x		1-0060
Committee Clerk Signature			

Minutes:

Chairman Lee opened the hearing on SB 2308. All members were present.

Testimony in favor of SB 2308

Senator Karen Krebsbach, District 43, Minot

Sen. Krebsbach is a sponsor of this bill and introduced it. See written testimony (Attachment 1)

Bruce Levi, North Dakota Medical Association See written testimony (Attachment 2)

Sen. Lyson: If I'm the owner of the policy and the blue slip (explanation of benefits)(EOB) comes to my house and its addressed to my child, and I contact the insurance company, how can they hold that information back from me?

Levi: This is an issue with all the states that have this kind of law, that's why we ran it by Blue Cross Blue Shield, and they felt comfortable with they policy they have now with sending the EOB out to the minor patient. It all goes back to the ethical imperative that the physician initially talk with the minor patient with what's happening here and if the minor patient does not want to

inform their parents and to correct any misconceptions they might have about that. That would depend on the family situation and whatever the physician gleans in that dialogue with that patient. What the bill tries to do is set up the parameters for that discussion and for resolving the whole issue of financial obligation. Under the other statutes, relating to alcohol and drug abuse and sexually transmitted diseases as well as the emergency services they talk about the ability of a minor to disaffirm their contracts from that. What the bill tries to do is to set up, it doesn't address the insurance situation, if the insurance situation is there, that will move forward, and we've talked with the Blues about what will happen in that situation. If there isn't insurance the bill provides a mechanism for the health care provider or the facility to have some sort of an arrangement with the minor, and the minor then would be financially obligated.

Sen. Warner: Can you talk about responsibilities of physicians as related to issues such as pregnancy of a minor.

Dr. Shari Orser, testifying on her own behalf. See written testimony (Attachment 3)

Dr. Orser answered Sen. Warner's question. She said physicians try to identify any situation where social services need to be involved. And its the physicians obligation to report any suspected abuse to the appropriate agency. And we try to arrange to have that child placed in a safer situation and work with the parents and the social service agencies. But above all, the confidentiality of the child has to be respected, and in some circumstances the child is not ready to be involved, and we need to advocate for them and help them..

Chairman Lee closed the hearing on SB 2308.

Senator Brown moved do pass on SB 2308, seconded by Senator Warner.

Vote: 5 yeas, 0 nays, 0 absent Carrier: Senator Judy Lee

Date: 1-25-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2308

Senate **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Brown Seconded By Sen. Warner

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No Ø

Absent Ø

Floor Assignment Sen. J Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2308: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2308 was placed on the Eleventh order on the calendar.

2005 HOUSE HUMAN SERVICES

SB 2308

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2308**

House Human Services Committee

❑ Conference Committee

Hearing Date **February 28, 2005**

Tape Number	Side A	Side B	Meter #
1	X		**3,472**
Committee Clerk Signature	Janice Stein		

Minutes:

REP. CLARA SUE PRICE, CHAIRPERSON Called the committee hearing to order.

SEN. KAREN KREBSBACH, DIST. 40 Introduced the bill. See attached written testimony.

BRUCE LEVI, REPRESENTING THE NORTH DAKOTA MEDICAL ASSOCIATION

Testified in support of the bill. See written testimony.

REP. PORTER In Subsection 3, what happens in a situation where the minor is treated, the claim is sent in to the insurance company, and the explanation of benefits comes back to the policyholder, and now they know anyway?

BRUCE LEVI I think that is something that would certainly be part of the discussion between the physician and the minor. From a standpoint of my understanding, is that the OB is actually going to the individual who has provided the service. I know, even in my family, I think the cutoff, I think, is twelve years old, where they are sending the EOB out with the name of the

patient, but obviously, it comes to the home of the patient. Maybe Dr. Orser can explain how that works, from her experience.

REP. PORTER If the minor child assumes the responsibility for the cost of the services, at what point do they become medicaid eligible?

BRUCE LEVI I have to think that through, with eligibility requirements under medicaid, and how that might apply to this particular situation. I suspect, the family situation would be part of the eligibility determination for medicaid.

REP. PORTER Under Subsection 5, why would we want to give the sibling unity, in the situation that the parents were mad enough at the health care facility or the physician, for not providing the information about their child who is thirteen years old in regard to the present treatment of pregnancy, that they couldn't get remedied in court?

BRUCE LEVI It all goes down to the statement of public policy, that is provided by SB 2308. There are situations in which public policy is to encourage young people to access those medical services.

REP.WEISZ Related to Subsection 3, even if the minor is familiar with financial responsibilities, the parent or guardian is legally liable for whatever bill has occurred?

BRUCE LEVI The other four exceptions we have in the law, the STD's, the drug abuse, the emergency care, there is language like this, this is why this is included here as well. It is basically, allowing an individual, who happens to be a minor, who otherwise, their contracts would be subject to disafirment, they could disafirm their contracts under the age of 18, if you are encouraging this sort of an arrangement, or encouraging care, the individual doesn't have

insurance, this would come in where there would be a separate kind of agreement to provide for financial obligation of a minor, this states that that contract can't be disafirmed.

REP. WEISZ That is my whole point, they can't disafirm it, which means in reality, the family guardian will be legally liable, as long as they are a minor.

BRUCE LEVI I think it is the other way around. It subjects them, as a minor, to full financial responsibility.

DR. SHARI ORSER, OBSTETRICIAN-GYNECOLOGIST, TESTIFYING ON HER OWN BEHALF Testified in support of the bill. See written testimony.

REP. KREIDT The situations you deal with, after the individual comes to see you, what percent will actually inform their parents of their situation?

DR. ORSER Most of them will eventually inform their parents, but not until they have to. We encourage them to get their parents involved. I have seen cases where, when children told their parents, that their parents through them out. I have a number of patients who ended up living with their boyfriend and his family, because her parents wouldn't let them stay at home any longer. If you are afraid something like that will happen, you will not tell your parents until you are forced to.

REP. KREIDT Related to section 3 in regard to payment. Will you arrange payments with the individual, that you will not send the bill to the parents?

DR. ORSER Yes, we can do that.

With no further testimony, the committee hearing was closed.

COMMITTEE ACTION **Tape #2, Side B Meter 1205**

REP. DEVLIN Related to a situation where an eighteen year old mother with an eight month old is pregnant again, living in a home that is not fit to live in. I can really see why she is afraid, because of what has happened. I have mixed feelings on that. It will only hurt the baby, if she doesn't get prenatal care.

