

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 1175**

66th Legislature  
2019 Regular Session

Passed by the House February 14, 2019  
Yeas 71 Nays 25

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**Speaker of the House of Representatives**

Passed by the Senate April 15, 2019  
Yeas 36 Nays 10

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1175** as passed by House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED HOUSE BILL 1175**

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Passed Legislature - 2019 Regular Session

**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Kilduff, Irwin, Jenkins, Klippert, Valdez, and Ortiz-Self

Read first time 01/16/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to authorization of health care decisions by an  
2 individual or designated person; and amending RCW 7.70.065 and  
3 70.122.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.70.065 and 2017 c 275 s 1 are each amended to read  
6 as follows:

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

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

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

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

20 (iii) The patient's spouse or state registered domestic partner;

1 (iv) Children of the patient who are at least eighteen years of  
2 age;

3 (v) Parents of the patient; (~~and~~)

4 (vi) Adult brothers and sisters of the patient;

5 (vii) Adult grandchildren of the patient who are familiar with  
6 the patient;

7 (viii) Adult nieces and nephews of the patient who are familiar  
8 with the patient;

9 (ix) Adult aunts and uncles of the patient who are familiar with  
10 the patient; and

11 (x) (A) An adult who:

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

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

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

15 (IV) Is not any of the following: A physician to the patient or  
16 an employee of the physician; the owner, administrator, or employee  
17 of a health care facility, nursing home, or long-term care facility  
18 where the patient resides or receives care; or a person who receives  
19 compensation to provide care to the patient; and

20 (V) Provides a declaration under (a) (x) (B) of this subsection.

21 (B) An adult who meets the requirements of (a) (x) (A) of this  
22 subsection shall provide a declaration, which is effective for up to  
23 six months from the date of the declaration, signed and dated under  
24 penalty of perjury pursuant to RCW 9A.72.085, that recites facts and  
25 circumstances demonstrating that he or she is familiar with the  
26 patient and that he or she:

27 (I) Meets the requirements of (a) (x) (A) of this subsection;

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

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

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

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

37 (C) A health care provider may, but is not required to, rely on a  
38 declaration provided under (a) (x) (B) of this subsection. The health  
39 care provider or health care facility where services are rendered is  
40 immune from suit in any action, civil or criminal, or from

1 professional or other disciplinary action when such reliance is based  
2 on a declaration provided in compliance with (a)(x)(B) of this  
3 subsection.

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

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

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

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

29 (d) No rights under Washington's death with dignity act, chapter  
30 70.245 RCW, may be exercised through a person authorized to provide  
31 informed consent to health care on behalf of a patient not competent  
32 to consent under RCW 11.88.010(1)(e).

33 (2) Informed consent for health care, including mental health  
34 care, for a patient who is not competent, as defined in RCW  
35 11.88.010(1)(e), because he or she is under the age of majority and  
36 who is not otherwise authorized to provide informed consent, may be  
37 obtained from a person authorized to consent on behalf of such a  
38 patient.

39 (a) Persons authorized to provide informed consent to health  
40 care, including mental health care, on behalf of a patient who is

1 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she  
2 is under the age of majority and who is not otherwise authorized to  
3 provide informed consent, shall be a member of one of the following  
4 classes of persons in the following order of priority:

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

7 (ii) A person authorized by the court to consent to medical care  
8 for a child in out-of-home placement pursuant to chapter 13.32A or  
9 13.34 RCW, if any;

10 (iii) Parents of the minor patient;

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

14 (v) A competent adult representing himself or herself to be a  
15 relative responsible for the health care of such minor patient or a  
16 competent adult who has signed and dated a declaration under penalty  
17 of perjury pursuant to RCW 9A.72.085 stating that the adult person is  
18 a relative responsible for the health care of the minor patient. Such  
19 declaration shall be effective for up to six months from the date of  
20 the declaration.

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

26 (A) Consent is necessary for nonemergency, outpatient, primary  
27 care services, including physical examinations, vision examinations  
28 and eyeglasses, dental examinations, hearing examinations and hearing  
29 aids, immunizations, treatments for illnesses and conditions, and  
30 routine follow-up care customarily provided by a health care provider  
31 in an outpatient setting, excluding elective surgeries;

32 (B) The minor patient meets the definition of a "homeless child  
33 or youth" under the federal McKinney-Vento homeless education  
34 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
35 115 Stat. 2005; and

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

39 (ii) A person authorized to consent to care under this subsection  
40 (2)(b) and the person's employing school or school district are not

1 subject to administrative sanctions or civil damages resulting from  
2 the consent or nonconsent for care, any care, or payment for any  
3 care, rendered pursuant to this section. Nothing in this section  
4 prevents a health care facility or a health care provider from  
5 seeking reimbursement from other sources for care provided to a minor  
6 patient under this subsection (2)(b).

7 (iii) Upon request by a health care facility or a health care  
8 provider, a person authorized to consent to care under this  
9 subsection (2)(b) must provide to the person rendering care a  
10 declaration signed and dated under penalty of perjury pursuant to RCW  
11 9A.72.085 stating that the person is a school nurse, school  
12 counselor, or homeless student liaison and that the minor patient  
13 meets the elements under (b)(i) of this subsection. The declaration  
14 must also include written notice of the exemption from liability  
15 under (b)(ii) of this subsection.

