

SHB 1641 - S COMM AMD  
By Committee on Health Care

ADOPTED 04/11/2017

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

3 "Sec. 1. RCW 7.70.065 and 2007 c 156 s 11 are each amended to  
4 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 patient's spouse or state registered domestic partner;

19 (iv) Children of the patient who are at least eighteen years of  
20 age;

21 (v) Parents of the patient; and

22 (vi) Adult brothers and sisters of the patient.

23 (b) If the health care provider seeking informed consent for  
24 proposed health care of the patient who is not competent to consent  
25 under RCW 11.88.010(1)(e), other than a person determined to be  
26 incapacitated because he or she is under the age of majority and who  
27 is not otherwise authorized to provide informed consent, makes  
28 reasonable efforts to locate and secure authorization from a  
29 competent person in the first or succeeding class and finds no such  
30 person available, authorization may be given by any person in the  
31 next class in the order of descending priority. However, no person  
32 under this section may provide informed consent to health care:

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

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

6 (c) Before any person authorized to provide informed consent on  
7 behalf of a patient not competent to consent under RCW  
8 11.88.010(1)(e), other than a person determined to be incapacitated  
9 because he or she is under the age of majority and who is not  
10 otherwise authorized to provide informed consent, exercises that  
11 authority, the person must first determine in good faith that that  
12 patient, if competent, would consent to the proposed health care. If  
13 such a determination cannot be made, the decision to consent to the  
14 proposed health care may be made only after determining that the  
15 proposed health care is in the patient's best interests.

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

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

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

30 (ii) A person authorized by the court to consent to medical care  
31 for a child in out-of-home placement pursuant to chapter 13.32A or  
32 13.34 RCW, if any;

33 (iii) Parents of the minor patient;

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

37 (v) A competent adult representing himself or herself to be a  
38 relative responsible for the health care of such minor patient or a  
39 competent adult who has signed and dated a declaration under penalty  
40 of perjury pursuant to RCW 9A.72.085 stating that the adult person is

1 a relative responsible for the health care of the minor patient. Such  
2 declaration shall be effective for up to six months from the date of  
3 the declaration.

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

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

15 (B) The minor patient meets the definition of a "homeless child  
16 or youth" under the federal McKinney-Vento homeless education  
17 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
18 115 Stat. 2005; and

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

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

30 (iii) Upon request by a health care facility or a health care  
31 provider, a person authorized to consent to care under this  
32 subsection (2)(b) must provide to the person rendering care a  
33 declaration signed and dated under penalty of perjury pursuant to RCW  
34 9A.72.085 stating that the person is a school nurse, school  
35 counselor, or homeless student liaison and that the minor patient  
36 meets the elements under (b)(i) of this subsection. The declaration  
37 must also include written notice of the exemption from liability  
38 under (b)(ii) of this subsection.

39 (c) A health care provider may, but is not required to, rely on  
40 the representations or declaration of a person claiming to be a

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

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

15 ((~~d~~)) (e) The health care provider or health care facility  
16 where services are rendered shall be immune from suit in any action,  
17 civil or criminal, or from professional or other disciplinary action  
18 when such reliance is based on a declaration signed under penalty of  
19 perjury pursuant to RCW 9A.72.085 stating that the adult person is a  
20 relative responsible for the health care of the minor patient under  
21 (a)(v) of this subsection, or a person claiming to be authorized to  
22 consent to the health care of the minor patient under (b) of this  
23 subsection.

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

27 NEW SECTION. **Sec. 2.** RCW 28A.320.147 ("Homeless child or  
28 youth"—Informed consent for health care for patient under the age of  
29 majority—Exemption from liability) and 2016 c 157 s 7 are each  
30 repealed."

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31 On page 1, line 3 of the title, after "act;" strike the remainder  
32 of the title and insert "amending RCW 7.70.065; and repealing RCW  
33 28A.320.147."

EFFECT: Clarifies that health care providers are not prohibited from seeking reimbursement for care provided to a minor patient.

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