

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1281

Chapter 440, Laws of 2005

59th Legislature
2005 Regular Session

KINSHIP CARE--MEDICAL CARE

EFFECTIVE DATE: 7/24/05

Passed by the House April 18, 2005
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 14, 2005
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved May 13, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1281** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 13, 2005 - 2:31 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1281

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Pettigrew, Hinkle, Kagi, Walsh, Schual-Berke, McDonald, Clibborn, Dickerson, Dunn, P. Sullivan, Orcutt, Darneille, Morrell, Campbell, Wallace and Chase)

READ FIRST TIME 02/16/05.

1 AN ACT Relating to adding to the list of persons who may give
2 informed consent to medical care for minors and providing immunity to
3 health care providers and facilities for reliance on the representation
4 of a person claiming to be responsible for the care of the minor;
5 amending RCW 7.70.065; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature to
8 assist children in the care of kin to access appropriate medical
9 services. Children being raised by kin have faced barriers to medical
10 care because their kinship caregivers have not been able to verify that
11 they are the identified primary caregivers of these children. Such
12 barriers pose an especially significant challenge to kinship caregivers
13 in dealing with health professionals when children are left in their
14 care.

15 (2) It is the intent of the legislature to assist kinship
16 caregivers in accessing appropriate medical care to meet the needs of
17 a child in their care by permitting such responsible adults who are
18 providing care to a child to give informed consent to medical care.

1 **Sec. 2.** RCW 7.70.065 and 2003 c 283 s 29 are each amended to read
2 as follows:

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

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

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

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

15 ~~((c))~~ (iii) The patient's spouse;

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

18 ~~((e))~~ (v) Parents of the patient; and

19 ~~((f))~~ (vi) Adult brothers and sisters of the patient.

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

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

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

35 ~~((3))~~ (c) Before any person authorized to provide informed
36 consent on behalf of a patient not competent to consent under RCW
37 11.88.010(1)(e), other than a person determined to be incapacitated
38 because he or she is under the age of majority and who is not otherwise

1 authorized to provide informed consent, exercises that authority, the
2 person must first determine in good faith that that patient, if
3 competent, would consent to the proposed health care. If such a
4 determination cannot be made, the decision to consent to the proposed
5 health care may be made only after determining that the proposed health
6 care is in the patient's best interests.

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

12 (a) Persons authorized to provide informed consent to health care
13 on behalf of a patient who is incapacitated, as defined in RCW
14 11.88.010(1)(e), because he or she is under the age of majority and who
15 is not otherwise authorized to provide informed consent, shall be a
16 member of one of the following classes of persons in the following
17 order of priority:

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

20 (ii) A person authorized by the court to consent to medical care
21 for a child in out-of-home placement pursuant to chapter 13.32A or
22 13.34 RCW, if any;

23 (iii) Parents of the minor patient;

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

27 (v) A competent adult representing himself or herself to be a
28 relative responsible for the health care of such minor patient or a
29 competent adult who has signed and dated a declaration 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. Such
32 declaration shall be effective for up to six months from the date of
33 the declaration.

34 (b) A health care provider may, but is not required to, rely on the
35 representations or declaration of a person claiming to be a relative
36 responsible for the care of the minor patient, under (a)(v) of this
37 subsection, if the health care provider does not have actual notice of

1 the falsity of any of the statements made by the person claiming to be
2 a relative responsible for the health care of the minor patient.

3 (c) A health care facility or a health care provider may, in its
4 discretion, require documentation of a person's claimed status as being
5 a relative responsible for the health care of the minor patient.
6 However, there is no obligation to require such documentation.

7 (d) The health care provider or health care facility where services
8 are rendered shall be immune from suit in any action, civil or
9 criminal, or from professional or other disciplinary action when such
10 reliance is based on a declaration signed under penalty of perjury
11 pursuant to RCW 9A.72.085 stating that the adult person is a relative
12 responsible for the health care of the minor patient under (a)(v) of
13 this subsection.

14 (3) For the purposes of this section, "health care provider" and
15 "health care facility" shall be defined as established in RCW
16 70.02.010.

Passed by the House April 18, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor May 13, 2005.

Filed in Office of Secretary of State May 13, 2005.