REP. PORTER The difficulty of this situation is that the child is still a minor, the financial responsibility, unless you totally emancipate that child, it still goes back to the parents, on all of these issues. We have all sorts of agencies in place with the public health unit, and other agencies who will do prenatal care, free of charge. The first four months of the pregnancy, there are about two things they tell you to do, take your vitamins everyday, and don't drink. Short of that, there are really no other major lifestyle changes that need to take place, maybe smoking too. I have a hard time with this, on the financial side of it, and taking the parents out of the loop, when it is still their financial responsibility, and I have a hard time granting immunity, if I feel like suing the physician because they told my kids something, or didn't tell me, I really have a hard time with this.

REP. DAMSCHEN Stated he understood what this bill is trying to address, but he was not sure it would fix the real problem. I think it is an easy way out for some families.

REP. WEISZ The point is, the kids are scared to talk to their families, to me that makes the statement, that they are not responsible enough to handle this on their own, yet, we are saying yes, you don't have to let anybody know.

REP. PORTER I don't know a hospital out there that would start writing off the bills. I think they would hold them, you have a year to file an insurance claim, and we are talking about a nine month window here, or less, all they have to do is hold the claim until it would be time, then they

could start submitting claims from six or seven months prior to. Every insurance company does the same.

REP. KREIDT Dr. Orser indicated that visiting with the individuals, one hundred percent will tell their parents eventually, anyway, why do we want to pass a bill like this?

REP. POTTER Somewhere in the back of my mind, I have a bit of a problem, obviously the girl won't be telling her parents until they find out, I would think with girls coming out of families which all of us would have, which I would hope are supportive families, I would think it is a difficult thing going to your family even if they are supportive. I know there are a lot of unsupportive families, going to a group like that, when you know you are going to have a lack of support, I guess I can see how this would be helpful for them. I would have to agree with the doctor. Having gone around with some police people in Grand Forks, and gone into some of these houses where some of these teenagers are on probation, I found a lot of these kids certainly do not grow up in any kind of circumstances that I have ever seen, and had any kind of understanding. To say that they eat three meals a day, or even two meals a day, and any of those meals being semi-healthy, I have my doubts. There is a lot of counseling that should go on with girls that are in troubled situations, and it is not your general run-of-the-mill routine visit for a lot of homes. As this female doctor said, these girls do get kicked out and have no support from home, then these babies are taken care of from the beginning with the folic acids and all the rest of the things they need to be taken care of. Even if any of my kids felt the need to do this, I would have been glad that they did in the long run, if they felt they couldn't come to me.

REP. DAMSCHEN All of those things are valid concerns, but I am not sure that, after a young woman goes through that and comes home, if she will be more accepted, I am afraid she will be more shunned by her family. We will not fix these family problems.

REP. PIETSCH I think we are giving an awful lot of authority to a minor.

REP. POTTER Whether it is a minor or not, someone needs to pay for that health care, and I would rather they get it. What if this child is getting physical abuse in the home, or sexual abuse by a father or uncle, a lot of these kids will not tell, until it is too late. I support the bill just trying to say, would I rather have them get care and Mom and Dad not know, versus not getting care. We don't have public health in every county or every situation. We are already allowing these kids to have drugs, alcohol and FCD treatments without the parents being notified, and apparently, that worked.

REP. ? The other situations you talked about, in the first district, that was a situation where it was one individual, actually, two individuals, I just feel that in the final analysis, I can support this bill.

REP. POTTER Made a motion for a **do pass.**

REP. KREIDT Second the motion. Motion failed.

REP. WEISZ Made a motion for a **DO NOT PASS.**

With no second, Rep. Weisz withdrew his motion. The bill will be acted on at a later date.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2308

House Human Services Committee

❑ Conference Committee

Hearing Date March 21, 2005

Tape Number	Side A	Side B	Meter #
1		x	641-1315
			tape is hard to hear.
Committee Clerk Signature			

Minutes:

Chairman Price opened hearing on SB 2308.

Chairman Price: Did everyone get the E-mail from Mr. Dotson? He had some questions, but they do not oppose it. She goes on to explain the areas of the bill. (Hard to Hear)

Rep. Damschen: I still have trouble with this one. It's tough for kids, it sure could drive a wedge in families, or in parent/child relationship.

Chairman Price: Mr. Levi indicated regarding the amendment #1 ???????? 14-10-17, which covers sexually transmitted diseases, the amendment put prog???? issue in statute.

Mr. Levi: In discussion regarding prenatal care on the bottom of page 2, are the types provided. Dr. Orser provided the information. Laid out the financial responsibility (take out that language). The amendment includes but does not require the doctor to provide care i.e. abortion etc. This amendment puts it under current law.

Rep. Porter: It will be interesting to hear what happens.

Chairman Price: Is there any opposition? Hearing none. We have an amendment before us.

Rep. Potter: Move to accept the amendment.

Rep. Devlin: Second

Vote: Unanimous

Rep. Nelson: I move a Do Pass as amended.

Rep. Potter: Second

Vote: 12-0-0

Carrier: Rep. Price

Date: 2/28/05 **Roll Call Vote #: 1**

2005 HOUSE STANDING COMMITTEE ROLL CALL
BILL/RESOLUTION NO. SB 2308

House Human Services **Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Failed

Motion Made By Rep. Seconded By Rep

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S. **Price**	✓		Rep.L. **Kaldor**		
V Chrm.G. **Kreidt**	✓	✓	Rep.L. **Potter**	✓	
Rep. V. **Pietsch**		✓	Rep.S. **Sandvig**		
Rep.J.O. **Nelson**	✓				
Rep.W.R. **Devlin**	✓	✓			
Rep.T. **Porter**		✓			
Rep.G. **Uglem**	✓				
Rep C. **Damschen**		✓			
Rep.R. **Weisz**		✓			

Total **Yes** 4 **No** 6

Absent _____

Floor Assignment **Rep.** _____

If the vote is on an amendment, briefly indicate intent:

~~[illegible]~~

— Hall —

Date: 2/28/05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2308

House **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Potter Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S.**Price**			Rep.L. **Kaldor**		
V Chrm.G. **Kreidt**			Rep.L. **Potter**		
Rep. V. **Pietsch**			Rep.S. **Sandvig**		
Rep.J.O. **Nelson**					
Rep.W.R. **Devlin**					
Rep.T. **Porter**					
Rep.G. **Uglem**					
Rep C. **Damschen**					
Rep.R. **Weisz**					

Total ( ) _____ **No** _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Rep Weisz withdrew his previous motion

Date: 3/15/05

Roll Call Vote #: 1 - Porter - Devlin amd
2 - DPAA - Nelson
Patter

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. [redacted]2308

House **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DPAs Amd.

