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**ENGROSSED SUBSTITUTE HOUSE BILL 1197**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Riccelli, Tharinger, Cody, Pollet, and Harris-Talley)

AN ACT Relating to health care decisions made by a designated person; amending RCW 7.70.065; reenacting and amending RCW 7.70.065; providing an effective date; and providing an expiration date.

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

**Sec.**  RCW 7.70.065 and 2019 c 232 s 8 and 2019 c 209 s 1 are each reenacted and amended to read as follows:

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

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

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

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

(iii) The individual to whom the patient has designated to make health care decisions by orally or personally informing a physician, nurse practitioner, or physician assistant as outlined in (e) of this subsection;

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

((~~(iv)~~)) (v) Children of the patient who are at least eighteen years of age;

((~~(v)~~)) (vi) Parents of the patient;

((~~(vi)~~)) (vii) Adult brothers and sisters of the patient;

((~~(vii)~~)) (viii) Adult grandchildren of the patient who are familiar with the patient;

((~~(viii)~~)) (ix) Adult nieces and nephews of the patient who are familiar with the patient;

((~~(ix)~~)) (x) Adult aunts and uncles of the patient who are familiar with the patient; and

((~~(x)~~)) (xi)(A) An adult who:

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

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

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

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

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

(B) An adult who meets the requirements of (a)((~~(x)~~)) (xi)(A) of this subsection shall provide a declaration, which is effective for up to six months from the date of the declaration, signed and dated under penalty of perjury pursuant to ((~~RCW 9A.72.085~~)) chapter 5.50 RCW, that recites facts and circumstances demonstrating that he or she is familiar with the patient and that he or she:

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

(II) Is a close friend of the patient;

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

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

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

(C) A health care provider may, but is not required to, rely on a declaration provided under (a)((~~(x)~~)) (xi)(B) of this subsection. The health care provider or health care facility where services are rendered is immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration provided in compliance with (a)((~~(x)~~)) (xi)(B) of this subsection.

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

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

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

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

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

(e) For purposes of (a)(iii) of this subsection:

(i) An employee of the medical facility where the patient is receiving care is prohibited from serving as a designated health care surrogate.

(ii) A patient is presumed to have capacity, unless a health care provider reasonably determines the patient lacks capacity due to the patient's demonstrated inability to understand and appreciate the nature and consequences of designating an individual to make health care decisions on the patient's behalf as a result of a cognitive impairment. A patient is presumed not to have the capacity to make a health care designation if the patient has been determined to be incapacitated under RCW 11.125.090 or if the patient is an adult subject to a guardianship that includes health care decision making under RCW 11.88.010.

(iii) The physician, nurse practitioner, or physician assistant to whom a health care surrogate designation has been communicated must enter a document with this information into the patient's health care record, provided that the physician, nurse practitioner, or physician assistant determines that the patient has capacity at the time of the designation and documents it in the patient's health record. The designation must be signed by the patient, unless the physician, nurse practitioner, or physician assistant determines that the patient is unable to physically sign. If the patient is unable to sign, he or she may make the designation orally.

(iv) A designation may be revoked by the patient at any time, in the following methods:

(A) A written revocation by the patient expressing his or her intent to revoke, signed and dated by the patient. Such revocation shall become effective only upon communication to the attending physician by the patient or by a person acting on behalf of the patient. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation.

(B) A verbal expression by the patient of his or her intent to revoke the designation. Such designation shall become effective only upon communication to the attending physician by the patient. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and shall obtain a signature from the patient, unless the physician determines that the patient is unable to physically sign. If the patient is unable to sign, he or she may make the revocation orally.

(v) A health care provider that relies upon the consent of an individual designated to provide care to a patient is immune from suit in any action, civil or criminal, or from professional or other disciplinary action for relying upon such consent unless the health care provider had actual knowledge of the patient's revocation of that designation at the time consent was obtained.

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

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

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

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

(iii) Parents of the minor patient;

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

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to chapter 5.50 RCW stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

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

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

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

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

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

(iii) Upon request by a health care facility or a health care provider, a person authorized to consent to care under this subsection (2)(b) must provide to the person rendering care a declaration signed and dated under penalty of perjury pursuant to chapter 5.50 RCW stating that the person is a school nurse, school counselor, or homeless student liaison and that the minor patient meets the elements under (b)(i) of this subsection. The declaration must also include written notice of the exemption from liability under (b)(ii) of this subsection.

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

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

(e) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to chapter 5.50 RCW stating that the adult person is a relative responsible for the health care of the minor patient under (a)(v) of this subsection, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection.

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

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

**Sec.**  RCW 7.70.065 and 2020 c 312 s 705 are each amended to read as follows:

(1) Informed consent for health care for a patient who is a minor or, to consent may be obtained from a person authorized to consent on behalf of such patient.

