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**SUBSTITUTE HOUSE BILL 3001**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**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)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to authorization to consent to medical care for  
2 minors; amending RCW 7.70.065; adding a new section to chapter 74.13  
3 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature to  
6 assist children in the care of kin to access appropriate medical  
7 services. Children being raised by kin have faced barriers to medical  
8 care because their kinship caregivers have not been able to verify that  
9 they are the identified primary caregivers of these children. Such  
10 barriers pose an especially significant challenge to kinship caregivers  
11 in dealing with health professionals when children are left in their  
12 care with no warning.

13 (2) To assist kinship caregivers in executing adequate and  
14 appropriate decisions regarding the medical needs of a child in their  
15 care, a mechanism is hereby created to authorize kinship caregivers to  
16 consent to medical care for those children in their care.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.13 RCW  
18 to read as follows:

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

10 (2) No person who acts in good faith reliance on consent provided  
11 pursuant to subsection (1) of this section shall be subject to criminal  
12 liability, civil liability, or professional disciplinary action as a  
13 result of such reliance.

14 (3) Any person who falsely claims to be standing in loco parentis  
15 or who, based on in loco parentis status, provides consent to a medical  
16 or surgical treatment or procedure despite actual knowledge that the  
17 parent of the child would object to such treatment or procedure shall  
18 be subject to a civil penalty of one thousand dollars for each  
19 violation and may also be subject to criminal liability.

20 (4) This section shall not apply to children who are in the custody  
21 of the department of social and health services or other agency  
22 contracted by the department of social and health services.

23 **Sec. 3.** RCW 7.70.065 and 2003 c 283 s 29 are each amended to read  
24 as follows:

25 (1) Informed consent for health care for a patient who is not  
26 competent, as defined in RCW 11.88.010(1)(e), to consent may be  
27 obtained from a person authorized to consent on behalf of such patient.  
28 Persons authorized to provide informed consent to health care on behalf  
29 of a patient who is not competent to consent shall be a member of one  
30 of the following classes of persons in the following order of priority:

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

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

35 (c) The patient's spouse;

36 (d) Children of the patient who are at least eighteen years of age;

37 (e) Parents of the patient; (~~and~~)

1 (f) Adult brothers and sisters of the patient; and

2 (g) Persons identified in section 2 of this act.

3 (2) If the physician seeking informed consent for proposed health  
4 care of the patient who is not competent to consent makes reasonable  
5 efforts to locate and secure authorization from a competent person in  
6 the first or succeeding class and finds no such person available,  
7 authorization may be given by any person in the next class in the order  
8 of descending priority. However, no person under this section may  
9 provide informed consent to health care:

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

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

14 (3) Before any person authorized to provide informed consent on  
15 behalf of a patient not competent to consent exercises that authority,  
16 the person must first determine in good faith that that patient, if  
17 competent, would consent to the proposed health care. If such a  
18 determination cannot be made, the decision to consent to the proposed  
19 health care may be made only after determining that the proposed health  
20 care is in the patient's best interests.

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