

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5185**

Chapter 270, Laws of 2021

67th Legislature  
2021 Regular Session

HEALTH CARE DECISIONS—INFORMED CONSENT

EFFECTIVE DATE: January 1, 2022

Passed by the Senate April 21, 2021  
Yeas 35 Nays 14

DENNY HECK

**President of the Senate**

Passed by the House April 5, 2021  
Yeas 97 Nays 1

LAURIE JINKINS

**Speaker of the House of  
Representatives**

Approved May 12, 2021 2:51 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5185** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

May 12, 2021

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5185**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Pedersen, Holy, and Wilson, C.)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to capacity to provide informed consent for  
2 health care decisions; amending RCW 7.70.065, 7.70.050, 7.70.060,  
3 69.50.317, and 70.02.220; and providing an effective date.

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

5 **Sec. 1.** RCW 7.70.065 and 2020 c 312 s 705 are each amended to  
6 read as follows:

7 (1) Informed consent for health care for a patient who (~~is a~~  
8 ~~minor or, to consent~~) does not have the capacity to make a health  
9 care decision may be obtained from a person authorized to consent on  
10 behalf of such patient. For purposes of this section, a person who is  
11 of the age of consent to make a particular health care decision is  
12 presumed to have capacity, unless a health care provider reasonably  
13 determines the person lacks capacity to make the health care decision  
14 due to the person's demonstrated inability to understand and  
15 appreciate the nature and consequences of a health condition, the  
16 proposed treatment, including the anticipated results, benefits,  
17 risks, and alternatives to the proposed treatment, including  
18 nontreatment, and reach an informed decision as a result of cognitive  
19 impairment; and the health care provider documents the basis for the  
20 determination in the medical record.

1 (a) Persons authorized to provide informed consent to health care  
2 on behalf of ((a)) an adult patient who ((has been placed under a  
3 guardianship under RCW 11.130.265 a minor or,)) does not have the  
4 capacity to make a health care decision shall be a member of one of  
5 the following classes of persons in the following order of priority:  
6 (i) The appointed guardian of the patient, if any;  
7 (ii) The individual, if any, to whom the patient has given a  
8 durable power of attorney that encompasses the authority to make  
9 health care decisions;  
10 (iii) The patient's spouse or state registered domestic partner;  
11 (iv) Children of the patient who are at least eighteen years of  
12 age;  
13 (v) Parents of the patient;  
14 (vi) Adult brothers and sisters of the patient;  
15 (vii) Adult grandchildren of the patient who are familiar with  
16 the patient;  
17 (viii) Adult nieces and nephews of the patient who are familiar  
18 with the patient;  
19 (ix) Adult aunts and uncles of the patient who are familiar with  
20 the patient; and  
21 (x) (A) An adult who:  
22 (I) Has exhibited special care and concern for the patient;  
23 (II) Is familiar with the patient's personal values;  
24 (III) Is reasonably available to make health care decisions;  
25 (IV) Is not any of the following: A physician to the patient or  
26 an employee of the physician; the owner, administrator, or employee  
27 of a health care facility, nursing home, or long-term care facility  
28 where the patient resides or receives care; or a person who receives  
29 compensation to provide care to the patient; and  
30 (V) Provides a declaration under (a) (x) (B) of this subsection.  
31 (B) An adult who meets the requirements of (a) (x) (A) of this  
32 subsection shall provide a declaration, which is effective for up to  
33 six months from the date of the declaration, signed and dated under  
34 penalty of perjury pursuant to chapter 5.50 RCW, that recites facts  
35 and circumstances demonstrating that he or she is familiar with the  
36 patient and that he or she:  
37 (I) Meets the requirements of (a) (x) (A) of this subsection;  
38 (II) Is a close friend of the patient;  
39 (III) Is willing and able to become involved in the patient's  
40 health care;

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

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

7 (C) A health care provider may, but is not required to, rely on a  
8 declaration provided under (a)(x)(B) of this subsection. The health  
9 care provider or health care facility where services are rendered is  
10 immune from suit in any action, civil or criminal, or from  
11 professional or other disciplinary action when such reliance is based  
12 on a declaration provided in compliance with (a)(x)(B) of this  
13 subsection.