(a) Persons authorized to provide informed consent to health care on behalf of a patient who has been placed under a guardianship under RCW 11.130.265 a minor or, shall be a member of one of the following classes of persons in the following order of priority:

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

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

(iii) The individual to whom the patient has designated to make health care decisions by orally or personally informing a physician, nurse practitioner, or physician assistant as outlined in (e) of this subsection;

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

((~~(iv)~~)) (v) Children of the patient who are at least eighteen years of age;

((~~(v)~~)) (vi) Parents of the patient;

((~~(vi)~~)) (vii) Adult brothers and sisters of the patient;

((~~(vii)~~)) (viii) Adult grandchildren of the patient who are familiar with the patient;

((~~(viii)~~)) (ix) Adult nieces and nephews of the patient who are familiar with the patient;

((~~(ix)~~)) (x) Adult aunts and uncles of the patient who are familiar with the patient; and

((~~(x)~~)) (xi)(A) An adult who:

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

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

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

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

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

(B) An adult who meets the requirements of (a)((~~(x)~~)) (xi)(A) of this subsection shall provide a declaration, which is effective for up to six months from the date of the declaration, signed and dated under penalty of perjury pursuant to chapter 5.50 RCW, that recites facts and circumstances demonstrating that he or she is familiar with the patient and that he or she:

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

(II) Is a close friend of the patient;

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

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

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

(C) A health care provider may, but is not required to, rely on a declaration provided under (a)((~~(x)~~)) (xi)(B) of this subsection. The health care provider or health care facility where services are rendered is immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration provided in compliance with (a)((~~(x)~~)) (xi)(B) of this subsection.

(b) If the health care provider seeking informed consent for proposed health care of the patient who has been placed under a guardianship under RCW 11.130.265((~~,~~)) makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

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

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

(c) Before any person authorized to provide informed consent on behalf of a patient who has been placed under a guardianship under RCW 11.130.265((~~,~~)) exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

(d) No rights under Washington's death with dignity act, chapter 70.245 RCW, may be exercised through a person authorized to provide informed consent to health care on behalf of a patient who is a minor or has been placed under a guardianship under RCW 11.130.265.

(e) For purposes of (a)(iii) of this subsection:

(i) An employee of the medical facility where the patient is receiving care is prohibited from serving as a designated health care surrogate.

(ii) A patient is presumed to have capacity, unless a health care provider reasonably determines the patient lacks capacity due to the patient's demonstrated inability to understand and appreciate the nature and consequences of designating an individual to make health care decisions on the patient's behalf as a result of a cognitive impairment. A patient is presumed not to have the capacity to make a health care designation if the patient has been determined to be incapacitated under RCW 11.125.090 or if the patient is an adult subject to a guardianship that includes health care decision making under RCW 11.130.265.

(iii) The physician, nurse practitioner, or physician assistant to whom a health care surrogate designation has been communicated must enter a document with this information into the patient's health care record, provided that the physician, nurse practitioner, or physician assistant determines that the patient has capacity at the time of the designation and documents it in the patient's health record. The designation must be signed by the patient, unless the physician, nurse practitioner, or physician assistant determines that the patient is unable to physically sign. If the patient is unable to sign, he or she may make the designation orally.

(iv) A designation may be revoked by the patient at any time, in the following methods:

(A) A written revocation by the patient expressing his or her intent to revoke, signed and dated by the patient. Such revocation shall become effective only upon communication to the attending physician by the patient or by a person acting on behalf of the patient. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation.

(B) A verbal expression by the patient of his or her intent to revoke the designation. Such designation shall become effective only upon communication to the attending physician by the patient. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and shall obtain a signature from the patient, unless the physician determines that the patient is unable to physically sign. If the patient is unable to sign, he or she may make the revocation orally.

(v) A health care provider that relies upon the consent of an individual designated to provide care to a patient is immune from suit in any action, civil or criminal, or from professional or other disciplinary action for relying upon such consent unless the health care provider had actual knowledge of the patient's revocation of that designation at the time consent was obtained.

(2) Informed consent for health care, including mental health care, for a patient who is under the age of majority and who is not otherwise authorized to provide informed consent, may be obtained from a person authorized to consent on behalf of such a patient.

(a) Persons authorized to provide informed consent to health care, including mental health care, on behalf of a patient who is under the age of majority and who is not otherwise authorized to provide informed consent, shall be a member of one of the following classes of persons in the following order of priority:

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

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

(iii) Parents of the minor patient;

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

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to chapter 5.50 RCW stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b)(i) Informed consent for health care on behalf of a patient who is under the age of majority and who is not otherwise authorized to provide informed consent may be obtained from a school nurse, school counselor, or homeless student liaison when:

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

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

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

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

(iii) Upon request by a health care facility or a health care provider, a person authorized to consent to care under this subsection (2)(b) must provide to the person rendering care a declaration signed and dated under penalty of perjury pursuant to chapter 5.50 RCW stating that the person is a school nurse, school counselor, or homeless student liaison and that the minor patient meets the elements under (b)(i) of this subsection. The declaration must also include written notice of the exemption from liability under (b)(ii) of this subsection.

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

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

(e) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to chapter 5.50 RCW stating that the adult person is a relative responsible for the health care of the minor patient under (a)(v) of this subsection, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection.

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

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

NEW SECTION. **Sec.**  Section 1 of this act expires January 1, 2022.

NEW SECTION. **Sec.**  Section 2 of this act takes effect January 1, 2022.

**--- END ---**