

**ORDINANCE NUMBER 007-\_\_\_\_\_**  
**DATE OF PASSAGE: \_\_\_\_\_**

PETITIONER: THE CITY OF AURORA

AN ORDINANCE to require parental notice for any Medical Procedure to be performed on a minor; to Medical Doctors to give notice to one parent or guardian at least 48 hours prior to any procedure; to provide for alternative notification in specified circumstances and to provide for judicial by-pass in specified circumstances; to provide exceptions; to provide for penalties; and to provide for related matters.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City Council of the City of Aurora has determined that it is in the best interest of public health, safety, morals and welfare to require parental notification of abortion as set forth in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows:

**Section 1. Short Title.**

This Ordinance may be cited as the “*Parental Notification of Medical Procedures Ordinance.*”

**Section 2. Legislative Purpose and Findings.**

(a) The City Council finds that:

(1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.

(2) The medical, emotional, and psychological consequences of Medical Procedures are sometimes serious and can be lasting, particularly when the patient is immature.

(3) The capacity to decide whether or not a Medical Procedure is required presupposes capacity for mature judgment .

(4) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the child.

(5) Parents who are aware that their minor child's Medical Procedure ensure that he or she receives adequate medical attention after their procedure.

(6) Parental consultation is usually desirable and in the best interests of the minor.

(b) The City Council's purpose in enacting this parental notice law is to further the important and compelling public interests of:

(1) Protecting minors against their own immaturity.

(2) Fostering family unity and preserving the family as a viable social unit.

(3) Protecting the constitutional rights of parents to rear children who are members of their household.

(4) In light of the foregoing statements of purposes, allowing for judicial bypasses of parental notification to be made only in exceptional or rare circumstances.

### **Section 3. Definitions.**

For purposes of this Ordinance:

(a) **"Medical Procedure"** means any course of action taken by medical or paramedical personnel intended to achieve a result in the care of a patient.

(b) **"Actual notice"** means the giving of notice directly, in person or by telephone.

(c) **"Constructive notice"** means notice by certified mail to the last known address of the parent or guardian with delivery deemed to have occurred 48 hours after the certified notice is mailed.

(d) **"Emancipated minor"** means any person under eighteen years of age who is or has been married or who has been legally emancipated.

(e) **"Incompetent"** means any person who has been adjudged a disabled person and has had a guardian appointed for her under the State Probate Act.

(f) “**Medical emergency**” means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a patient to necessitate the immediate action to avert death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(g) “**Neglect**” means the failure of a parent to supply a child with necessary food, clothing, shelter, or medical care when reasonably able to do so or the failure to protect a child from conditions or actions that imminently and seriously endanger the child's physical or mental health when reasonably able to do so.

(h) “**Physical abuse**” means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(i) “**Physician**” means any person licensed to practice medicine in all its branches under the Illinois Medical Practice Act of 1987.

(j) “**First Responder**” refers to those individuals who in the early stages of an incident are responsible for the protection and the preservation of life, property evidence and the environment, including emergency response providers as defined in section 2 of the Homeland Security Act of 2002 (6U.S.C.101) as well as emergency management public health, clinical care, and other skilled support personnel that provide immediate support services during prevention, response, and recovery operations.

(k) “**Good Samaritan**” Someone who voluntarily helps someone else who is in distress.

(l) “**Sexual abuse**” means any sexual conduct or sexual penetration as defined in Section 12-12 of the Illinois Criminal Code of 1961 that is prohibited by the criminal laws of the State of Illinois and committed against a minor by an adult family member as defined in the Illinois Criminal Code of 1961.

#### **Section 4. Notice of One Parent Required.**

No person shall perform a Medical Procedure upon an unemancipated minor or upon an incompetent unless that person has given at least 48 hours actual notice to one parent or the legal guardian. The notice may be given by a referring physician. The person who performs the Medical Procedure must receive the written statement of the referring physician certifying that the referring physician has given notice to the parent or guardian of the unemancipated minor or incompetent who is to receive the Medical Procedure. If actual notice is not possible after a reasonable effort, the person or his or her agent must give 48 hours constructive notice.

### **Section 5. Alternate Notification.**

If the minor patient declares in a signed written statement that she is a victim of sexual abuse, neglect, or physical abuse by either of his or her parents or legal guardian, then the attending physician shall give the notice required by this Ordinance to a brother or sister of the minor who is over 21 years of age, or to a stepparent or grandparent specified by the minor. The physician who intends to perform the Medical Procedure must certify in the patient's medical record that he or she has received the written declaration of abuse or neglect. Any physician relying in good faith on a written statement under this Section shall not be civilly or criminally liable under any provisions of this Ordinance for failure to give notice.

### **Section 6. Exceptions.**

Notice shall not be required under Section 4 or 5 of this Ordinance if:

- (a) The attending physician, First Responder, or a good Samaritan certifies that a medical emergency exists and there is insufficient time to provide the required notice; or
- (b) Notice is waived in writing by the person who is entitled to notice; or
- (c) Notice is waived under section 7.