14 (b) If the health care provider seeking informed consent for  
15 proposed health care of the patient who (~~has been placed under a~~  
16 ~~guardianship under RCW 11.130.265,~~) does not have the capacity to  
17 make a particular health care decision, other than a person who is  
18 under the age of consent for the particular health care decision,  
19 makes reasonable efforts to locate and secure authorization from a  
20 competent person in the first or succeeding class and finds no such  
21 person available, authorization may be given by any person in the  
22 next class in the order of descending priority. However, no person  
23 under this section may provide informed consent to health care:

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

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

29 (c) Before any person authorized to provide informed consent on  
30 behalf of a patient who (~~has been placed under a guardianship under~~  
31 ~~RCW 11.130.265,~~) does not have the capacity to make a health care  
32 decision exercises that authority, the person must first determine in  
33 good faith that that patient, if (~~competent~~) he or she had the  
34 capacity to make the health care decision, would consent to the  
35 proposed health care. If such a determination cannot be made, the  
36 decision to consent to the proposed health care may be made only  
37 after determining that the proposed health care is in the patient's  
38 best interests. This subsection (1)(c) does not apply to informed  
39 consent provided on behalf of a patient who has not reached the age  
40 of consent required to make a particular health care decision.

1 (d) No rights under Washington's death with dignity act, chapter  
2 70.245 RCW, may be exercised through a person authorized to provide  
3 informed consent to health care on behalf of a patient who (~~is a~~  
4 ~~minor or has been placed under a guardianship under RCW 11.130.265~~)  
5 does not have the capacity to make a health care decision.

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

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

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

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

20 (iii) Parents of the minor patient;

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

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

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

35 (A) Consent is necessary for nonemergency, outpatient, primary  
36 care services, including physical examinations, vision examinations  
37 and eyeglasses, dental examinations, hearing examinations and hearing  
38 aids, immunizations, treatments for illnesses and conditions, and  
39 routine follow-up care customarily provided by a health care provider  
40 in an outpatient setting, excluding elective surgeries;

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

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

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

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

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

35 (d) A health care facility or a health care provider may, in its  
36 discretion, require documentation of a person's claimed status as  
37 being a relative responsible for the health care of the minor  
38 patient, or a person claiming to be authorized to consent to the  
39 health care of the minor patient under (b) of this subsection.  
40 However, there is no obligation to require such documentation.

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

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

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

16 **Sec. 2.** RCW 7.70.050 and 2011 c 336 s 252 are each amended to  
17 read as follows:

18 (1) The following shall be necessary elements of proof that  
19 injury resulted from health care in a civil negligence case or  
20 arbitration involving the issue of the alleged breach of the duty to  
21 secure an informed consent by a patient or his or her representatives  
22 against a health care provider:

23 (a) That the health care provider failed to inform the patient of  
24 a material fact or facts relating to the treatment;

25 (b) That the patient consented to the treatment without being  
26 aware of or fully informed of such material fact or facts;

27 (c) That a reasonably prudent patient under similar circumstances  
28 would not have consented to the treatment if informed of such  
29 material fact or facts;

30 (d) That the treatment in question proximately caused injury to  
31 the patient.

32 (2) Under the provisions of this section a fact is defined as or  
33 considered to be a material fact, if a reasonably prudent person in  
34 the position of the patient or his or her representative would attach  
35 significance to it deciding whether or not to submit to the proposed  
36 treatment.

37 (3) Material facts under the provisions of this section which  
38 must be established by expert testimony shall be either:

1 (a) The nature and character of the treatment proposed and  
2 administered;

3 (b) The anticipated results of the treatment proposed and  
4 administered;

5 (c) The recognized possible alternative forms of treatment; or

6 (d) The recognized serious possible risks, complications, and  
7 anticipated benefits involved in the treatment administered and in  
8 the recognized possible alternative forms of treatment, including  
9 nontreatment.

