

SHB 1197 - H AMD 387

By Representative Riccelli

ADOPTED 03/04/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 7.70.065 and 2019 c 232 s 8 and 2019 c 209 s 1 are
4 each reenacted and amended to read as follows:

5 (1) Informed consent for health care for a patient who is not
6 competent, as defined in RCW 11.88.010(1)(e), to consent may be
7 obtained from a person authorized to consent on behalf of such
8 patient.

9 (a) Persons authorized to provide informed consent to health care
10 on behalf of a patient who is not competent to consent, based upon a
11 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall
12 be a member of one of the following classes of persons in the
13 following order of priority:

14 (i) The appointed guardian of the patient, if any;

15 (ii) The individual, if any, to whom the patient has given a
16 durable power of attorney that encompasses the authority to make
17 health care decisions;

18 (iii) The individual to whom the patient has designated to make
19 health care decisions by orally or personally informing a physician,
20 nurse practitioner, or physician assistant who then signs and enters
21 a document with this information into the patient's health record,
22 provided that the physician, nurse practitioner, or physician
23 assistant determines that the patient has capacity as defined in (e)
24 of this subsection at the time of the designation and documents it in
25 the patient's health record;

26 (iv) The patient's spouse or state registered domestic partner;

27 ~~((iv))~~ (v) Children of the patient who are at least eighteen
28 years of age;

29 ~~((v))~~ (vi) Parents of the patient;

30 ~~((vi))~~ (vii) Adult brothers and sisters of the patient;

31 ~~((vii))~~ (viii) Adult grandchildren of the patient who are
32 familiar with the patient;

1 (~~(viii)~~) (ix) Adult nieces and nephews of the patient who are
2 familiar with the patient;

3 (~~(ix)~~) (x) Adult aunts and uncles of the patient who are
4 familiar with the patient; and

5 (~~(x)~~) (xi) (A) An adult who:
6 (I) Has exhibited special care and concern for the patient;
7 (II) Is familiar with the patient's personal values;
8 (III) Is reasonably available to make health care decisions;
9 (IV) Is not any of the following: A physician to the patient or
10 an employee of the physician; the owner, administrator, or employee
11 of a health care facility, nursing home, or long-term care facility
12 where the patient resides or receives care; or a person who receives
13 compensation to provide care to the patient; and
14 (V) Provides a declaration under (a)(~~(x)~~) (xi) (B) of this
15 subsection.

16 (B) An adult who meets the requirements of (a)(~~(x)~~) (xi) (A) of
17 this subsection shall provide a declaration, which is effective for
18 up to six months from the date of the declaration, signed and dated
19 under penalty of perjury pursuant to (~~RCW 9A.72.085~~) chapter 5.50
20 RCW, that recites facts and circumstances demonstrating that he or
21 she is familiar with the patient and that he or she:
22 (I) Meets the requirements of (a)(~~(x)~~) (xi) (A) of this
23 subsection;
24 (II) Is a close friend of the patient;
25 (III) Is willing and able to become involved in the patient's
26 health care;
27 (IV) Has maintained such regular contact with the patient as to
28 be familiar with the patient's activities, health, personal values,
29 and morals; and
30 (V) Is not aware of a person in a higher priority class willing
31 and able to provide informed consent to health care on behalf of the
32 patient.

33 (C) A health care provider may, but is not required to, rely on a
34 declaration provided under (a)(~~(x)~~) (xi) (B) of this subsection. The
35 health care provider or health care facility where services are
36 rendered is immune from suit in any action, civil or criminal, or
37 from professional or other disciplinary action when such reliance is
38 based on a declaration provided in compliance with (a)(~~(x)~~) (xi) (B)
39 of this subsection.

1 (b) If the health care provider seeking informed consent for
2 proposed health care of the patient who is not competent to consent
3 under RCW 11.88.010(1)(e), other than a person determined to be
4 incapacitated because he or she is under the age of majority and who
5 is not otherwise authorized to provide informed consent, makes
6 reasonable efforts to locate and secure authorization from a
7 competent person in the first or succeeding class and finds no such
8 person available, authorization may be given by any person in the
9 next class in the order of descending priority. However, no person
10 under this section may provide informed consent to health care:

11 (i) If a person of higher priority under this section has refused
12 to give such authorization; or

13 (ii) If there are two or more individuals in the same class and
14 the decision is not unanimous among all available members of that
15 class.

