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**SENATE BILL 5883**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Trudeau, Keiser, Billig, Conway, Hunt, Kuderer, Nguyen, Nobles, Robinson, Saldaña, Van De Wege, and C. Wilson

Read first time 01/18/22. Referred to Committee on Law & Justice.

1 AN ACT Relating to an unaccompanied homeless youth's ability to  
2 provide informed consent for that minor patient's own health care,  
3 including nonemergency, outpatient, and primary care services,  
4 including physical examinations, vision examinations and eyeglasses,  
5 dental examinations, hearing examinations and hearing aids,  
6 immunizations, treatments for illnesses and conditions, and routine  
7 follow-up care customarily provided by a health care provider in an  
8 outpatient setting, excluding elective surgeries; and amending RCW  
9 7.70.065.

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

11 **Sec. 1.** RCW 7.70.065 and 2021 c 270 s 1 are each amended to read  
12 as follows:

13 (1) Informed consent for health care for a patient who does not  
14 have the capacity to make a health care decision may be obtained from  
15 a person authorized to consent on behalf of such patient. For  
16 purposes of this section, a person who is of the age of consent to  
17 make a particular health care decision is presumed to have capacity,  
18 unless a health care provider reasonably determines the person lacks  
19 capacity to make the health care decision due to the person's  
20 demonstrated inability to understand and appreciate the nature and  
21 consequences of a health condition, the proposed treatment, including

1 the anticipated results, benefits, risks, and alternatives to the  
2 proposed treatment, including nontreatment, and reach an informed  
3 decision as a result of cognitive impairment; and the health care  
4 provider documents the basis for the determination in the medical  
5 record.

6 (a) Persons authorized to provide informed consent to health care  
7 on behalf of an adult patient who does not have the capacity to make  
8 a health care decision shall be a member of one of the following  
9 classes of persons in the following order of priority:

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

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

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

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

17 (v) Parents of the patient;

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

19 (vii) Adult grandchildren of the patient who are familiar with  
20 the patient;

21 (viii) Adult nieces and nephews of the patient who are familiar  
22 with the patient;

23 (ix) Adult aunts and uncles of the patient who are familiar with  
24 the patient; and

25 (x) (A) An adult who:

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

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

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

29 (IV) Is not any of the following: A physician to the patient or  
30 an employee of the physician; the owner, administrator, or employee  
31 of a health care facility, nursing home, or long-term care facility  
32 where the patient resides or receives care; or a person who receives  
33 compensation to provide care to the patient; and

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

35 (B) An adult who meets the requirements of (a) (x) (A) of this  
36 subsection shall provide a declaration, which is effective for up to  
37 six months from the date of the declaration, signed and dated under  
38 penalty of perjury pursuant to chapter 5.50 RCW, that recites facts  
39 and circumstances demonstrating that he or she is familiar with the  
40 patient and that he or she:

1 (I) Meets the requirements of (a) (x) (A) of this subsection;  
2 (II) Is a close friend of the patient;  
3 (III) Is willing and able to become involved in the patient's  
4 health care;  
5 (IV) Has maintained such regular contact with the patient as to  
6 be familiar with the patient's activities, health, personal values,  
7 and morals; and  
8 (V) Is not aware of a person in a higher priority class willing  
9 and able to provide informed consent to health care on behalf of the  
10 patient.  
11 (C) A health care provider may, but is not required to, rely on a  
12 declaration provided under (a) (x) (B) of this subsection. The health  
13 care provider or health care facility where services are rendered is  
14 immune from suit in any action, civil or criminal, or from  
15 professional or other disciplinary action when such reliance is based  
16 on a declaration provided in compliance with (a) (x) (B) of this  
17 subsection.  
18 (b) If the health care provider seeking informed consent for  
19 proposed health care of the patient who does not have the capacity to  
20 make a particular health care decision, other than a person who is  
21 under the age of consent for the particular health care decision,  
22 makes reasonable efforts to locate and secure authorization from a  
23 competent person in the first or succeeding class and finds no such  
24 person available, authorization may be given by any person in the  
25 next class in the order of descending priority. However, no person  
26 under this section may provide informed consent to health care:  
27 (i) If a person of higher priority under this section has refused  
28 to give such authorization; or  
29 (ii) If there are two or more individuals in the same class and  
30 the decision is not unanimous among all available members of that  
31 class.  
32 (c) Before any person authorized to provide informed consent on  
33 behalf of a patient who does not have the capacity to make a health  
34 care decision exercises that authority, the person must first  
35 determine in good faith that that patient, if he or she had the  
36 capacity to make the health care decision, would consent to the  
37 proposed health care. If such a determination cannot be made, the  
38 decision to consent to the proposed health care may be made only  
39 after determining that the proposed health care is in the patient's  
40 best interests. This subsection (1)(c) does not apply to informed

1 consent provided on behalf of a patient who has not reached the age  
2 of consent required to make a particular health care decision.

3 (d) No rights under Washington's death with dignity act, chapter  
4 70.245 RCW, may be exercised through a person authorized to provide  
5 informed consent to health care on behalf of a patient who does not  
6 have the capacity to make a health care decision.

7 (2) Informed consent for health care, including mental health  
8 care, for a patient who is under the age of majority and who is not  
9 otherwise authorized to provide informed consent, may be obtained  
10 from a person authorized to consent on behalf of such a patient.

11 (a) Persons authorized to provide informed consent to health  
12 care, including mental health care, on behalf of a patient who is  
13 under the age of majority and who is not otherwise authorized to  
14 provide informed consent, shall be a member of one of the following  
15 classes of persons in the following order of priority:

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

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

21 (iii) Parents of the minor patient;

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

25 (v) A competent adult representing himself or herself to be a  
26 relative responsible for the health care of such minor patient or a  
27 competent adult who has signed and dated a declaration under penalty  
28 of perjury pursuant to chapter 5.50 RCW stating that the adult person  
29 is a relative responsible for the health care of the minor patient.  
30 Such declaration shall be effective for up to six months from the  
31 date of the declaration.