10 (4) If a recognized health care emergency exists and the patient  
11 (~~is not legally competent~~) does not have the capacity to give an  
12 informed consent and/or a person legally authorized to consent on  
13 behalf of the patient is not readily available, his or her consent to  
14 required treatment will be implied.

15 **Sec. 3.** RCW 7.70.060 and 2012 c 101 s 1 are each amended to read  
16 as follows:

17 (1) If a patient (~~while legally competent~~) who has capacity to  
18 make health a care decision, or his or her representative if he or  
19 she (~~is not competent~~) does not have the capacity to make a health  
20 care decision, signs a consent form which sets forth the following,  
21 the signed consent form shall constitute prima facie evidence that  
22 the patient gave his or her informed consent to the treatment  
23 administered and the patient has the burden of rebutting this by a  
24 preponderance of the evidence:

25 (a) A description, in language the patient could reasonably be  
26 expected to understand, of:

27 (i) The nature and character of the proposed treatment;

28 (ii) The anticipated results of the proposed treatment;

29 (iii) The recognized possible alternative forms of treatment; and

30 (iv) The recognized serious possible risks, complications, and  
31 anticipated benefits involved in the treatment and in the recognized  
32 possible alternative forms of treatment, including nontreatment;

33 (b) Or as an alternative, a statement that the patient elects not  
34 to be informed of the elements set forth in (a) of this subsection.

35 (2) If a patient (~~while legally competent~~) who has capacity to  
36 make a health care decision, or his or her representative if he or  
37 she (~~is not competent~~) does not have the capacity to make a health  
38 care decision, signs an acknowledgment of shared decision making as  
39 described in this section, such acknowledgment shall constitute prima

1 facie evidence that the patient gave his or her informed consent to  
2 the treatment administered and the patient has the burden of  
3 rebutting this by clear and convincing evidence. An acknowledgment of  
4 shared decision making shall include:

5 (a) A statement that the patient, or his or her representative,  
6 and the health care provider have engaged in shared decision making  
7 as an alternative means of meeting the informed consent requirements  
8 set forth by laws, accreditation standards, and other mandates;

9 (b) A brief description of the services that the patient and  
10 provider jointly have agreed will be furnished;

11 (c) A brief description of the patient decision aid or aids that  
12 have been used by the patient and provider to address the needs for  
13 (i) high-quality, up-to-date information about the condition,  
14 including risk and benefits of available options and, if appropriate,  
15 a discussion of the limits of scientific knowledge about outcomes;  
16 (ii) values clarification to help patients sort out their values and  
17 preferences; and (iii) guidance or coaching in deliberation, designed  
18 to improve the patient's involvement in the decision process;

19 (d) A statement that the patient or his or her representative  
20 understands: The risk or seriousness of the disease or condition to  
21 be prevented or treated; the available treatment alternatives,  
22 including nontreatment; and the risks, benefits, and uncertainties of  
23 the treatment alternatives, including nontreatment; and

24 (e) A statement certifying that the patient or his or her  
25 representative has had the opportunity to ask the provider questions,  
26 and to have any questions answered to the patient's satisfaction, and  
27 indicating the patient's intent to receive the identified services.

28 (3) As used in this section, "shared decision making" means a  
29 process in which the physician or other health care practitioner  
30 discusses with the patient or his or her representative the  
31 information specified in subsection (2) of this section with the use  
32 of a patient decision aid and the patient shares with the provider  
33 such relevant personal information as might make one treatment or  
34 side effect more or less tolerable than others.