Motion Made By Nelson Seconded By Patter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S. **Price**	x		Rep.L. **Kaldor**	x	
V Chrm.G. **Kreidt**	x		Rep.L. **Potter**	x	
Rep. V. **Pietsch**	x		Rep.S. **Sandvig**	x	
Rep.J.O. **Nelson**	x				
Rep.W.R. **Devlin**	x				
Rep.T. **Porter**	x				
Rep.G. **Uglem**	x				
Rep C. **Damschen**	x				
Rep.R. **Weisz**	x				

Total ( ) 12 **No** 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Adopted by the Human Services Committee
March 21, 2005

House Amendments to SB 2308 - Human Services Committee 03/22/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 14-10-17 of the North Dakota Century Code, relating to treatment for minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-10-17 of the North Dakota Century Code is amended and reenacted as follows:

14-10-17. Minors - Treatment for sexually transmitted disease - Drug abuse - Alcoholism - Pregnancy.

1. Any person of the age of fourteen years or older may contract for and receive examination, care, or treatment for sexually transmitted disease, alcoholism, pregnancy-related care, or drug abuse without permission, authority, or consent of a parent or guardian.

2. For purposes of this section, "pregnancy-related care" means prenatal care, labor, and delivery, and other health care services to determine the presence of or to treat pregnancy or conditions associated with pregnancy. This section does not authorize a minor to consent to abortion or otherwise supersede the requirements of chapter 14-02.1. A physician or other health care professional or a health care facility may not be compelled against their best judgment to provide pregnancy-related care to a minor based on the minor's own consent. A physician or other health care professional who provides pregnancy-related care to a minor may inform the parent or guardian of the minor of any health care services given or needed if the physician or other health care professional discusses with the minor the reasons for informing the parent or guardian before the disclosure, and in the judgment of the physician or other health care professional:

   a. Failure to inform the parent or guardian would seriously jeopardize the health of the minor or the unborn child;

   b. Severe complications are present or anticipated;

   c. Major surgery or prolonged hospitalization is needed; or

   d. Informing the parent or guardian would benefit the minor's physical and mental health."

Renumber accordingly

Date: 3/28/05 Roll Call Vote #:)

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2308

House **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amd

Motion Made By Rep Nelson Seconded By Rep Potter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S.**Price**	✓		Rep.L. **Kaldor**	✓	
V Chrm.G. **Kreidt**	✓		Rep.L. **Potter**	✓	
Rep. V. **Pietsch**	✓		Rep.S. **Sandvig**	✓	
Rep.J.O. **Nelson**	✓				
Rep.W.R. **Devlin**	✓				
Rep.T. **Porter**	✓				
Rep.G. **Uglem**	✓				
Rep C. **Damschen**	✓				
Rep.R. **Weisz**	✓				

Total ( ) 12 **No** 0

Absent 0

Floor Assignment Price

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2308: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2308 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 14-10-17 of the North Dakota Century Code, relating to treatment for minors.

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   a. Failure to inform the parent or guardian would seriously jeopardize the health of the minor or the unborn child;

   b. Severe complications are present or anticipated;

   c. Major surgery or prolonged hospitalization is needed; or

   d. Informing the parent or guardian would benefit the minor's physical and mental health."

Renumber accordingly

Date: 3/21/05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2308

House **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amd

Motion Made By Nelson Seconded By Potter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S.**Price**	✓		Rep.L. **Kaldor**	✓	
V Chrm.G. **Kreidt**	✓		Rep.L. **Potter**	✓	
Rep. V. **Pietsch**	✓		Rep.S. **Sandvig**		✓
Rep.J.O. **Nelson**	✓				
Rep.W.R. **Devlin**		✓			
Rep.T. **Porter**		✓			
Rep.G. **Uglem**	✓				
Rep C. **Damschen**		✓			
Rep.R. **Weisz**		✓			

Total ( ) 7 **No** 5

Absent 0

Floor Assignment Rep Price

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2308: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2308 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 14-10-17 of the North Dakota Century Code, relating to treatment for minors.

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   a. Failure to inform the parent or guardian would seriously jeopardize the health of the minor or the unborn child;

   b. Severe complications are present or anticipated;

   c. Major surgery or prolonged hospitalization is needed; or

   d. Informing the parent or guardian would benefit the minor's physical and mental health."

Renumber accordingly

2005 TESTIMONY

SB 2308

Attachment 1

Sen. Karen Krebsbach

SB 2308
Senate Human Services Committee
Tuesday, January 25, 2005

There are several instances for which we as legislators have included language in the ND Century Code authorizing minors to consent for health care services. Those services include examination, care and treatment for alcoholism, drug abuse and sexually transmitted diseases, as well as emergency medical services. These are situations in which the public policy is to encourage young people to access medical services, rather than discourage them from seeking the appropriate help they need.

Senate Bill 2308 would recognize that this same kind of situation arises often with respect to a young person who finds herself pregnant – that as a matter of public policy we ought to encourage that young person to seek appropriate prenatal care and other health care for her and her unborn child. Physicians have an ethical duty to involve their minor patients in the medical decision-making process to a degree commensurate with their abilities. At the same time, if a minor patient asks for confidential services, physicians are ethically bound to encourage the minor to involve their parents. More clarity is needed, however, on the legal role of the physician in working with young people who seek confidential pregnancy-related health care services for themselves and their unborn children.

I introduced Senate Bill 2308 at the request of a number of health care organizations seeking this clarity, including the North Dakota Chapter of the American College of Obstetricians and Gynecologists, the North Dakota OB-GYN Society, the North Dakota Medical Association, and the North Dakota Healthcare Association representing hospitals. Senate Bill 2308 would authorize a minor to consent for pregnancy-related care, but not abortion services which are covered by another law, as well as identify situations in which the physician or other health professional may inform the minor's parents or guardian.

Senate Bill 2308 strikes an appropriate balance – a balance that recognizes the need to encourage young people to seek the medical care they need for themselves and an unborn child, and the need in some circumstance for the young person's parents or guardian to be involved.

Thank you Senator Lee and members of the Committee. There are representatives of various organizations here to describe more fully the rationale and scope of the bill, and answer questions you have.

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[redacted]nd Forks
Speaker of the House

Jack Kerbeshian, MD
Grand Forks
AMA Delegate

Bruce Levi
Executive Director

David Peske
Director of
Governmental Relations

Leann Tschider
Director of Membership
Office Manager

Testimony in Support of Senate Bill No. 2308
Senate Human Services Committee
January 25, 2005

Senator Lee and Committee members, I'm Bruce Levi representing the North Dakota Medical Association. NDMA is the professional membership organization for North Dakota's physicians, residents and medical students. With me today is Dr. Shari Orser. Dr. Orser has been actively involved in the North Dakota OB-GYN Society and also serves as the Vice President of the North Dakota Medical Association. She is here to testify on her own behalf regarding this bill. The North Dakota Medical Association supports SB 2308.