32 (b) (i) Informed consent for health care on behalf of a patient  
33 who is under the age of majority and who is not otherwise authorized  
34 to provide informed consent may be obtained from a school nurse,  
35 school counselor, or homeless student liaison when:

36 (A) Consent is necessary for nonemergency, outpatient, primary  
37 care services, including physical examinations, vision examinations  
38 and eyeglasses, dental examinations, hearing examinations and hearing  
39 aids, immunizations, treatments for illnesses and conditions, and

1 routine follow-up care customarily provided by a health care provider  
2 in an outpatient setting, excluding elective surgeries;

3 (B) The minor patient meets the definition of a "homeless child  
4 or youth" under the federal McKinney-Vento homeless education  
5 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
6 115 Stat. 2005; and

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

10 (ii) A person authorized to consent to care under this subsection  
11 (2)(b) and the person's employing school or school district are not  
12 subject to administrative sanctions or civil damages resulting from  
13 the consent or nonconsent for care, any care, or payment for any  
14 care, rendered pursuant to this section. Nothing in this section  
15 prevents a health care facility or a health care provider from  
16 seeking reimbursement from other sources for care provided to a minor  
17 patient under this subsection (2)(b).

18 (iii) Upon request by a health care facility or a health care  
19 provider, a person authorized to consent to care under this  
20 subsection (2)(b) must provide to the person rendering care a  
21 declaration signed and dated under penalty of perjury pursuant to  
22 chapter 5.50 RCW stating that the person is a school nurse, school  
23 counselor, or homeless student liaison and that the minor patient  
24 meets the elements under (b)(i) of this subsection. The declaration  
25 must also include written notice of the exemption from liability  
26 under (b)(ii) of this subsection.

27 (c) A health care provider may, but is not required to, rely on  
28 the representations or declaration of a person claiming to be a  
29 relative responsible for the care of the minor patient, under (a)(v)  
30 of this subsection, or a person claiming to be authorized to consent  
31 to the health care of the minor patient under (b) of this subsection,  
32 if the health care provider does not have actual notice of the  
33 falsity of any of the statements made by the person claiming to be a  
34 relative responsible for the health care of the minor patient, or  
35 person claiming to be authorized to consent to the health care of the  
36 minor patient.

37 (d) A health care facility or a health care provider may, in its  
38 discretion, require documentation of a person's claimed status as  
39 being a relative responsible for the health care of the minor  
40 patient, or a person claiming to be authorized to consent to the

1 health care of the minor patient under (b) of this subsection.  
2 However, there is no obligation to require such documentation.

3 (e) The health care provider or health care facility where  
4 services are rendered shall be immune from suit in any action, civil  
5 or criminal, or from professional or other disciplinary action when  
6 such reliance is based on a declaration signed under penalty of  
7 perjury pursuant to chapter 5.50 RCW stating that the adult person is  
8 a relative responsible for the health care of the minor patient under  
9 (a)(v) of this subsection, or a person claiming to be authorized to  
10 consent to the health care of the minor patient under (b) of this  
11 subsection.

12 (3) An unaccompanied homeless youth who is a minor patient who is  
13 not otherwise authorized to provide informed consent and is unable to  
14 obtain informed consent under subsection (2)(b)(i) of this section is  
15 authorized to provide informed consent for nonemergency, outpatient,  
16 primary care services, including physical examinations, vision  
17 examinations and eyeglasses, dental examinations, hearing  
18 examinations and hearing aids, immunizations, treatments for  
19 illnesses and conditions, and routine follow-up care customarily  
20 provided by a health care provider in an outpatient setting,  
21 excluding elective surgeries.

22 (a) For purposes of this subsection:

23 (i) "Youth" and "minor" mean an unemancipated individual who is  
24 under the chronological age of 18 years.

25 (ii) "Unaccompanied" means a youth experiencing homelessness  
26 while not in the physical custody of a parent or guardian.

27 (iii) "Homeless" means without a fixed, regular, and adequate  
28 nighttime residence as set forth in the federal McKinney-Vento  
29 homeless education assistance improvements act of 2001, P.L. 107-110,  
30 January 8, 2002, 115 Stat. 2005.

31 (b) A health care provider may, but is not required to, request  
32 documentation that the minor patient under this subsection (3) is an  
33 unaccompanied homeless youth. Acceptable documentation that a minor  
34 patient is an unaccompanied homeless youth includes, but is not  
35 limited to, a written, oral, or electronic statement by:

36 (i) Staff at a governmental or nonprofit human services agency or  
37 homeless services agency;

38 (ii) An attorney representing the minor; or

39 (iii) An adult relative of the minor or other adult with  
40 knowledge of the minor and the minor's housing situation.

1 (c) A health care facility or a health care provider is not  
2 subject to administrative sanctions or civil liability for providing  
3 health care services in good faith based upon the consent of the  
4 unaccompanied homeless youth minor on the minor's own behalf or upon  
5 the documentation.

6 (d) A person who provides a statement for documentation that the  
7 minor patient is an unaccompanied homeless youth is not subject to  
8 administrative sanctions or civil liability for providing  
9 documentation in good faith based upon the person's knowledge of the  
10 minor patient and the minor patient's housing situation.

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

14 ~~((4))~~ (5) A person who knowingly provides a false declaration  
15 under this section shall be subject to criminal penalties under  
16 chapter 9A.72 RCW.

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