

HOUSE BILL REPORT

SHB 1281

As Amended by the Senate

Title: An act relating to adding to the list of persons who may give informed consent to medical care for minors and providing immunity to health care providers and facilities for reliance on the representation of a person claiming to be responsible for the care of the minor.

Brief Description: Adding to the list of persons who may give informed consent to medical care for minors and providing immunity to health care providers and facilities when they rely upon the representation of a person claiming to be responsible for the care of the minor.

Sponsors: By House Committee on Children & Family Services (originally sponsored by Representatives Pettigrew, Hinkle, Kagi, Walsh, Schual-Berke, McDonald, Clibborn, Dickerson, Dunn, P. Sullivan, Orcutt, Darneille, Morrell, Campbell, Wallace and Chase).

Brief History:

Committee Activity:

Children & Family Services: 2/2/05, 2/14/05 [DPS].

Floor Activity:

Passed House: 3/7/05, 93-0.

Senate Amended.

Passed Senate: 4/14/05, 46-0.

Brief Summary of Substitute Bill

- Modifies the informed consent statute to permit a person who represents himself or herself as having authority to consent to medical care for a child to be the last person on the hierarchical list of persons who may consent to medical care for the minor child.
- Provides immunity to health care providers from liability in any suit based upon their reliance on the representations of a person claiming to be responsible for the medical care of a child.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Roberts, Vice Chair; Hinkle, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Darneille, Dickerson, Dunn, Haler and Pettigrew.

Staff: Sonja Hallum (786-7092).

Background:

In 2001, the Legislature directed the Washington State Institute for Public Policy (WSIPP) to study the prevalence and needs of families who are raising related children. In June 2002, the WSIPP issued a report describing the prevalence and characteristics of kinship care, needs of kinship care providers in the state, policies and services available in Washington and other states, and policy options that may increase appropriate kinship care placements.

Among the findings of the WSIPP study was the recognition that because kinship caregivers lack legal standing, they can face barriers in raising the children in their care. The kinship caregiver workgroup convened by the Department of Social and Health Services (DSHS) in response to the study recommended that Washington adopt a law that would authorize relative caregivers to enroll a child in school and obtain medical care for the child.

In Washington state, a person has the right to make his or her own health care decisions. Under the principle of "informed consent," medical care must be explained to the patient so that he or she understands it and can make informed decisions. Treatment without consent, however, is allowed and will generally be provided in an emergency unless the patient indicates otherwise.

If the patient is determined to be incapacitated or incompetent to make health care decisions, a surrogate decision-maker must speak for him or her. If a person is under the age of 18, he or she is considered to lack capacity to make most health care decisions. There is a specific hierarchy of appropriate decision-makers defined by state law. The following is the list of persons, in order of priority, who may consent to medical treatment on behalf of another person:

- (1) a guardian who has been appointed by a court;
- (2) the person named in the durable power of attorney with health care decision-making authority;
- (3) a spouse;
- (4) adult children;
- (5) parents; and
- (6) adult brothers and sisters.

If a child's caregiver is not a person who is on the above list, the caregiver may not consent to medical treatment for the child in his or her care.

Summary of Substitute Bill:

The list of persons who may provide informed consent for medical care is changed to permit a person who is authorized to consent to medical care on behalf of the child to give consent for medical treatment.

The following is the list of persons, in order of priority, who are authorized to consent to medical care on behalf of a minor under the age of 18:

- (1) a guardian appointed by the court, including a person authorized to consent to medical care under the dependency and termination of parental relationship statutes;
- (2) parents of the minor; and
- (3) a competent adult who represents himself or herself to be responsible for the health care of the minor child.

The health care provider may, but is not required to, rely upon the representations of a person claiming to be responsible for the care of the minor child, so long as the provider does not have actual knowledge of the falsity of the person's representations.

The provider may request documentation to verify the person's claimed status as being responsible for the care of the child.

An immunity clause is added to state that a health care provider who relies upon the representations of a person claiming to be responsible for the child is immune from liability in any suit based upon the reliance.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment adds a person whom the parent has authorized to consent to medical care to the list of persons who may consent to the medical care for the child. The Senate amendment also makes several changes including clarifying that a "legal custodian" is a person who is given authority over the child under the domestic relations statutes, the document that must be provided is a declaration rather than an affidavit, and the adult who is representing himself or herself as being responsible for the health care of the child must state this in the declaration.

The Senate amendment also changes the liability provisions of the original bill. The amendment permits the health care provider to rely on the representations or the declaration of the person claiming to be responsible for the health care of the child. However, the immunity provision is changed to permit the provider to be immune from liability only when the suit is based on the reliance of the provider on the declaration.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support on original bill) This bill is designed to help people get medical care for the children in their care. Many children are in relative care and their parents have not provided the consent to the caregiver to get medical care for the child. It is important to pass this bill to get medical care for children. It is hard to get medical records and this could

help get records needed to care for a child. It is a tragedy to deny children access to medical care. This has been a barrier to kinship caregivers, especially in rural communities where there is limited access to health care.

Testimony Against: None.

Persons Testifying: Representative Pettigrew, prime sponsor; Rick Bartholmiew, Family Law Section and Washington State Bar Association; Edith Owen, Pierce County Relatives Raising Children; Kristie Lund, Relatives as Parents and Kinship Caregiver; Ken Bertrand, Group Health; Laurie Lippold, Children's Home Society; and Cindy Hofer, kin-adoptive family and Relatives as Parents Program.

Persons Signed In To Testify But Not Testifying: None.