
ENGROSSED SUBSTITUTE HOUSE BILL 2541

State of Washington

65th Legislature

2018 Regular Session

By House Judiciary (originally sponsored by Representatives Kilduff, Rodne, and Eslick)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to expanding the classes of persons who may
2 provide informed consent for certain patients who are not competent
3 to consent; and amending RCW 7.70.065.

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 shall be effective for
23 up to six months from the date of the declaration, signed and dated
24 under penalty of perjury pursuant to RCW 9A.72.085, that recites
25 facts and circumstances demonstrating that he or she is familiar with
26 the 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
40 shall be 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 (2) Informed consent for health care, including mental health
30 care, for a patient who is not competent, as defined in RCW
31 11.88.010(1)(e), because he or she is under the age of majority and
32 who is not otherwise authorized to provide informed consent, may be
33 obtained from a person authorized to consent on behalf of such a
34 patient.

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

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

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

6 (iii) Parents of the minor patient;

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

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

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

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

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

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

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

1 seeking reimbursement from other sources for care provided to a minor
2 patient under this subsection (2)(b).

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

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

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

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

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