

HOUSE BILL REPORT

SHB 3001

As Passed House:
February 14, 2004

Title: An act relating to authorization to consent to medical care for minors.

Brief Description: Authorizing kinship caregivers to consent to medical care.

Sponsors: By House Committee on Children & Family Services (originally sponsored by Representatives Pettigrew, Boldt, Flannigan, Bailey, Kagi, Clibborn, Shabro, McDermott, Dickerson, Miloscia, Darneille, Roach, O'Brien, Morrell, Santos, Linville, Lantz, Wood and Chase).

Brief History:

Committee Activity:

Children & Family Services: 2/4/04, 2/6/04 [DPS].

Floor Activity:

Passed House: 2/14/04, 95-0.

Brief Summary of Substitute Bill

- Authorizes a person standing in loco parentis to a child to consent to medical treatment for that 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; Darneille, Vice Chair; Boldt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Bailey, Dickerson, Miloscia, Pettigrew and Shabro.

Staff: Cynthia Forland (786-7152).

Background:

Kinship Care

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.

In anticipation of the release of the WSIPP report, the Department of Social and Health Services (DSHS) was required to convene a kinship caregivers workgroup to review the report and develop a briefing for the Legislature identifying the policy issues related to kinship caregivers, the federal and state statutes associated with these issues, and options to address the issues. The Kinship Care Workgroup, which the DSHS formed in response, reported to the Legislature in November 2002 with recommendations identifying a number of steps that could be taken by the Legislature or by the DSHS that encompassed the following areas related to kinship care: financial needs, service delivery and practice, legal issues, social services, and issues for federal action.

The Kinship Care Workgroup put forth a total of 16 high priority recommendations, including the recommendation that the Legislature mandate and fund an ongoing committee of relative caregivers and others to oversee the implementation of the recommendations in the report and continue future work on kinship care in the state.

In 2003, legislation was enacted requiring the DSHS to establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. In response, the DSHS established the Kinship Oversight Committee, which issued recommendations in January 2004 concerning issues of legislative concern relating to kinship care. Those recommendations included establishing authorization for kinship caregivers to consent to medical care for children in their care.

Consent for Health Care

State law provides that informed consent for health care for a patient who is not competent to consent, which includes a person under 18 years of age, may be obtained from a person authorized to consent on behalf of that patient. Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent must be a member of one of the following classes of persons in the following order of priority:

- the appointed guardian of the patient, if any;
- the individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
- the patient's spouse;
- children of the patient who are at least 18 years of age;
- parents of the patient; and
- adult brothers and sisters of the patient.

If the physician seeking informed consent for proposed health care of the patient who is not competent to 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, none of these persons may provide informed consent to health care:

- if a person of higher priority has refused to give such authorization; or
- if there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

Before any person authorized to provide informed consent on behalf of a patient not competent to 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.

Summary of Substitute Bill:

In addition to such other persons as may be so authorized, any person 18 years of age or older standing in loco parentis to a child under 18 years of age is authorized to consent to any medical or surgical treatment or procedure not prohibited by law, including professional use of anesthetics and administration of prescribed medications, provided that the treatment or procedure has been suggested, recommended, prescribed, or directed by a licensed health care practitioner performing services within that practitioner's authorized scope of practice.

No person who acts in good faith reliance on consent provided by a person standing in loco parentis to a child may be subject to criminal liability, civil liability, or professional disciplinary action as a result of such reliance.

Any person who falsely claims to be standing in loco parentis or who, based on in loco parentis status, provides consent to a medical or surgical treatment or procedure despite actual knowledge that the parent of the child would object to such treatment or procedure is subject to a civil penalty of \$1,000 for each violation and may also be subject to criminal liability.

The authorized consent does not apply to children who are in the custody of the DSHS or other agency contracted by the DSHS.

Persons standing in loco parentis to a child identified in the bill as authorized to consent to any medical or surgical treatment or procedure suggested, recommended, prescribed, or directed by a licensed health care practitioner are added to the classes of persons authorized under state law to provide informed consent to health care on behalf of a patient who is not competent to consent, which includes persons under 18 years of age.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) This is pretty much the same bill as last year, which provided a medical and educational affidavit for kinship caregivers. This bill only speaks to the medical piece, to help kinship caregivers access medical care. This bill is an incredible opportunity for children who are in the care of relatives to get medical care and to have some kind of agreement with HIPAA. Even with a signed, notarized authorization to consent to medical

care, there can be delays and complications in accessing care. There are tens of thousands of children in the state cared for by kin, often with no warning or preparation. This bill limits authorization to treatment recommended by a physician. This was a high-priority, short-term recommendation of the Kinship Care Workgroup. Around 24 states have some sort of medical consent in place for kinship caregivers. This bill is modeled on what other states are doing. As a result of the unclear legal status of kinship caregivers, preventive care is often not accessed for children.

Testimony Against: None.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; Edith Owen, Pierce County Relatives Raising Children; Janet Helson, Columbia Legal Services on behalf of a client; Laurie Lippold, Children's Home Society; and Kevin Campbell, Catholic Community Services.

Persons Signed In To Testify But Not Testifying: None.