SB 2308 would follow the lead of at least thirty-four other states in providing statutory authority for a physician or other health care professional to rely on the consent of a minor for pregnancy-related health care. SB 2308 is actually a hybrid of Minnesota and Montana statutes.

In summary, SB 2308 would authorize a minor to consent and contract for medical, mental, and other healthcare services to determine the presence of or to treat pregnancy and conditions associated with pregnancy. A physician or other healthcare professional would not be compelled against their best judgment to treat a minor based on the minor's own consent. A physician or other healthcare professional would be authorized under the bill to inform the parent or the guardian of the minor of any health care services given or needed after discussion with the minor under various circumstances. The bill would provide a physician or other healthcare professional or healthcare facility with civil and criminal immunity from liability for relying on a minor's consent or for informing a parent or guardian.

States have traditionally recognized the right of parents to make health care decisions on their children's behalf on the presumption that before reaching the age of majority, young people lack the experience and judgment to make fully informed decisions. In 1991, the Legislative Assembly enacted a third-party consent statute [NDCC 23-12-13] that may imply a general proposition that a minor lacks capacity to provide informed consent for health care.

Nevertheless, there have long been exceptions to the rule that minors lack capacity to provide consent for health care. In North Dakota, our statutes recognize the ability of minors to make decisions in a number of contexts, without the consent of a parent or guardian:

- NDCC Section 14-10-17: Examination, care, and treatment for sexually transmitted disease, alcoholism, or drug abuse
- NDCC Section 14-10-17.1: Examination, care, or treatment in a life-threatening situation

Concern about confidentiality is often a major obstacle to the delivery of health care to adolescents. Access to confidential services is often essential, because many adolescents will not seek care if they have to inform a parent or have their parents' consent. These laws encourage young people to seek the health care services they need and enable them to talk candidly with their physician or other health professional. If access to confidential health care is not an option, teenagers simply may not seek the care they need.

SB 2308 follows the ethics of medical practice. The American Medical Association Code of Medical Ethics addresses the issue of confidential care for minors, and a copy of the ethics opinion is included as an attachment to my written testimony. I will briefly review the bill.

Subsection 1: The language in subsection 1 provides authorization for a minor to consent for pregnancy-related services, as derived from Minnesota law [Minn. Stat. 144.343]. Subsection 1 uses the Minnesota terminology "medical, mental, or other health services to determine the presence of or to treat pregnancy and conditions associated with pregnancy" in describing the services to which a minor may consent. The consent of no other person is required. The authorization does not include abortion services, which are governed by the state's Abortion

Control Act [NDCC 14-02.1]. The Abortion Control Act provides for specific consent and notification requirements that would not be affected by this legislation.

Subsection 2: The language in subsection 2 is derived from Montana law [Mont. Code Ann. 41-1-407] which recognizes that based on factors, including the maturity of the minor, a physician should not be compelled to against their best judgment to treat a minor based on the minor's own consent. This provision provides the necessary medical discretion to allow the physician or other health professional to work within the ethical guidelines that address confidential care for minors.

Subsection 3: The language addresses the financial responsibility of the minor for care. Minnesota specifically provides that a minor consenting to services assumes financial responsibility for the cost of the services in all cases [Minn. Stat. 144.347]. The proposed language in SB 2308 would allow for an agreement that the payment for services will come directly from the minor or from some other source. The proposed language would bring more flexibility to the financial arrangement by providing a context for the physician and minor patient to reach an understanding concerning 1) who is responsible for paying the cost of the medical treatment, and 2) to whom the physician can disclose medical information that is necessary to obtain payment for the services. This language was reviewed by BlueCross BlueShield of North Dakota and they did not find the language problematic.

Subsection 4: The language in subsection 4 authorizes disclosure to parents or guardian in under certain circumstances deemed appropriate in the physician's or other health professional's judgment, but only if the physician or other health care professional discusses with the minor the reasons for informing the parent or guardian before the disclosure. This prior discussion requirement is consistent with the AMA Ethics Code. The circumstances that may result in disclosure to the parent or guardian include:

- Failure to inform the parent or guardian would seriously jeopardize the health of the minor or the unborn child (serious jeopardy standard recognized in AMA Ethics Code, Minnesota and Montana);
- Severe complications are present or anticipated (Mont. Code Ann. 41-1-403);
- Major surgery or prolonged hospitalization is needed (Mont. Code Ann. 41-1-403); or

- Informing the parent or guardian would benefit the minor's physical and mental health (Mont. Code Ann. 41-1-403).

Subsection 5: This language would provide a physician or other health care professional or health care facility with immunity from any civil or criminal liability by reason of providing health care services on the consent of a minor or informing a parent or guardian under SB 2308, but this immunity would not apply to any negligent acts or omissions. This language is similar to other states that provide immunity for the conduct of the physician or other health care professional in seeking consent from a minor or informing parents or guardians. No immunity is provided for the actual health care provided, which must still be provided in a competent manner.

NDMA urges you to support SB 2308 with a "do pass" recommendation.

I will attempt to answer any questions you have. Dr. Orser also has prepared testimony and can answer your questions from her experience in providing medical care to pregnant minors.

E-5.055 Confidential Care for Minors
AMA Code of Medical Ethics

Physicians who treat minors have an ethical duty to promote the autonomy of minor patients by involving them in the medical decision-making process to a degree commensurate with their abilities.

When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minor's reasons for not involving their parents and correcting misconceptions that may be motivating their objections.

Where the law does not require otherwise, physicians should permit a competent minor to consent to medical care and should not notify parents without the patient's consent. Depending on the seriousness of the decision, competence may be evaluated by physicians for most minors. When necessary, experts in adolescent medicine or child psychological development should be consulted. Use of the courts for competence determinations should be made only as a last resort.

When an immature minor requests contraceptive services, pregnancy-related care (including pregnancy testing, prenatal and postnatal care, and delivery services), or treatment for sexually transmitted disease, drug and alcohol abuse, or mental illness, physicians must recognize that requiring parental involvement may be counterproductive to the health of the patient. Physicians should encourage parental involvement in these situations. However, if the minor continues to object, his or her wishes ordinarily should be respected. If the physician is uncomfortable with providing services without parental involvement, and alternative confidential services are available, the minor may be referred to those services. In cases when the physician believes that without parental involvement and guidance, the minor will face a serious health threat, and there is reason to believe that the parents will be helpful and understanding, disclosing the problem to the parents is ethically justified. When the physician does breach confidentiality to the parents, he or she must discuss the reasons for the breach with the minor prior to the disclosure.