16 (c) Before any person authorized to provide informed consent on
17 behalf of a patient not competent to consent under RCW
18 11.88.010(1)(e), other than a person determined to be incapacitated
19 because he or she is under the age of majority and who is not
20 otherwise authorized to provide informed consent, exercises that
21 authority, the person must first determine in good faith that that
22 patient, if competent, would consent to the proposed health care. If
23 such a determination cannot be made, the decision to consent to the
24 proposed health care may be made only after determining that the
25 proposed health care is in the patient's best interests.

26 (d) No rights under Washington's death with dignity act, chapter
27 70.245 RCW, may be exercised through a person authorized to provide
28 informed consent to health care on behalf of a patient not competent
29 to consent under RCW 11.88.010(1)(e).

30 (e) For purposes of (a)(iii) of this subsection:

31 (i) A patient is presumed to have capacity, unless a health care
32 provider reasonably determines the patient lacks capacity due to the
33 patient's demonstrated inability to understand and appreciate the
34 nature and consequences of designating an individual to make health
35 care decisions on the patient's behalf as a result of a cognitive
36 impairment. A patient is presumed not to have the capacity to make a
37 health care designation if the patient has been determined to be
38 incapacitated under RCW 11.125.090 or if the patient is an adult
39 subject to a guardianship that includes health care decision making
40 under RCW 11.88.010.

1 (ii) A patient may revoke a designation at any time by either a
2 verbal expression or a signed and dated written statement expressing
3 his or her intent to revoke. Such revocation shall become effective
4 only upon communication to the attending physician by the patient or
5 by a person acting on behalf of the patient. The attending physician
6 shall record the time, date, and place of revocation and the time,
7 date, and place of revocation, if different, of when the physician
8 received notification of the revocation.

9 (iii) A health care provider that relies upon the consent of an
10 individual designated to provide care to a patient is immune from
11 suit in any action, civil or criminal, or from professional or other
12 disciplinary action for relying upon such consent unless the health
13 care provider had actual knowledge of the patient's revocation of
14 that designation at the time consent was obtained.

15 (2) Informed consent for health care, including mental health
16 care, for a patient who is not competent, as defined in RCW
17 11.88.010(1)(e), because he or she is under the age of majority and
18 who is not otherwise authorized to provide informed consent, may be
19 obtained from a person authorized to consent on behalf of such a
20 patient.

21 (a) Persons authorized to provide informed consent to health
22 care, including mental health care, on behalf of a patient who is
23 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she
24 is under the age of majority and who is not otherwise authorized to
25 provide informed consent, shall be a member of one of the following
26 classes of persons in the following order of priority:

27 (i) The appointed guardian, or legal custodian authorized
28 pursuant to Title 26 RCW, of the minor patient, if any;

29 (ii) A person authorized by the court to consent to medical care
30 for a child in out-of-home placement pursuant to chapter 13.32A or
31 13.34 RCW, if any;

32 (iii) Parents of the minor patient;

33 (iv) The individual, if any, to whom the minor's parent has given
34 a signed authorization to make health care decisions for the minor
35 patient; and

36 (v) A competent adult representing himself or herself to be a
37 relative responsible for the health care of such minor patient or a
38 competent adult who has signed and dated a declaration under penalty
39 of perjury pursuant to chapter 5.50 RCW stating that the adult person
40 is a relative responsible for the health care of the minor patient.

1 Such declaration shall be effective for up to six months from the
2 date of the declaration.

3 (b) (i) Informed consent for health care on behalf of a patient
4 who is incapacitated, as defined in RCW 11.88.010(1)(e), because he
5 or she is under the age of majority and who is not otherwise
6 authorized to provide informed consent may be obtained from a school
7 nurse, school counselor, or homeless student liaison when:

8 (A) Consent is necessary for nonemergency, outpatient, primary
9 care services, including physical examinations, vision examinations
10 and eyeglasses, dental examinations, hearing examinations and hearing
11 aids, immunizations, treatments for illnesses and conditions, and
12 routine follow-up care customarily provided by a health care provider
13 in an outpatient setting, excluding elective surgeries;

14 (B) The minor patient meets the definition of a "homeless child
15 or youth" under the federal McKinney-Vento homeless education
16 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
17 115 Stat. 2005; and

18 (C) The minor patient is not under the supervision or control of
19 a parent, custodian, or legal guardian, and is not in the care and
20 custody of the department of social and health services.

21 (ii) A person authorized to consent to care under this subsection
22 (2)(b) and the person's employing school or school district are not
23 subject to administrative sanctions or civil damages resulting from
24 the consent or nonconsent for care, any care, or payment for any
25 care, rendered pursuant to this section. Nothing in this section
26 prevents a health care facility or a health care provider from
27 seeking reimbursement from other sources for care provided to a minor
28 patient under this subsection (2)(b).

