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HOUSE BILL 2541

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Kilduff, Rodne, and Eslick

Read first time 01/10/18. Referred to Committee on Judiciary.

1            AN ACT Relating to expanding the classes of persons who may  
2 provide informed consent for certain patients who are not competent  
3 to consent; and amending RCW 7.70.065.

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

5            **Sec. 1.** RCW 7.70.065 and 2017 c 275 s 1 are each amended to read  
6 as follows:

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

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

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

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

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

1 (iv) Children of the patient who are at least eighteen years of  
2 age;

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

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

5 (vii) Adult grandchildren of the patient;

6 (viii) Adult nieces and nephews of the patient;

7 (ix) Adult aunts and uncles of the patient; and

8 (x)(A) An adult who:

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

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

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

12 (IV) Is not any of the following: A physician to the patient or  
13 an employee of the physician; or the owner, administrator, or  
14 employee of a health care facility or long-term care facility where  
15 the patient resides or receives care; and

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

17 (B) An adult who meets the requirements of (a)(x)(A) of this  
18 subsection shall provide a declaration, which shall be effective for  
19 up to six months from the date of the declaration, signed and dated  
20 under penalty of perjury pursuant to RCW 9A.72.085, that recites  
21 facts and circumstances demonstrating his or her familiarity with the  
22 patient and includes statements that he or she:

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

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

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

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

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

36 (b) If the health care provider seeking informed consent for  
37 proposed health care of the patient who is not competent to consent  
38 under RCW 11.88.010(1)(e), other than a person determined to be  
39 incapacitated because he or she is under the age of majority and who  
40 is not otherwise authorized to provide informed consent, makes

1 reasonable efforts to locate and secure authorization from a  
2 competent person in the first or succeeding class and finds no such  
3 person available, authorization may be given by any person in the  
4 next class in the order of descending priority. However, no person  
5 under this section may provide informed consent to health care:

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

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

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

21 (2) Informed consent for health care, including mental health  
22 care, for a patient who is not competent, as defined in RCW  
23 11.88.010(1)(e), because he or she is under the age of majority and  
24 who is not otherwise authorized to provide informed consent, may be  
25 obtained from a person authorized to consent on behalf of such a  
26 patient.

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

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

35 (ii) A person authorized by the court to consent to medical care  
36 for a child in out-of-home placement pursuant to chapter 13.32A or  
37 13.34 RCW, if any;

38 (iii) Parents of the minor patient;

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

4 (v) A competent adult representing himself or herself to be a  
5 relative responsible for the health care of such minor patient or a  
6 competent adult who has signed and dated a declaration under penalty  
7 of perjury pursuant to RCW 9A.72.085 stating that the adult person is  
8 a relative responsible for the health care of the minor patient. Such  
9 declaration shall be effective for up to six months from the date of  
10 the declaration.

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

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

22 (B) The minor patient meets the definition of a "homeless child  
23 or youth" under the federal McKinney-Vento homeless education  
24 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
25 115 Stat. 2005; and

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

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

37 (iii) Upon request by a health care facility or a health care  
38 provider, a person authorized to consent to care under this  
39 subsection (2)(b) must provide to the person rendering care a  
40 declaration signed and dated under penalty of perjury pursuant to RCW

1 9A.72.085 stating that the person is a school nurse, school  
2 counselor, or homeless student liaison and that the minor patient  
3 meets the elements under (b)(i) of this subsection. The declaration  
4 must also include written notice of the exemption from liability  
5 under (b)(ii) of this subsection.

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

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

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

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

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