35 (4)(a) As used in this section, "patient decision aid" means a  
36 written, audiovisual, or online tool that provides a balanced  
37 presentation of the condition and treatment options, benefits, and  
38 harms, including, if appropriate, a discussion of the limits of  
39 scientific knowledge about outcomes, for any medical condition or  
40 procedure, including abortion as defined in RCW 9.02.170 and:

1 (i)(A) That is certified by one or more national certifying  
2 organizations recognized by the medical director of the health care  
3 authority; or

4 (B) That has been evaluated based on the international patient  
5 decision aid standards by an organization located in the United  
6 States or Canada and has a current overall score satisfactory to the  
7 medical director of the health care authority; or

8 (ii) That, if a current evaluation is not available from an  
9 organization located in the United States or Canada, the medical  
10 director of the health care authority has independently assessed and  
11 certified based on the international patient decision aid standards.

12 (b) The health care authority may charge a fee to the  
13 certification applicant to defray the costs of the assessment and  
14 certification under this subsection.

15 (5) Failure to use a form or to engage in shared decision making,  
16 with or without the use of a patient decision aid, shall not be  
17 admissible as evidence of failure to obtain informed consent. There  
18 shall be no liability, civil or otherwise, resulting from a health  
19 care provider choosing either the signed consent form set forth in  
20 subsection (1)(a) of this section or the signed acknowledgment of  
21 shared decision making as set forth in subsection (2) of this  
22 section.

23 **Sec. 4.** RCW 69.50.317 and 2019 c 314 s 17 are each amended to  
24 read as follows:

25 (1) Any practitioner who writes the first prescription for an  
26 opioid during the course of treatment to any patient must, under  
27 professional rules, discuss the following with the patient:

28 (a) The risks of opioids, including risk of dependence and  
29 overdose;

30 (b) Pain management alternatives to opioids, including nonopioid  
31 pharmacological treatments, and nonpharmacological treatments  
32 available to the patient, at the discretion of the practitioner and  
33 based on the medical condition of the patient; and

34 (c) A written copy of the warning language provided by the  
35 department under RCW 43.70.765.

36 (2) If the patient is under eighteen years old or (~~is not~~  
37 ~~competent~~)) does not have the capacity to make a health care  
38 decision, the discussion required by subsection (1) of this section

1 must include the patient's parent, guardian, or the person identified  
2 in RCW 7.70.065, unless otherwise provided by law.

3 (3) The practitioner shall document completion of the  
4 requirements in subsection (1) of this section in the patient's  
5 health care record.

6 (4) To fulfill the requirements of subsection (1) of this  
7 section, a practitioner may designate any individual who holds a  
8 credential issued by a disciplining authority under RCW 18.130.040 to  
9 conduct the discussion.

10 (5) Violation of this section constitutes unprofessional conduct  
11 under chapter 18.130 RCW.

12 (6) This section does not apply to:

13 (a) Opioid prescriptions issued for the treatment of pain  
14 associated with terminal cancer or other terminal diseases, or for  
15 palliative, hospice, or other end-of-life care of where the  
16 practitioner determines the health, well-being, or care of the  
17 patient would be compromised by the requirements of this section and  
18 documents such basis for the determination in the patient's health  
19 care record; or

20 (b) Administration of an opioid in an inpatient or outpatient  
21 treatment setting.

22 (7) This section does not apply to practitioners licensed under  
23 chapter 18.92 RCW.

24 (8) The department shall review this section by March 31, 2026,  
25 and report to the appropriate committees of the legislature on  
26 whether this section should be retained, repealed, or amended.

27 **Sec. 5.** RCW 70.02.220 and 2017 3rd sp.s. c 6 s 332 are each  
28 amended to read as follows:

29 (1) No person may disclose or be compelled to disclose the  
30 identity of any person who has investigated, considered, or requested  
31 a test or treatment for a sexually transmitted disease, except as  
32 authorized by this section, RCW 70.02.210, or chapter 70.24 RCW.

