

ESHB 2541 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 7.70.065 and 2017 c 275 s 1 are each amended to
4 read as follows:

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

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

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

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

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

19 (iv) Children of the patient who are at least eighteen years of
20 age;

21 (v) Parents of the patient; (~~and~~)

22 (vi) Adult brothers and sisters of the patient;

23 (vii) Adult grandchildren of the patient who are familiar with
24 the patient;

25 (viii) Adult nieces and nephews of the patient who are familiar
26 with the patient;

27 (ix) Adult aunts and uncles of the patient who are familiar with
28 the patient; and

29 (x)(A) An adult who:

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

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

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

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

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

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

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

14 (II) Is a close friend of the patient;

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

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

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

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

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

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

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

6 (c) Before any person authorized to provide informed consent on
7 behalf of a patient not competent to consent under RCW
8 11.88.010(1)(e), other than a person determined to be incapacitated
9 because he or she is under the age of majority and who is not
10 otherwise authorized to provide informed consent, exercises that
11 authority, the person must first determine in good faith that that
12 patient, if competent, would consent to the proposed health care. If
13 such a determination cannot be made, the decision to consent to the
14 proposed health care may be made only after determining that the
15 proposed health care is in the patient's best interests.

16 (2) Informed consent for health care, including mental health
17 care, for a patient who is not competent, as defined in RCW
18 11.88.010(1)(e), because he or she is under the age of majority and
19 who is not otherwise authorized to provide informed consent, may be
20 obtained from a person authorized to consent on behalf of such a
21 patient.

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

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

30 (ii) A person authorized by the court to consent to medical care
31 for a child in out-of-home placement pursuant to chapter 13.32A or
32 13.34 RCW, if any;

33 (iii) Parents of the minor patient;

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

37 (v) A competent adult representing himself or herself to be a
38 relative responsible for the health care of such minor patient or a
39 competent adult who has signed and dated a declaration under penalty
40 of perjury pursuant to RCW 9A.72.085 stating that the adult person is

1 a relative responsible for the health care of the minor patient. Such
2 declaration shall be effective for up to six months from the date of
3 the declaration.

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

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

15 (B) The minor patient meets the definition of a "homeless child
16 or youth" under the federal McKinney-Vento homeless education
17 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
18 115 Stat. 2005; and

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

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

30 (iii) Upon request by a health care facility or a health care
31 provider, a person authorized to consent to care under this
32 subsection (2)(b) must provide to the person rendering care a
33 declaration signed and dated under penalty of perjury pursuant to RCW
34 9A.72.085 stating that the person is a school nurse, school
35 counselor, or homeless student liaison and that the minor patient
36 meets the elements under (b)(i) of this subsection. The declaration
37 must also include written notice of the exemption from liability
38 under (b)(ii) of this subsection.

39 (c) A health care provider may, but is not required to, rely on
40 the representations or declaration of a person claiming to be a

1 relative responsible for the care of the minor patient, under (a)(v)
2 of this subsection, or a person claiming to be authorized to consent
3 to the health care of the minor patient under (b) of this subsection,
4 if the health care provider does not have actual notice of the
5 falsity of any of the statements made by the person claiming to be a
6 relative responsible for the health care of the minor patient, or
7 person claiming to be authorized to consent to the health care of the
8 minor patient.

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

15 (e) The health care provider or health care facility where
16 services are rendered shall be immune from suit in any action, civil
17 or criminal, or from professional or other disciplinary action when
18 such reliance is based on a declaration signed under penalty of
19 perjury pursuant to RCW 9A.72.085 stating that the adult person is a
20 relative responsible for the health care of the minor patient under
21 (a)(v) of this subsection, or a person claiming to be authorized to
22 consent to the health care of the minor patient under (b) of this
23 subsection.

24 (3) An informed decision by a qualified patient to request or
25 obtain a prescription for medication for purposes of chapter 70.245
26 RCW, the Washington death with dignity act, may not be obtained from
27 persons authorized to provide informed consent under this section
28 where such qualified patient is incapacitated as defined in chapter
29 11.88 RCW.

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

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33 On page 1, line 3 of the title, after "consent;" strike the
34 remainder of the title and insert "and amending RCW 7.70.065."

EFFECT: An informed decision to request or obtain medication to end a qualified patient's life may not be obtained by persons authorized to provide informed consent on behalf of an incapacitated person as defined in chapter 11.88 RCW.

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