29 (iii) Upon request by a health care facility or a health care
30 provider, a person authorized to consent to care under this
31 subsection (2)(b) must provide to the person rendering care a
32 declaration signed and dated under penalty of perjury pursuant to
33 chapter 5.50 RCW stating that the person is a school nurse, school
34 counselor, or homeless student liaison and that the minor patient
35 meets the elements under (b)(i) of this subsection. The declaration
36 must also include written notice of the exemption from liability
37 under (b)(ii) of this subsection.

38 (c) A health care provider may, but is not required to, rely on
39 the representations or declaration of a person claiming to be a
40 relative responsible for the care of the minor patient, under (a)(v)

1 of this subsection, or a person claiming to be authorized to consent
2 to the health care of the minor patient under (b) of this subsection,
3 if the health care provider does not have actual notice of the
4 falsity of any of the statements made by the person claiming to be a
5 relative responsible for the health care of the minor patient, or
6 person claiming to be authorized to consent to the health care of the
7 minor patient.

8 (d) A health care facility or a health care provider may, in its
9 discretion, require documentation of a person's claimed status as
10 being a relative responsible for the health care of the minor
11 patient, or a person claiming to be authorized to consent to the
12 health care of the minor patient under (b) of this subsection.
13 However, there is no obligation to require such documentation.

14 (e) The health care provider or health care facility where
15 services are rendered shall be immune from suit in any action, civil
16 or criminal, or from professional or other disciplinary action when
17 such reliance is based on a declaration signed under penalty of
18 perjury pursuant to chapter 5.50 RCW stating that the adult person is
19 a relative responsible for the health care of the minor patient under
20 (a)(v) of this subsection, or a person claiming to be authorized to
21 consent to the health care of the minor patient under (b) of this
22 subsection.

23 (3) For the purposes of this section, "health care," "health care
24 provider," and "health care facility" shall be defined as established
25 in RCW 70.02.010.

26 (4) A person who knowingly provides a false declaration under
27 this section shall be subject to criminal penalties under chapter
28 9A.72 RCW.

29 **Sec. 2.** RCW 7.70.065 and 2020 c 312 s 705 are each amended to
30 read as follows:

31 (1) Informed consent for health care for a patient who is a minor
32 or, to consent may be obtained from a person authorized to consent on
33 behalf of such patient.

34 (a) Persons authorized to provide informed consent to health care
35 on behalf of a patient who has been placed under a guardianship under
36 RCW 11.130.265 a minor or, shall be a member of one of the following
37 classes of persons in the following order of priority:

38 (i) The appointed guardian of the patient, if any;

1 (ii) The individual, if any, to whom the patient has given a
2 durable power of attorney that encompasses the authority to make
3 health care decisions;

4 (iii) The individual to whom the patient has designated to make
5 health care decisions by orally or personally informing a physician,
6 nurse practitioner, or physician assistant who then signs and enters
7 a document with this information into the patient's health record,
8 provided that the physician, nurse practitioner, or physician
9 assistant determines that the patient has capacity as defined in (e)
10 of this subsection at the time of the designation and documents it in
11 the patient's health record;

12 (iv) The patient's spouse or state registered domestic partner;

13 ~~((iv))~~ (v) Children of the patient who are at least eighteen
14 years of age;

15 ~~((v))~~ (vi) Parents of the patient;

16 ~~((vi))~~ (vii) Adult brothers and sisters of the patient;

17 ~~((vii))~~ (viii) Adult grandchildren of the patient who are
18 familiar with the patient;

19 ~~((viii))~~ (ix) Adult nieces and nephews of the patient who are
20 familiar with the patient;

21 ~~((ix))~~ (x) Adult aunts and uncles of the patient who are
22 familiar with the patient; and

23 ~~((x))~~ (xi) (A) An adult who:

24 (I) Has exhibited special care and concern for the patient;

25 (II) Is familiar with the patient's personal values;

26 (III) Is reasonably available to make health care decisions;

27 (IV) Is not any of the following: A physician to the patient or
28 an employee of the physician; the owner, administrator, or employee
29 of a health care facility, nursing home, or long-term care facility
30 where the patient resides or receives care; or a person who receives
31 compensation to provide care to the patient; and

32 (V) Provides a declaration under (a) ~~((x))~~ (xi) (B) of this
33 subsection.