For minors who are mature enough to be unaccompanied by their parents for their examination, confidentiality of information disclosed during an exam, interview, or in counseling should be maintained. Such information may be disclosed to parents when the patient consents to disclosure. Confidentiality may be justifiably breached in situations for which confidentiality for adults may be breached, according to Opinion 5.05, "Confidentiality." In addition, confidentiality for immature minors may be ethically breached when necessary to enable the parent to make an informed decision about treatment for the minor or when such a breach is necessary to avert serious harm to the minor. (IV) Issued June 1994 based on the report "Confidential Care for Minors," adopted June 1992; Updated June 1996.

Attachment 3

Testimony in Favor of Senate Bill 2308
(1-25-05)

Chairman Lee and Members of the committee,

For the record my name is Shari Orser, an obstetrician-gynecologist. I am an employee of Medcenter One Health Systems, but today I am testifying on my own behalf.

I believe this bill is vitally important. It offers confidentiality to assure that needed care is given to the minor in those unfortunate circumstances where the parents do not necessarily have the best interest of the minor in mind. This is especially important when young women are pregnant in order to assure the best possible outcome for the newborn child and the mother.

In surveys minors and providers consistently identify concerns about lack of confidentiality as a barrier to obtaining health care. Minors who are pregnant, have STD's, abuse drugs and alcohol, or have emotional problems may avoid seeking health care if they must inform their parents.

Our best opportunity for optimal pregnancy outcomes is to begin prenatal care early. Statistics from the State Department of Health indicate that on average 43% of teenage mothers start prenatal visits late. These statistics also show that only 25% of all teenage mothers receive the optimal number of prenatal visits. Many minors do not present for prenatal care until the mid-to-late second trimester, often when they can no longer conceal the pregnancy from their parents. This significantly delays the opportunity for

treatment with folic acid, providing iron for anemia, counseling about healthy diet, discussion of other high risk behaviors such as smoking, alcohol and drug use, early treatment of STD's and identification of other risk factors for poor outcome. Some minors do not even come in until they are already in labor and have not received any prenatal care. In either situation, the health of both the mother and child is put in jeopardy.

Accessing care late in a pregnancy is a risk factor for early delivery and babies that are born too early, result in 60% of infant morbidity and mortality. The cost of one day in our NICU (Neonatal Intensive Care Unit) is substantial. If minors are assured of confidentiality they will feel able to seek health care earlier in the pregnancy and would improve pregnancy outcomes as well as potentially limit the risks and eliminate the cost of additional treatment for complications.

When minors know their confidentiality will be respected, they will be able to develop a relationship of trust with the health care provider and in turn the health care provider will be able to encourage the minor to seek parental involvement or facilitate discussions with the minor and the parent if needed.

We would like to believe that all parents are loving and have only their child's best interest at heart, but the sad truth is that that is not always the case.

I am aware of a situation in which a parent refused to consent to an epidural for her 16-year-old daughter. She felt that since her child got herself into the situation, she deserved to endure the pain of labor. This bill would enable the minor and her physician to determine the best course of treatment and prevent this sort of abuse of parental authority. In some cases parental involvement is just not to a minors benefit.

I believe this bill is important to the health and well-being of young mothers and their children and would urge you to support it with a "Do pass" recommendation.

Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

SB 2308

HOUSE HUMAN SERVICES COMMITTEE

Monday, February 28, 2005

For the record, my name is Karen K. Krebsbach, Senator District 40.

There are several instances for which we as legislators have included language in the ND Century Code authorizing minors to consent for health care services. Those services include examination, care and treatment for alcoholism, drug abuse and sexually transmitted diseases, as well as emergency medical services. These are situations in which the public policy is to encourage young people to access medical services, rather than discourage them from seeking the appropriate help they need.

Senate Bill 2308 would recognize that this same kind of situation arises often with respect to a young person who finds herself pregnant – that as a matter of public policy we ought to encourage that young person to seek appropriate prenatal care and other health care for her and her unborn child. Physicians have an ethical duty to involve their minor patients in the medical decision-making process to a degree commensurate with their abilities. At the same time, if a minor patient asks for confidential services, physicians are ethically bound to encourage the minor to involve their parents. More clarity is needed, however, on the legal role of the physician in working with young people who seek confidential pregnancy-related health care services for themselves and their unborn children.

I introduced Senate Bill 2308 at the request of a number of health care organizations seeking this clarity, including the North Dakota Chapter of the American College of Obstetricians and Gynecologists, the North Dakota OB-GYN Society, the North Dakota Medical Association, and the

North Dakota Healthcare Association representing hospitals. Senate Bill 2308 would authorize a minor to consent for pregnancy-related care, but not abortion services which are covered by another law, as well as identify situations in which the physician or other health professional may inform the minor's parents or guardian.

Senate Bill 2308 strikes an appropriate balance – a balance that recognizes the need to encourage young people to seek the medical care they need for themselves and an unborn child, and the need in some circumstance for the young person's parents or guardian to be involved.

Thank you Representative Price and members of the Committee. There are representatives of various organizations here to describe more fully the rationale and scope of the bill, and answer questions you have.

(1)

PROPOSED AMENDMENTS TO SB 2308 – OPTION 1

Page 1, line 7, after "minor" insert "fourteen years of age or older" and replace "medical, mental" with "prenatal care, labor and delivery"
Page 1, remove lines 15 through 17

Page 2, remove lines 7 through 10

Renumber accordingly

PROPOSED AMENDMENTS TO SB 2308 – OPTION 2

Page 1, line 1, after "A Bill" replace the remainder of the bill with "for an Act to amend and reenact section 14-10-17 of the North Dakota Century Code, relating to treatment for minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. AMENDMENT. Section 14-10-17 of the North Dakota Century Code is amended and reenacted as follows:

14-10-17 Minors – Treatment for sexually transmitted disease – Drug abuse – Alcoholism – Pregnancy.

1. Any person of the age of fourteen years or older may contract for and receive examination, care, or treatment for sexually transmitted disease, alcoholism, pregnancy-related care, or drug abuse without permission, authority or consent of a parent or guardian.
2. For purposes of this section, "pregnancy-related care" means prenatal care, labor and delivery, and other health care services to determine the presence of or to treat pregnancy or conditions associated with pregnancy. This section does not authorize a minor to consent to abortion or otherwise supercede the requirements of chapter 14-02.1. A physician or other health care professional or a health care facility may not be compelled against their best judgment to provide pregnancy-related care to a minor based on the minor's own consent. A physician or other health care professional who provides pregnancy-related care to a minor may inform the parent or guardian of the minor of any health care services given or needed if the physician or other health care professional discusses with the minor the reasons for informing the parent or guardian before the disclosure, and in the judgment of the physician or other health care professional:
   a. Failure to inform the parent or guardian would seriously jeopardize the health of the minor or the unborn child;
   b. Severe complications are present or anticipated;
   c. Major surgery or prolonged hospitalization is needed; or
   d. Informing the parent or guardian would benefit the minor's physical and mental health."

