

Physician Education Express

Update in Indiana Parental Consent Law



Audience: Physicians, Fellows, Residents, Medical Students and Advanced Practice Providers

Education Level: Yellow

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SUMMARY

Indiana law regarding who can provide medical consent for a minor defines “parent” as one who has legal custody of a child. If one parent has been given sole legal custody of the child, that is the only parent who can consent to medical treatment for that child. While the other parent may have visitation time with the child, if they do not have either joint or sole legal custody of the child, they cannot consent to the child’s medical treatment.

References:

IC 16-18-2-266.4 "Parent or legal guardian or custodian"

Sec. 266.4. (a) "Parent or legal guardian or custodian" means the following, except as provided in subsection (b):

(1) A parent having legal custody of a child.

(2) The biological father of a child who is married to the mother of the child:

(A) if the mother of the child has legal custody of the child; and

(B) even if the father does not have legal custody of the child.

(3) The legal guardian of a child.

(4) The legal custodian of a child.

(b) The term does not include:

(1) the department of correction, if wardship of the child is transferred to the department for housing in a correctional facility for children;

(2) a community based correctional facility for children, if wardship of the child is transferred to the correctional facility for children; or

(3) a secure juvenile facility, if wardship is transferred to the secure juvenile facility.

If an entity described in this subsection has wardship, the person described in subsection (a) who had legal custody of the child (or, in the case of a father described in subsection (a)(2), was married to a mother with legal custody) at the time wardship was transferred is the parent, legal guardian, or custodian of the child unless a court has terminated that person's legal custody or guardianship rights.

As added by P.L.173-2017, SEC.1.

Highlights

There has been a change in the definition of “parent” for purposes of minor medical consent law in Indiana:

-The parent(s) that has/have legal custody of the child can consent to the child’s medical treatment.

-If one parent has sole legal custody of the child that is the only parent who can consent to that child’s medical treatment.

-For more information regarding this change, please reach out to Kori L. Chambers, Esq., CPHRM Associate General Counsel for IU Health kchambers3@iuhealth.org