

MIEC New Law Alert

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Idaho Edition

New laws affecting Idaho clinicians

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The Idaho Legislature enacted a number of new laws affecting physicians, other health care professionals and patients: public health nurses may now deliver and label certain medications; physician assistants must now submit to criminal history checks and may establish independent medical practices; physician supervisory requirements are further defined; informal consultations do not establish physician-patient relationships; civil liability protections are provided to owners and users of AEDs; conscience protections are extended to include health care professionals; the IRIS registry is now an opt-out program; the Idaho Board of Medicine may now issue subpoenas in conjunction with investigations and depositions; and the DEA allows electronic prescriptions for controlled substances.

Public health nurses may label and deliver certain medications

Amends §54-1721, Idaho Code

Public health district nurses licensed by the State of Idaho may now label and deliver refills of certain prepackaged medications for preventive health services. The medications include prenatal vitamins, contraceptives, antibiotics for the treatment of tuberculosis, and antiviral medication for the treatment of sexually transmitted infections. The medications are prescribed by a clinician with prescribing authority including physicians, advanced practice nurses, and physician assistants. This law eliminates

the necessity of having clinician level staff travel to rural district offices for the purpose of labeling and delivering the medications.

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Physician Assistants: criminal history checks and right to establish an independent medical practice

Amending §54-1807, Idaho Code, repealing §54-1807 (2), Idaho Code, and adding a new §54-1807A, Idaho Code.

This section expands upon the licensure requirements for a physician assistant (PA), supervision requirements (including a PAs right to establish an independent medical practice) and establishes a PA advisory committee.

“Graduate physician assistant” means a person who is a graduate of an approved program for the education and training of PAs and who meets all of the requirements for licensure, but who:

(a) Has not yet taken and passed the certification examination and who has been authorized by the board to render patient services under the direction of a supervising physician for a period of six (6) months; or

(b) Has passed the certification examination but who has not yet obtained a college baccalaureate degree and who has been authorized by the board to render patient services under the direction of a supervising physician for a period of not more than five (5) years.

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Licensure and criminal history check

The licensure requirements for PAs include passage of an examination acceptable to the board and submission of a completed application to the board on forms furnished by the board. All applicants for original licensure as a PA shall submit to a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database.

Physician supervision

After a supervising physician or alternate supervising physician receives board approval to supervise a physician assistant, the physician may delegate medical services to the physician assistant as set forth in the delegation of services agreement on forms approved by and filed with the board. The physician assistant may perform delegated medical services in any setting authorized by the supervising physician or alternate supervising physician and the board, including clinics, hospitals, ambulatory surgical centers, patients' homes, nursing homes and other health care institutions.

The supervising physician and alternate supervising physician are responsible for all aspects of the performance of a physician assistant whether or not the supervising physician or alternate supervising physician actually pays the physician assistant a salary. The supervising physician and alternate supervising physician are responsible for supervising the PA and ensuring the medical services performed by the PA are within the PA's scope of training and experience and have been properly delegated by the supervising physician or alternate supervising physician.

Supervision shall be continuous but shall not require the constant physical presence of the supervising physician or alternate supervising physician at

the time and place where medical services are performed by the PA.

A supervising physician or alternate supervising physician shall not delegate to a PA the performance of any medical services for which the supervising physician or alternate supervising physician does not have training or experience and does not perform.

PAs may independently own a medical practice

A PA or a group of PAs may independently own a medical practice provided that the supervising physician, alternate supervising physician and each physician assistant comply with legal requirements and board rules for PAs and supervising physicians. Each PA must be licensed, registered or certified as a PA in any state, territory or jurisdiction of the United States for at least two years before the PA may independently own a practice in Idaho. This provision clarifies a longstanding dispute and confusion as to whether a PA may own a medical practice in Idaho, particularly without a physician co-owner. Medicare requirements should also be considered before a PA establishes an independent practice. Likewise, MIEC insureds should contact MIEC to determine whether they are covered for the acts of PAs under their supervision, and under what circumstances and conditions policyholders can insure the PAs they supervise or employ.

(Note: These physician supervision requirements are in addition to existing requirements. See MIEC Special Report Claims Alert Number 25A, "The use of nonphysician clinicians in a medical practice" for more information on existing requirements.)

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No physician-patient relationship for informal consultations

Addition of §54-1821, Idaho Code

This law creates a safe harbor by clarifying that a doctor who does not see a patient and only provides counsel to another doctor without expectation of compensation does not have a physician-patient relationship with that patient. A consulted physician who does not have a physician-patient relationship with a patient by virtue of this law shall not be named on any special verdict form concerning care provided to the patient unless there is a basis of liability to the patient independent of the consultation.

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Automated External Defibrillators: civil liability protection

Amending §5-337, Idaho Code

This law is directed at encouraging the placement of automated external defibrillators (AEDs) by providing civil liability protection to owners of the devices. It increases the negligence standard from simple negligence to gross negligence, while still providing requirements regarding the maintenance of AEDs.

A person or entity who acquires a defibrillator which has been prescribed by a physician or osteopath shall ensure that:

Expected defibrillator users receive training in its use and care equivalent to the CPR and AED training of the American Heart Association, the American Red Cross or similar entities;

The defibrillator is maintained and tested by the owner according to the manufacturer's operational guidelines;

There is involvement of a licensed physician in the owner's program to ensure compliance with requirements for training, notification, maintenance and guidelines for use;

Any person who renders emergency care or treatment of a person in cardiac arrest by using a defibrillator must activate the emergency medical services system as soon as possible, and must report any clinical use of the defibrillator to the prescribing physician.