Renumber accordingly

NOTE

SB 2308 recognizes the current ethical perspective that the involvement of a concerned adult can contribute to the health and success of an adolescent, and that policies in health care settings should encourage and facilitate communication between a minor and her parent(s), when appropriate. SB 2308 addresses those situations when parental involvement may not be appropriate, setting parameters for the exercise of appropriate professional judgment by a physician or other health professional.

Public Health – Family Planning Clinics

In response to concern that minors can already access pregnancy-related care through family planning agencies -- family planning clinics provide pregnancy testing but not prenatal care and other pregnancy-related medical services. As summarized in the 2003 ND Legislative Council Report of the Budget Committee on Human Services, in its alternatives-to-abortion study:

> "The program, operated through the nine delegate agencies, offers family planning services at 18 clinic sites in North Dakota. ... The program provides pregnancy testing, diagnosis, counseling, and referrals. Each clinic is required to maintain a service referral list, which must be made available to clients, for women with positive pregnancy test results. Pregnant clients must be offered information and counseling regarding prenatal care and delivery, infant care, foster care, adoption, and pregnancy termination."

Custer Family Planning in Bismarck was contacted, from which information was received that these family planning services involve pregnancy testing for minors, but not prenatal care.

Age Threshold

Both proposed amendments would provide a threshold age of fourteen years for application of the statute. The age threshold is currently in place for other recognized treatments – sexually transmitted disease, drug abuse, alcoholism -- under section 14-10-17. There is no age threshold for emergency care under section 14-10-17.1.

Importance and Scope of Early Prenatal Care

In response to concern that prenatal care in the early stages of pregnancy is not vital, recommendations of the Institute for Clinical Systems Improvement (Bloomington, MN) incorporating comments from North Dakota-based health providers on routine prenatal care are attached. Prenatal care performed in the first 12 weeks of pregnancy include:

Visit 1 (6 to 8 weeks) –
Screening maneuvers: risk profiles, height and weight/BMI, OB history and physical, hemoglobin, rubella/rubeola, Varicella, ABO/Rh/Ab, RPR, Urine culture, Hepatitis B, HIV, domestic abuse screening.
Counseling and education: lifestyle, nutrition, warning signs, course of care, physiology of pregnancy, testing for risks in pregnancy.
Immunization and chemoprophylaxis: tetanus-diptheria booster, nutritional supplements.

Visit 2 (10 to 12 weeks) –

Screening maneuvers: Weight, blood pressure, fetal heart tones, fetal, anomaly/biochemical, screening.
Counseling and education: fetal growth, review lab results, breastfeeding, body mechanics.

Adolescents are more likely to experience pregnancy complications and give birth to low-weight babies than older females. This occurs primarily because adolescents do not receive early prenatal care. [The American College of Obstetricians and Gynecologists, Adolescent Pregnancy Facts]. Adolescents are more likely to smoke than older women during pregnancy, which is another factor that contributes to the higher likelihood of adolescents having low birth-weight babies. These are concerns in North Dakota. As stated by Dr. Orser in her testimony:

> Statistics from the State Department of Health indicate that on average 43% of teenage mothers start prenatal visits late. These statistics also show that only 25% of all teenage mothers receive the optimal number of prenatal visits. Many minors do not present for prenatal care until the mid-to-late second trimester, often when they can no longer conceal the pregnancy from their parents. *This significantly delays the opportunity for treatment with folic acid, providing iron for anemia, counseling about healthy diet, discussion of other high risk behaviors such as smoking, alcohol and drug use, early treatment of STD's and identification of other risk factors for poor outcome. Some minors do not even come in until they are already in labor and have not received any prenatal care. In either situation, the health of both the mother and child is put in jeopardy.*
>
> Accessing care late in a pregnancy is a risk factor for early delivery and babies that are born too early, result in 60% of infant morbidity and mortality. The cost of one day in our NICU (Neonatal Intensive Care Unit) is substantial. If minors are assured of confidentiality they will feel able to seek health care earlier in the pregnancy and would improve pregnancy outcomes as well as potentially limit the risks and eliminate the cost of additional treatment for complications.

This proposed amendments would clarify the services for which a minor could consent – to include pregnancy testing, prenatal care, and labor and delivery services.

The proposed amendments would also remove "mental" health services from the scope of services authorized for minors' consent for pregnancy-related care, as suggested by Rep. Grande

Financial Responsibility
Both proposed amendments would remove language relating to financial responsibility for care, and rely on current law for providing the parameter for payment in the manner currently provided for services provided to minors under current law for sexually transmitted disease, drug abuse, and alcoholism. Currently, sections 14-10-17 and 14-10-17.1 allow a minor to "contract for and receive" medical care under certain circumstances.

With respect to the current statute that allows a minor to contract for and receive treatment for sexually transmitted disease, alcoholism or drug abuse in section 14-10-17, one major ND health system described its policy as follows: If a person under the age of 18 requests confidential services, a special account is set up. Often, the minor may pay in advance, so no billing is ever

generated. If a parent's insurance is used, the insurer mails the Explanation of Benefits (EOB) to the minor but billing for any unpaid balance is sent to the parent.

Current law in section 14-10-13 states that a "minor cannot disaffirm an obligation, otherwise valid, entered into by the minor under the express authority or direction of a statute." Current law also states that parents are liable for the support of their minor children. Section 14-08.1-01 states that a "person legally responsible for the support of a child under the age of eighteen years who is not subject to any subsisting court order for the support of the child and who fails to provide support, subsistence, education, or other necessary care for the child, regardless of whether the child is not or was not in destitute circumstances, is liable for the reasonable value of physical or custodial care or support which has been furnished to the child by any person, institution, agency, or county social service board."

Health Professional Immunity

In response to concern over the need for an immunity provision as provided in section 5 of the bill, both proposed amendments would remove the immunity language for health care professionals who provide services on the consent of a minor or inform parents about care to be provided a minor. A health care professional would still be able to assert the statutory authorization for relying or not relying on a minor's consent and informing or not informing a parent or guardian as a defense to a medical liability claim, although statutory immunity would provide a better legal environment for the physician or other health care professional.

