

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5883

67th Legislature
2022 Regular Session

Passed by the Senate March 7, 2022
Yeas 29 Nays 20

President of the Senate

Passed by the House March 3, 2022
Yeas 57 Nays 41

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5883** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5883

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By Senate Law & Justice (originally sponsored by Senators Trudeau, Keiser, Billig, Conway, Hunt, Kuderer, Nguyen, Nobles, Robinson, Saldaña, Van De Wege, and C. Wilson)

READ FIRST TIME 02/03/22.

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

22 (a) For purposes of this subsection:

23 (i) "Unaccompanied" means a youth experiencing homelessness while
24 not in the physical custody of a parent or guardian.

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

29 (b) A health care facility or a health care provider may, in its
30 discretion, require documentation that the minor patient under this
31 subsection (3) is an unaccompanied homeless youth. However, there is
32 no obligation to require such documentation. Acceptable documentation
33 that a minor patient is an unaccompanied homeless youth includes a
34 written or electronic statement signed under penalty of perjury
35 pursuant to chapter 5.50 RCW by:

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

38 (ii) An attorney representing the minor patient; or

1 (iii) An adult relative of the minor patient or other adult with
2 knowledge of the minor patient and the minor patient's housing
3 situation.

4 (c) A health care provider may, but is not required to, rely on
5 the representations or declaration stating that the patient is an
6 unaccompanied homeless youth, if the health care provider does not
7 have actual notice of the falsity of any of the statements made by
8 the person claiming to be authorized to consent to the health care of
9 the minor patient.

10 (d) The health care provider or health care facility where
11 services are rendered is immune from suit in any action, civil or
12 criminal, and from professional or other disciplinary action when
13 such reliance is based on a declaration signed under penalty of
14 perjury pursuant to chapter 5.50 RCW stating that the patient is an
15 unaccompanied homeless youth under (b) of this subsection, or is
16 based on the statement of a minor patient regarding the minor
17 patient's housing situation.

18 (e) A person who provides a statement for documentation that the
19 minor patient is an unaccompanied homeless youth is not subject to
20 administrative sanctions or civil liability for providing
21 documentation in good faith based upon the person's knowledge of the
22 minor patient and the minor patient's housing situation.

23 (f) During a visit with an unaccompanied homeless youth who
24 provides informed consent authorized under this subsection (3), a
25 primary care provider as defined under RCW 74.09.010 shall use
26 existing best practices that align with any guidelines developed by
27 the office of crime victims advocacy established in RCW 43.280.080
28 and the commercially sexually exploited children statewide
29 coordinating committee established under RCW 7.68.801 designed to
30 identify:

31 (i) Whether the unaccompanied homeless youth may be a victim of
32 human trafficking; and

33 (ii) Potential referral to additional services, the department of
34 children, youth, and families, or law enforcement.

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

1 (~~(4)~~) (5) A person who knowingly provides a false declaration
2 under this section shall be subject to criminal penalties under
3 chapter 9A.72 RCW.

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