If Notice is not required based on an emergency pursuant to subparagraph (a) of this Section, then the attending physician shall send Notice in accordance with the terms of this Ordinance within 24 hours of performing the Medical Procedure.

### **Section 7. Procedure for Judicial Waiver of Notice.**

- (a) The requirements and procedures under this Section are available to minors and incompetent persons whether or not they are residents of this state.
- (b) The minor or incompetent person may petition any circuit court for a waiver of the notice requirement and may participate in proceedings on her own behalf. The petition shall include a statement that the complainant requires a Medical Procedure and is unemancipated. The petition shall also include a statement that notice has not been waived and that the complainant wishes to receive the procedure without giving notice under this Ordinance. The court may appoint a guardian ad litem for him or her. Any guardian ad litem appointed under this Ordinance shall act to maintain the confidentiality of the proceedings.

The circuit court shall advise him or her that they have a right to court-appointed counsel and shall provide her with counsel upon her request.

(c) Court proceedings under this Section shall be confidential and shall ensure the anonymity of the minor or incompetent person. All court proceedings under this section shall be sealed. The minor or incompetent person shall have the right to file his or her petition in the circuit court using a pseudonym or using solely his or her initials. All documents related to this petition shall be confidential and shall not be available to the public. These proceedings shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within 48 hours of the time that the petition was filed, except that the 48-hour limitation may be extended at the request of the minor or incompetent person. If the court fails to rule within the 48-hour period and an extension was not requested, then the petition shall be deemed to have been granted, and the notice requirement shall be waived.

(d) If the court finds, by clear and convincing evidence, that the minor is both sufficiently mature and well-informed to decide whether to have a Medical Procedure, the court shall issue an order authorizing the minor to consent to the performance or inducement of a Medical Procedure without the notification of a parent or guardian and the court shall execute the required forms. If the court does not make the finding specified in this subparagraph or subparagraph (e) of this section, it shall dismiss the petition.

(e) If the court finds, by clear and convincing evidence, that there is a pattern of physical, sexual, or emotional abuse of the complainant by one or both of his or her parents, guardian, or custodian, or that the notification of a parent or guardian is not in the best interest of the complainant, the court shall issue an order authorizing the minor to consent to the performance or inducement of a Medical Procedure without the notification of a parent or guardian. If the court does not make the finding specified in this subparagraph or subparagraph (d) of this section, it shall dismiss the petition.

(f) A court that conducts proceedings under this Section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor.

(g) An expedited confidential appeal shall be available, as the Supreme Court provides by rule, to any minor or incompetent person to whom the circuit court denies a waiver of notice. An order authorizing a Medical Procedure without notice shall not be subject to appeal.

### **Section 9. Penalties.**

(a) Any person who intentionally performs a Medical Procedure with knowledge that or with reckless disregard as to whether the person upon whom the Medical Procedure is to be performed is an unemancipated minor or an incompetent without providing the required notice is guilty of a Class A Misdemeanor. “Intentionally” is defined by Section 4-4 of the Illinois Criminal Code of 1961 (720 ILCS 5/4-4). It is an affirmative defense to prosecution under this section that the minor falsely represented his or her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a careful and prudent person under similar circumstances would have relied on the representation. This affirmative defense does not apply if the physician is shown to have had independent knowledge of the minor’s actual age or identity or failed to use due diligence in determining the minor’s age or identity. In this subsection, “affirmative defense” has the meaning and application assigned by Section 3-2 of the Illinois Criminal Code of 1961 (720 ILCS 5/3-2).

(b) Failure to provide persons with the notice required under this Ordinance is *prima facie* evidence of failure to provide notice and of interference with family relations in appropriate civil actions. Such prima facie evidence shall not apply to any issue other than failure to inform the parents or guardian and interference with family relations in appropriate civil actions. The civil action may be based on a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. The law of this State shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this Ordinance. Nothing in this Ordinance shall be construed to limit the common law rights of parents.

(c) Any person not authorized to receive notice under this Ordinance who signs a waiver of notice under subsection (b) of Section 6 is guilty of a Class A Misdemeanor.

(d) Any person who coerces a minor to have a Medical Procedure is guilty of a Class A Misdemeanor.

**Section 10. Construction.**

(a) Nothing in this Ordinance shall be construed as creating or recognizing a right to a Medical Procedure.

Section 11. Severability.

The provisions of this Ordinance are declared to be severable, and if any provision, word, phrase, or clause of the Ordinance or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance.

**PASSED AND APPROVED** by the City Council of the City of Aurora, Illinois on this \_\_\_\_\_ Day of \_\_\_\_\_, 2007.

**AYES** \_\_\_\_\_ **NAYS** \_\_\_\_\_ **NOT VOTING** \_\_\_\_\_

**SIGNED** by the Mayor of the City of Aurora, Illinois, on this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Mayor  
City of Aurora                      Illinois

Attest:

\_\_\_\_\_  
City Clerk