(1)

Testimony in Support of Senate Bill No. 2308
House Human Services Committee
February 28, 2005

Madam Chairman Price and Committee members, I'm Bruce Levi representing the North Dakota Medical Association. NDMA is the professional membership organization for North Dakota's physicians, residents and medical students. With me today is Dr. Shari Orser. Dr. Orser has been actively involved in the North Dakota OB-GYN Society and also serves as the Vice President of the North Dakota Medical Association. The North Dakota Medical Association supports SB 2308.

SB 2308 would follow the lead of at least thirty-four other states in providing statutory authority for a physician or other health care professional to rely on the consent of a minor for pregnancy-related health care. SB 2308 is actually a hybrid of Minnesota and Montana statutes. The bill was passed in the Senate by a vote of 42-1.

In summary, SB 2308 would authorize a minor to consent and contract for medical, mental, and other healthcare services to determine the presence of or to treat pregnancy and conditions associated with pregnancy. A physician or other healthcare professional would not be compelled against their best judgment to treat a minor based on the minor's own consent. A physician or other healthcare professional would be authorized under the bill to inform the parent or the guardian of the minor of any health care services given or needed after discussion with the minor under various circumstances. The bill would provide a physician or other healthcare professional or healthcare facility with civil and criminal immunity from liability for relying on a minor's consent or for informing a parent or guardian.

States have traditionally recognized the right of parents to make health care decisions on their children's behalf on the presumption that before reaching the age of majority, young people lack the experience and judgment to make fully informed decisions. In 1991, the Legislative Assembly enacted a third-party consent statute [NDCC 23-12-13] that may imply a general proposition that a minor lacks capacity to provide informed consent for health care.

Nevertheless, there have long been exceptions to the rule that minors lack capacity to provide consent for health care. In North Dakota, our statutes recognize the ability of minors to make decisions in a number of contexts, without the consent of a parent or guardian:

- NDCC Section 14-10-17: Examination, care, and treatment for sexually transmitted disease, alcoholism, or drug abuse
- NDCC Section 14-10-17.1: Examination, care, or treatment in a life-threatening situation

Concern about confidentiality is often a major obstacle to the delivery of health care to adolescents. Access to confidential services is often essential, because many adolescents will not seek care if they have to inform a parent or have their parents' consent. These laws encourage young people to seek the health care services they need and enable them to talk candidly with their physician or other health professional. If access to confidential health care is not an option, teenagers simply may not seek the care they need.

SB 2308 follows the ethics of medical practice. The American Medical Association Code of Medical Ethics addresses the issue of confidential care for minors, and a copy of the ethics opinion is included as an attachment to my written testimony. I will briefly review the bill.

Subsection 1: The language in subsection 1 provides authorization for a minor to consent for pregnancy-related services, as derived from Minnesota law [Minn. Stat. 144.343]. Subsection 1 uses the Minnesota terminology "medical, mental, or other health services to determine the presence of or to treat pregnancy and conditions associated with pregnancy" in describing the services to which a minor may consent. The consent of no other person is required. The authorization does not include abortion services, which are governed by the state's Abortion Control Act [NDCC 14-02.1]. The Abortion Control Act provides for specific consent and notification requirements that would not be affected by this legislation.

Subsection 2: The language in subsection 2 is derived from Montana law [Mont. Code Ann. 41-1-407] which recognizes that based on factors, including the maturity of the minor, a physician should not be compelled to against their best judgment to treat a minor based on the minor's own consent. This provision provides the necessary medical discretion to allow the physician or other

health professional to work within the ethical guidelines that address confidential care for minors.

Subsection 3: The language addresses the financial responsibility of the minor for care. Minnesota specifically provides that a minor consenting to services assumes financial responsibility for the cost of the services in all cases [Minn. Stat. 144.347]. The proposed language in SB 2308 would allow for an agreement that the payment for services will come directly from the minor or from some other source. The proposed language would bring more flexibility to the financial arrangement by providing a context for the physician and minor patient to reach an understanding concerning 1) who is responsible for paying the cost of the medical treatment, and 2) to whom the physician can disclose medical information that is necessary to obtain payment for the services. This language was reviewed by BlueCross BlueShield of North Dakota and they did not find the language problematic.

Subsection 4: The language in subsection 4 authorizes disclosure to parents or guardian in under certain circumstances deemed appropriate in the physician's or other health professional's judgment, but only if the physician or other health care professional discusses with the minor the reasons for informing the parent or guardian before the disclosure. This prior discussion requirement is consistent with the AMA Ethics Code. The circumstances that may result in disclosure to the parent or guardian include:

- Failure to inform the parent or guardian would seriously jeopardize the health of the minor or the unborn child (serious jeopardy standard recognized in AMA Ethics Code, Minnesota and Montana);
- Severe complications are present or anticipated (Mont. Code Ann. 41-1-403);
- Major surgery or prolonged hospitalization is needed (Mont. Code Ann. 41-1-403); or
- Informing the parent or guardian would benefit the minor's physical and mental health (Mont. Code Ann. 41-1-403).

Subsection 5: This language would provide a physician or other health care professional or health care facility with immunity from any civil or criminal liability by reason of providing health care services on the consent of a minor or informing a parent or guardian under SB 2308, but this immunity would not apply to any negligent acts or omissions. This language is similar

to other states that provide immunity for the conduct of the physician or other health care professional in seeking consent from a minor or informing parents or guardians. No immunity is provided for the actual health care provided, which must still be provided in a competent manner.

NDMA urges you to support SB 2308 with a "do pass" recommendation.

I will attempt to answer any questions you have. Dr. Orser also has prepared testimony and can answer your questions from her experience in providing medical care to pregnant minors.

E-5.055 Confidential Care for Minors
AMA Code of Medical Ethics

Physicians who treat minors have an ethical duty to promote the autonomy of minor patients by involving them in the medical decision-making process to a degree commensurate with their abilities.

When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minor's reasons for not involving their parents and correcting misconceptions that may be motivating their objections.

Where the law does not require otherwise, physicians should permit a competent minor to consent to medical care and should not notify parents without the patient's consent. Depending on the seriousness of the decision, competence may be evaluated by physicians for most minors. When necessary, experts in adolescent medicine or child psychological development should be consulted. Use of the courts for competence determinations should be made only as a last resort.

When an immature minor requests contraceptive services, pregnancy-related care (including pregnancy testing, prenatal and postnatal care, and delivery services), or treatment for sexually transmitted disease, drug and alcohol abuse, or mental illness, physicians must recognize that requiring parental involvement may be counterproductive to the health of the patient. Physicians should encourage parental involvement in these situations. However, if the minor continues to object, his or her wishes ordinarily should be respected. If the physician is uncomfortable with providing services without parental involvement, and alternative confidential services are available, the minor may be referred to those services. In cases when the physician believes that without parental involvement and guidance, the minor will face a serious health threat, and there is reason to believe that the parents will be helpful and understanding, disclosing the problem to the parents is ethically justified. When the physician does breach confidentiality to the parents, he or she must discuss the reasons for the breach with the minor prior to the disclosure.