34 (B) An adult who meets the requirements of (a) ~~((x))~~ (xi) (A) of
35 this subsection shall provide a declaration, which is effective for
36 up to six months from the date of the declaration, signed and dated
37 under penalty of perjury pursuant to chapter 5.50 RCW, that recites
38 facts and circumstances demonstrating that he or she is familiar with
39 the patient and that he or she:

1 (I) Meets the requirements of (a)(~~(*)~~) (xi)(A) of this
2 subsection;

3 (II) Is a close friend of the patient;

4 (III) Is willing and able to become involved in the patient's
5 health care;

6 (IV) Has maintained such regular contact with the patient as to
7 be familiar with the patient's activities, health, personal values,
8 and morals; and

9 (V) Is not aware of a person in a higher priority class willing
10 and able to provide informed consent to health care on behalf of the
11 patient.

12 (C) A health care provider may, but is not required to, rely on a
13 declaration provided under (a)(~~(*)~~) (xi)(B) of this subsection. The
14 health care provider or health care facility where services are
15 rendered is immune from suit in any action, civil or criminal, or
16 from professional or other disciplinary action when such reliance is
17 based on a declaration provided in compliance with (a)(~~(*)~~) (xi)(B)
18 of this subsection.

19 (b) If the health care provider seeking informed consent for
20 proposed health care of the patient who has been placed under a
21 guardianship under RCW 11.130.265(~~(7)~~) makes reasonable efforts to
22 locate and secure authorization from a competent person in the first
23 or succeeding class and finds no such person available, authorization
24 may be given by any person in the next class in the order of
25 descending priority. However, no person under this section may
26 provide informed consent to health care:

27 (i) If a person of higher priority under this section has refused
28 to give such authorization; or

29 (ii) If there are two or more individuals in the same class and
30 the decision is not unanimous among all available members of that
31 class.

32 (c) Before any person authorized to provide informed consent on
33 behalf of a patient who has been placed under a guardianship under
34 RCW 11.130.265(~~(7)~~) exercises that authority, the person must first
35 determine in good faith that that patient, if competent, would
36 consent to the proposed health care. If such a determination cannot
37 be made, the decision to consent to the proposed health care may be
38 made only after determining that the proposed health care is in the
39 patient's best interests.

1 (d) No rights under Washington's death with dignity act, chapter
2 70.245 RCW, may be exercised through a person authorized to provide
3 informed consent to health care on behalf of a patient who is a minor
4 or has been placed under a guardianship under RCW 11.130.265.

5 (e) For purposes of (a)(iii) of this subsection:

6 (i) A patient is presumed to have capacity, unless a health care
7 provider reasonably determines the patient lacks capacity due to the
8 patient's demonstrated inability to understand and appreciate the
9 nature and consequences of designating an individual to make health
10 care decisions on the patient's behalf as a result of a cognitive
11 impairment. A patient is presumed not to have the capacity to make a
12 health care designation if the patient has been determined to be
13 incapacitated under RCW 11.125.090 or if the patient is an adult
14 subject to a guardianship that includes health care decision making
15 under RCW 11.130.265.

16 (ii) A patient may revoke a designation at any time by either a
17 verbal expression or a signed and dated written statement expressing
18 his or her intent to revoke. Such revocation shall become effective
19 only upon communication to the attending physician by the patient or
20 by a person acting on behalf of the patient. The attending physician
21 shall record the time, date, and place of revocation and the time,
22 date, and place of revocation, if different, of when the physician
23 received notification of the revocation.

24 (iii) A health care provider that relies upon the consent of an
25 individual designated to provide care to a patient is immune from
26 suit in any action, civil or criminal, or from professional or other
27 disciplinary action for relying upon such consent unless the health
28 care provider had actual knowledge of the patient's revocation of
29 that designation at the time consent was obtained.

30 (2) Informed consent for health care, including mental health
31 care, for a patient who is under the age of majority and who is not
32 otherwise authorized to provide informed consent, may be obtained
33 from a person authorized to consent on behalf of such a patient.

34 (a) Persons authorized to provide informed consent to health
35 care, including mental health care, on behalf of a patient who is
36 under the age of majority and who is not otherwise authorized to
37 provide informed consent, shall be a member of one of the following
38 classes of persons in the following order of priority:

39 (i) The appointed guardian, or legal custodian authorized
40 pursuant to Title 26 RCW, of the minor patient, if any;

1 (ii) A person authorized by the court to consent to medical care
2 for a child in out-of-home placement pursuant to chapter 13.32A or
3 13.34 RCW, if any;

4 (iii) Parents of the minor patient;

5 (iv) The individual, if any, to whom the minor's parent has given
6 a signed authorization to make health care decisions for the minor
7 patient; and

8 (v) A competent adult representing himself or herself to be a
9 relative responsible for the health care of such minor patient or a
10 competent adult who has signed and dated a declaration under penalty
11 of perjury pursuant to chapter 5.50 RCW stating that the adult person
12 is a relative responsible for the health care of the minor patient.
13 Such declaration shall be effective for up to six months from the
14 date of the declaration.

