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HOUSE BILL 1641

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State of Washington

65th Legislature

2017 Regular Session

By Representatives McBride, Caldier, Graves, Jinkins, Fey, Clibborn,  
and Stanford

Read first time 01/25/17. Referred to Committee on Judiciary.

1 AN ACT Relating to informed consent for nonemergency, outpatient,  
2 primary health care services for unaccompanied homeless youth under  
3 the federal McKinney-Vento homeless assistance act; amending RCW  
4 7.70.065; and repealing RCW 28A.320.147.

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

6 **Sec. 1.** RCW 7.70.065 and 2007 c 156 s 11 are each amended to  
7 read as follows:

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

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

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

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

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

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

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

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

30 (2) Informed consent for health care, including mental health  
31 care, for a patient who is not competent, as defined in RCW  
32 11.88.010(1)(e), because he or she is under the age of majority and  
33 who is not otherwise authorized to provide informed consent, may be  
34 obtained from a person authorized to consent on behalf of such a  
35 patient.

36 (a) Persons authorized to provide informed consent to health  
37 care, including mental health care, on behalf of a patient who is  
38 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she  
39 is under the age of majority and who is not otherwise authorized to

1 provide informed consent, shall be a member of one of the following  
2 classes of persons in the following order of priority:

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

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

8 (iii) Parents of the minor patient;

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

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

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

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

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

34 (C) The minor patient is not under the supervision or control of  
35 a parent, custodian, or legal guardian.

36 (ii) A person authorized to consent to care under this subsection  
37 (2)(b) and the person's employing school or school district are not  
38 subject to administrative sanctions or civil damages resulting from  
39 the consent or nonconsent for care, any care, or payment for any  
40 care, rendered pursuant to this section.

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 RCW  
5 9A.72.085 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 ~~((+e))~~ (d) A health care facility or a health care provider may,  
21 in its discretion, require documentation of a person's claimed status  
22 as 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 ~~((+d))~~ (e) The health care provider or health care facility  
27 where services are rendered shall be immune from suit in any action,  
28 civil or criminal, or from professional or other disciplinary action  
29 when such reliance is based on a declaration signed under penalty of  
30 perjury pursuant to RCW 9A.72.085 stating that the adult person is a  
31 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 NEW SECTION. Sec. 2. RCW 28A.320.147 ("Homeless child or  
39 youth"—Informed consent for health care for patient under the age of

1 majority—Exemption from liability) and 2016 c 157 s 7 are each  
2 repealed.

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