For minors who are mature enough to be unaccompanied by their parents for their examination, confidentiality of information disclosed during an exam, interview, or in counseling should be maintained. Such information may be disclosed to parents when the patient consents to disclosure. Confidentiality may be justifiably breached in situations for which confidentiality for adults may be breached, according to Opinion 5.05, "Confidentiality." In addition, confidentiality for immature minors may be ethically breached when necessary to enable the parent to make an informed decision about treatment for the minor or when such a breach is necessary to avert serious harm to the minor. (IV) Issued June 1994 based on the report "Confidential Care for Minors," adopted June 1992; Updated June 1996.

(2)

Testimony in Favor of Senate Bill 2308
(2-28-05)

Chairman Price and members of the Human Services Committee,

For the record my name is Shari Orser, an obstetrician-gynecologist. I am an employee of Medcenter One Health Systems, but today I am testifying on my own behalf.

I believe this bill is vitally important. It offers confidentiality to assure that needed care is given to the minor in those unfortunate circumstances where the parents do not necessarily have the best interest of the minor in mind. This is especially important when young women are pregnant in order to assure the best possible outcome for the newborn child and the mother.

In surveys minors and providers consistently identify concerns about lack of confidentiality as a barrier to obtaining health care. Minors who are pregnant, have STD's, abuse drugs and alcohol, or have emotional problems may avoid seeking health care if they must inform their parents.

Our best opportunity for optimal pregnancy outcomes is to begin prenatal care early. Statistics from the State Department of Health indicate that on average 43% of teenage mothers start prenatal visits late. These statistics also show that only 25% of all teenage mothers receive the optimal number of prenatal visits. Many minors do not present for prenatal care until the mid-to-late second trimester, often when they can no longer conceal the pregnancy from their parents. This significantly delays the opportunity for treatment with

folic acid, providing iron for anemia, counseling about healthy diet, discussion of other high risk behaviors such as smoking, alcohol and drug use, early treatment of STD's and identification of other risk factors for poor outcome. Some minors do not even come in until they are already in labor and have not received any prenatal care. In either situation, the health of both the mother and child is put in jeopardy.

Accessing care late in a pregnancy is a risk factor for early delivery and babies that are born too early, result in 60% of infant morbidity and mortality. The cost of one day in our NICU (Neonatal Intensive Care Unit) is substantial. If minors are assured of confidentiality they will feel able to seek health care earlier in the pregnancy and would improve pregnancy outcomes as well as potentially limit the risks and eliminate the cost of additional treatment for complications.

When minors know their confidentiality will be respected, they will be able to develop a relationship of trust with the health care provider and in turn the health care provider will be able to encourage the minor to seek parental involvement or facilitate discussions with the minor and the parent if needed.

We would like to believe that all parents are loving and have only their child's best interest at heart, but the sad truth is that that is not always the case.

I am aware of a situation in which a parent refused to consent to an epidural for her 16-year-old daughter. She felt that since her child got herself into the situation, she deserved to

endure the pain of labor. This bill would enable the minor and her physician to determine the best course of treatment and prevent this sort of abuse of parental authority. In some cases parental involvement is just not to a minors benefit.

I believe this bill is important to the health and well-being of young mothers and their children and would urge you to support it with a "Do pass" recommendation.

Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

Price, Clara Sue

From: Christopher Dodson [ndcatholicdir@btinet.net]
Sent: Tuesday, March 15, 2005 3:30 PM
To: Price, Clara Sue
Subject: SB 2308 Talking Points

Rep. Price:

Per your request:

Below are some talking points we have developed to explain why the North Dakota Catholic Conference is not opposing SB 2308. Our experience so far has been that concerned individuals are, if not satisfied, at least not as concerned as they were, upon hearing some of these points.

Christopher Dodson

Our interest in Senate Bill 2308 is to make sure that the bill does not cover abortion services and that it strikes a proper balance between protecting the life and health of the minor mother and the unborn child, on the one hand, and the parent's rights, on the other hand. To date, we think that the bill does this.

Some have expressed concerns about the loss of parental rights under the bill. The conference, of course, defends the principle of parental rights. Those rights, however, should not trump the health and life of the minor and the unborn child.

Here are some of the persuasive points we have heard related to this bill:

1. The bill only allows consent to pregnancy services. It does not include abortion, emergency contraception, and other services.

2. Health care providers are concerned that not enough pregnant minors are receiving prenatal care because they delay seeking medical help until after they have told their parents about the pregnancy. The experience of crisis pregnancy centers supports this perception. Very few of the girls that come in for help have told their parents that they might be pregnant. The unborn child's access to prenatal care should not be delayed until the minor is ready to not only inform her parents, but also get them to consent to the care and agree to pay for it.

3. There are exceptions written into the legislation: Under the bill, a health care provider could inform the parent or guardian if failure to do so would seriously jeopardize the health of the minor or the unborn child, if severe complications are present, major surgery or prolonged hospitalization is needed, or if informing the parent or guardian would benefit the minor's physical or mental health.

4, The Code already allows exceptions to the requirement of informing parents for treatment for sexually transmitted diseases, drug abuse, alcoholism, and emergency care. We have not heard any testimony that these exceptions have been abused. Moreover, it seems that protecting the life and health of the unborn child is as important, if not more so, than these types of care.

5. The moment the child is born, the minor has the authority and duty to make healthcare decisions for that child. From a prolife perspective, it seems a little inconsistent to argue that she cannot make decisions regarding the health of the unborn child prior to that moment. Indeed, considering that she will have to make decisions after birth, granting a legal right to do so before birth prepares her for the responsibilities to come.

6. The proponents of the bill are not pushing a "child autonomy" agenda. With the exception of one case where the parents refused to allow their daughter to receive pain relief during labor, no testimony was presented showing that healthcare professionals want to bypass the parents. Instead, what they mostly want is the ability to provide care in those rare instances where the minor absolutely refuses to allow the doctor to inform the parents. In other words, we have not seen anything indicating an alternative agenda.

To summarize, we think the bill has been carefully written to address an important need in health care, honoring the dignity of the minor and protecting the health of an unborn child, without extending beyond that and without unduly infringing upon parental rights.

If the bill is amended so that this careful balance is lost, we will reconsider whether to oppose the bill.

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