The person or entity who acquires a defibrillator shall notify an agent of the emergency communications system or emergency vehicle dispatch center of the existence, location and type of defibrillator.

Any person who reasonably renders emergency care using a defibrillator, without remuneration or expectation of remuneration, at the scene of an accident or emergency shall not be liable for any civil damages resulting from the person's acts or omissions.

No cause of action shall be maintained against a licensed physician, osteopath, physician assistant, nurse practitioner, or nurse, or against an emergency medical technician, fireman, peace officer, ambulance attendant or other person trained to use a defibrillator, or against a person or entity who acquires or maintains a defibrillator which arises from the reasonable use of a defibrillator in an emergency setting and no cause of action shall be maintained against the physician or osteopath who wrote the prescription for the defibrillator if the prescription was written in good faith.

This immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton or reckless misconduct.

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Conscience protections for health care professionals

Addition of new §18-611, Idaho Code

In 1973, the Idaho Legislature enacted limited conscience protections for hospitals and doctors. This law extends conscience protections to other licensed health care professionals in limited circumstances.

Definitions:

"Abortifacient" means any drug that causes an abortion as defined in §18-604, Idaho Code, emergency contraception or any drug the primary purpose of which is to cause the destruction of an embryo or fetus.

"Reasonably accommodate" and "undue hardship" shall be construed consistently with Title VII of the Federal Civil Rights Act of 1964, as amended.

According to the new law, no health care professional shall be required to provide "health care services" (defined as abortion, dispensation of an abortifacient drug, human embryonic stem cell research, treatment regimens utilizing human embryonic stem cells, human embryo cloning or end of life treatment and care) that violate his or her conscience. "Provision of services" includes to counsel, advise, perform, dispense, assist in or refer for any of the services listed above.

Employers of health care professionals shall reasonably accommodate the conscience rights of their employees upon advanced written notification by the employee. Such notice shall suffice without specification of the reason therefor. It shall be unlawful for any employer to discriminate against

any health care professional based upon his or her declining to provide a health care service that violates his or her conscience, unless the employer can demonstrate that such accommodation poses an undue hardship.

No health care professional or employer of the health care professional shall be civilly, criminally or administratively liable for the professional's declining to provide health care services that violate his or her conscience, except for life-threatening situations. If a health care professional invokes a conscience right in a life-threatening situation where no other health care professional capable of treating the emergency is available, he or she shall provide care and treatment until an alternate health care professional capable of treating the emergency is found.

The law does not allow a health care professional or employer to refuse to provide health care services because of a patient's race, color, religion, sex, age, disability or national origin.

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Immunization Reminder Information System is now "opt-out"

Amending §§39-4803 and 39-4804, Idaho Code

The purpose of this law is to raise childhood immunization rates by expanding use of the Immunization Reminder Information System (IRIS) by physicians and other health care providers. By changing the IRIS registry to an opt-out program, more information regarding a child's immunization status will be available to health care providers. Parents who do not wish to have their children's data included will have the right to opt out of the system. An opt-out IRIS system will require less time and effort to assist the minority of individuals

who choose to opt out, rather than go through the consent process for every single patient.

At the time information is initially collected regarding any child for entry into the registry, the parent or guardian shall be notified that:

They have the right under Idaho law to submit a statement which exempts them from any requirement to have information regarding the child entered into the registry. At any time they have the right to remove any information from the registry regarding the child; and

Immunizations are not mandatory and may be refused on religious and other grounds.

The decision of a parent or guardian to submit a statement or remove any information from the registry or refuse the immunization on religious or other grounds shall not be used in any manner against the interests of the parent or guardian in any administrative, civil or criminal action.

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Idaho Board of Medicine subpoena power

Amending §54-1806 (4), Idaho Code

The Idaho Board of Medicine may now issue a subpoena in conjunction with investigations or depositions conducted by the Board. This expands upon the Board's authority to issue a subpoena in conjunction with disciplinary proceedings and hearings. Previous court rulings had held that the Board did not have subpoena power prior to formal disciplinary proceedings being undertaken. With respect to subpoena power, the law's impact is primarily on third persons, as the Board has previously considered it an independent violation of the Medical Practices Act for a physician

to refuse to provide information and records to the Board of Medicine at their request during an investigation.

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DEA allows electronic prescriptions for controlled substances

Effective June 1, 2010, DEA's rule, "Electronic Prescriptions for Controlled Substances" revised DEA's regulations to provide practitioners with the option of writing (and transmitting) prescriptions for controlled substances electronically. The electronic health record application used by the practitioner must be certified as meeting the requirements of the DEA's rule, and two-factor identity proofing of individual prescribing providers is required (two of the following: something you know, something you have, something you are). "Something you know" refers to a password; an example of "something you have" could be a cryptographic key stored on a hardware device such as a PDA. It must remain in the provider's sole possession. "Something you are" indicates biometric identifiers such as a fingerprint.

For more information, please see the Frequently Asked Questions on the DEA website:

http://www.deadiversion.usdoj.gov/ecomm/e_rx/faq/faq.htm

State laws must be obeyed if they are more stringent than the DEA rule. According to Idaho Board of Pharmacy, there is an Idaho statute that would prohibit electronic prescribing and transmission of Schedule II drugs. It is the Board's intention to revise the statute to be in congruence with the federal electronic prescription regulations.

We thank Steven J. Hippler, Esq., of Givens Pursley, LLP, Boise, Idaho, for his review of this edition of New Law Alert.

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