15 (b)(i) Informed consent for health care on behalf of a patient
16 who is under the age of majority and who is not otherwise authorized
17 to provide informed consent may be obtained from a school nurse,
18 school counselor, or homeless student liaison when:

19 (A) Consent is necessary for nonemergency, outpatient, primary
20 care services, including physical examinations, vision examinations
21 and eyeglasses, dental examinations, hearing examinations and hearing
22 aids, immunizations, treatments for illnesses and conditions, and
23 routine follow-up care customarily provided by a health care provider
24 in an outpatient setting, excluding elective surgeries;

25 (B) The minor patient meets the definition of a "homeless child
26 or youth" under the federal McKinney-Vento homeless education
27 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
28 115 Stat. 2005; and

29 (C) The minor patient is not under the supervision or control of
30 a parent, custodian, or legal guardian, and is not in the care and
31 custody of the department of social and health services.

32 (ii) A person authorized to consent to care under this subsection
33 (2)(b) and the person's employing school or school district are not
34 subject to administrative sanctions or civil damages resulting from
35 the consent or nonconsent for care, any care, or payment for any
36 care, rendered pursuant to this section. Nothing in this section
37 prevents a health care facility or a health care provider from
38 seeking reimbursement from other sources for care provided to a minor
39 patient under this subsection (2)(b).

1 (iii) Upon request by a health care facility or a health care
2 provider, a person authorized to consent to care under this
3 subsection (2)(b) must provide to the person rendering care a
4 declaration signed and dated under penalty of perjury pursuant to
5 chapter 5.50 RCW stating that the person is a school nurse, school
6 counselor, or homeless student liaison and that the minor patient
7 meets the elements under (b)(i) of this subsection. The declaration
8 must also include written notice of the exemption from liability
9 under (b)(ii) of this subsection.

10 (c) A health care provider may, but is not required to, rely on
11 the representations or declaration of a person claiming to be a
12 relative responsible for the care of the minor patient, under (a)(v)
13 of this subsection, or a person claiming to be authorized to consent
14 to the health care of the minor patient under (b) of this subsection,
15 if the health care provider does not have actual notice of the
16 falsity of any of the statements made by the person claiming to be a
17 relative responsible for the health care of the minor patient, or
18 person claiming to be authorized to consent to the health care of the
19 minor patient.

20 (d) A health care facility or a health care provider may, in its
21 discretion, require documentation of a person's claimed status as
22 being a relative responsible for the health care of the minor
23 patient, or a person claiming to be authorized to consent to the
24 health care of the minor patient under (b) of this subsection.
25 However, there is no obligation to require such documentation.

26 (e) The health care provider or health care facility where
27 services are rendered shall be immune from suit in any action, civil
28 or criminal, or from professional or other disciplinary action when
29 such reliance is based on a declaration signed under penalty of
30 perjury pursuant to chapter 5.50 RCW stating that the adult person is
31 a relative responsible for the health care of the minor patient under
32 (a)(v) of this subsection, or a person claiming to be authorized to
33 consent to the health care of the minor patient under (b) of this
34 subsection.

35 (3) For the purposes of this section, "health care," "health care
36 provider," and "health care facility" shall be defined as established
37 in RCW 70.02.010.

38 (4) A person who knowingly provides a false declaration under
39 this section shall be subject to criminal penalties under chapter
40 9A.72 RCW.

1 NEW SECTION. **Sec. 3.** Section 1 of this act expires January 1,
2 2022.

3 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect January
4 1, 2022."

5 Correct the title.

EFFECT: Establishes a presumption that a patient has the capacity to designate a health care surrogate provided that the patient has not been determined incapacitated under the Durable Power of Attorney Act nor is not subject to a guardianship that includes health care decision-making. Allows a health care provider to overcome the presumption by reasonably determining that the patient has demonstrated an inability to understand and appreciate the nature and consequences of designating an individual to make health care decisions on the patient's behalf. Modifies the revocation of a designation by allowing a patient to revoke either by verbally informing or providing a written statement to an attending physician, instead of allowing a patient to revoke by personally informing any person providing care to the patient.

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