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

26 (d) A health care facility or a health care provider may, in its  
27 discretion, require documentation of a person's claimed status as  
28 being a relative responsible for the health care of the minor  
29 patient, or a person claiming to be authorized to consent to the  
30 health care of the minor patient under (b) of this subsection.  
31 However, there is no obligation to require such documentation.

32 (e) The health care provider or health care facility where  
33 services are rendered shall be immune from suit in any action, civil  
34 or criminal, or from professional or other disciplinary action when  
35 such reliance is based on a declaration signed under penalty of  
36 perjury pursuant to RCW 9A.72.085 stating that the adult person is a  
37 relative responsible for the health care of the minor patient under  
38 (a)(v) of this subsection, or a person claiming to be authorized to  
39 consent to the health care of the minor patient under (b) of this  
40 subsection.

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

4 (4) A person who knowingly provides a false declaration under  
5 this section shall be subject to criminal penalties under chapter  
6 9A.72 RCW.

7 **Sec. 2.** RCW 70.122.030 and 1992 c 98 s 3 are each amended to  
8 read as follows:

9 (1) Any adult person may execute a directive directing the  
10 withholding or withdrawal of life-sustaining treatment in a terminal  
11 condition or permanent unconscious condition. The directive shall be  
12 signed by the declarer and acknowledged before a notary public or  
13 other individual authorized by law to take acknowledgments or signed  
14 by the declarer in the presence of two witnesses not related to the  
15 declarer by blood or marriage and who would not be entitled to any  
16 portion of the estate of the declarer upon declarer's decease under  
17 any will of the declarer or codicil thereto then existing or, at the  
18 time of the directive, by operation of law then existing. In  
19 addition, a witness to a directive shall not be the attending  
20 physician, an employee of the attending physician or a health  
21 facility in which the declarer is a patient, or any person who has a  
22 claim against any portion of the estate of the declarer upon  
23 declarer's decease at the time of the execution of the directive. The  
24 directive, or a copy thereof, shall be made part of the patient's  
25 medical records retained by the attending physician, a copy of which  
26 shall be forwarded by the custodian of the records to the health  
27 facility when the withholding or withdrawal of life-support treatment  
28 is contemplated. The directive may be in the following form and may  
29 include a notarial certificate for an acknowledgment in an individual  
30 capacity in short form as permitted by state law, but in addition may  
31 include other specific directions:

32 Health Care Directive

33 Directive made this . . . . day of . . . . . (month, year).

34 I . . . . ., having the capacity to make health care decisions,  
35 willfully, and voluntarily make known my desire that my dying shall  
36 not be artificially prolonged under the circumstances set forth  
37 below, and do hereby declare that:

1 (a) If at any time I should be diagnosed in writing to be in a  
2 terminal condition by the attending physician, or in a permanent  
3 unconscious condition by two physicians, and where the application of  
4 life-sustaining treatment would serve only to artificially prolong  
5 the process of my dying, I direct that such treatment be withheld or  
6 withdrawn, and that I be permitted to die naturally. I understand by  
7 using this form that a terminal condition means an incurable and  
8 irreversible condition caused by injury, disease, or illness, that  
9 would within reasonable medical judgment cause death within a  
10 reasonable period of time in accordance with accepted medical  
11 standards, and where the application of life-sustaining treatment  
12 would serve only to prolong the process of dying. I further  
13 understand in using this form that a permanent unconscious condition  
14 means an incurable and irreversible condition in which I am medically  
15 assessed within reasonable medical judgment as having no reasonable  
16 probability of recovery from an irreversible coma or a persistent  
17 vegetative state.

18 (b) In the absence of my ability to give directions regarding the  
19 use of such life-sustaining treatment, it is my intention that this  
20 directive shall be honored by my family and physician(s) as the final  
21 expression of my legal right to refuse medical or surgical treatment  
22 and I accept the consequences of such refusal. If another person is  
23 appointed to make these decisions for me, whether through a durable  
24 power of attorney or otherwise, I request that the person be guided  
25 by this directive and any other clear expressions of my desires.

26 (c) If I am diagnosed to be in a terminal condition or in a  
27 permanent unconscious condition (check one):

28 I DO want to have artificially provided nutrition and hydration.

29 I DO NOT want to have artificially provided nutrition and  
30 hydration.

31 (d) If I have been diagnosed as pregnant and that diagnosis is  
32 known to my physician, this directive shall have no force or effect  
33 during the course of my pregnancy.

34 (e) I understand the full import of this directive and I am  
35 emotionally and mentally capable to make the health care decisions  
36 contained in this directive.

37 (f) I understand that before I sign this directive, I can add to  
38 or delete from or otherwise change the wording of this directive and  
39 that I may add to or delete from this directive at any time and that



1 any changes shall be consistent with Washington state law or federal  
2 constitutional law to be legally valid.

3 (g) It is my wish that every part of this directive be fully  
4 implemented. If for any reason any part is held invalid it is my wish  
5 that the remainder of my directive be implemented.

6 Signed.....

7 City, County, and State of Residence

8 The declarer has been personally known to me or has provided proof of  
9 identity and I believe him or her to be capable of making health care  
10 decisions.

11 Witness.....

12 Witness.....

13 (2) Prior to withholding or withdrawing life-sustaining  
14 treatment, the diagnosis of a terminal condition by the attending  
15 physician or the diagnosis of a permanent unconscious state by two  
16 physicians shall be entered in writing and made a permanent part of  
17 the patient's medical records.

18 (3) A directive executed in another political jurisdiction is  
19 valid to the extent permitted by Washington state law and federal  
20 constitutional law.

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