33 (2) No person may disclose or be compelled to disclose  
34 information and records related to sexually transmitted diseases,  
35 except as authorized by this section, RCW 70.02.210, 70.02.205, or  
36 chapter 70.24 RCW. A person may disclose information related to  
37 sexually transmitted diseases about a patient without the patient's  
38 authorization, to the extent a recipient needs to know the  
39 information, if the disclosure is to:

1 (a) The subject of the test or the subject's legal representative  
2 for health care decisions in accordance with RCW 7.70.065, with the  
3 exception of such a representative of a minor fourteen years of age  
4 or over and otherwise (~~competent~~) capable of making health care  
5 decisions;

6 (b) The state (~~public~~) health officer as defined in RCW  
7 70.24.017, a local public health officer, or the centers for disease  
8 control of the United States public health service in accordance with  
9 reporting requirements for a diagnosed case of a sexually transmitted  
10 disease;

11 (c) A health facility or health care provider that procures,  
12 processes, distributes, or uses: (i) A human body part, tissue, or  
13 blood from a deceased person with respect to medical information  
14 regarding that person; (ii) semen, including that was provided prior  
15 to March 23, 1988, for the purpose of artificial insemination; or  
16 (iii) blood specimens;

17 (d) Any state or local public health officer conducting an  
18 investigation pursuant to RCW 70.24.024, so long as the record was  
19 obtained by means of court-ordered HIV testing pursuant to RCW  
20 70.24.340 or 70.24.024;

21 (e) A person allowed access to the record by a court order  
22 granted after application showing good cause therefor. In assessing  
23 good cause, the court shall weigh the public interest and the need  
24 for disclosure against the injury to the patient, to the physician-  
25 patient relationship, and to the treatment services. Upon the  
26 granting of the order, the court, in determining the extent to which  
27 any disclosure of all or any part of the record of any such test is  
28 necessary, shall impose appropriate safeguards against unauthorized  
29 disclosure. An order authorizing disclosure must: (i) Limit  
30 disclosure to those parts of the patient's record deemed essential to  
31 fulfill the objective for which the order was granted; (ii) limit  
32 disclosure to those persons whose need for information is the basis  
33 for the order; and (iii) include any other appropriate measures to  
34 keep disclosure to a minimum for the protection of the patient, the  
35 physician-patient relationship, and the treatment services;

36 (f) Persons who, because of their behavioral interaction with the  
37 infected individual, have been placed at risk for acquisition of a  
38 sexually transmitted disease, as provided in RCW 70.24.022, if the  
39 health officer or authorized representative believes that the exposed

1 person was unaware that a risk of disease exposure existed and that  
2 the disclosure of the identity of the infected person is necessary;

3 (g) A law enforcement officer, firefighter, health care provider,  
4 health care facility staff person, department of correction's staff  
5 person, jail staff person, or other persons as defined by the board  
6 of health in rule pursuant to RCW 70.24.340(~~((4))~~), who has requested  
7 a test of a person whose bodily fluids he or she has been  
8 substantially exposed to, pursuant to RCW 70.24.340(~~((4))~~), if a  
9 state or local public health officer performs the test;

10 (h) Claims management personnel employed by or associated with an  
11 insurer, health care service contractor, health maintenance  
12 organization, self-funded health plan, state administered health care  
13 claims payer, or any other payer of health care claims where such  
14 disclosure is to be used solely for the prompt and accurate  
15 evaluation and payment of medical or related claims. Information  
16 released under this subsection must be confidential and may not be  
17 released or available to persons who are not involved in handling or  
18 determining medical claims payment; and

19 (i) A department of children, youth, and families worker, a  
20 child-placing agency worker, or a guardian ad litem who is  
21 responsible for making or reviewing placement or case-planning  
22 decisions or recommendations to the court regarding a child, who is  
23 less than fourteen years of age, has a sexually transmitted disease,  
24 and is in the custody of the department of children, youth, and  
25 families or a licensed child-placing agency. This information may  
26 also be received by a person responsible for providing residential  
27 care for such a child when the department of social and health  
28 services, the department of children, youth, and families, or a  
29 licensed child-placing agency determines that it is necessary for the  
30 provision of child care services.

31 (3) No person to whom the results of a test for a sexually  
32 transmitted disease have been disclosed pursuant to subsection (2) of  
33 this section may disclose the test results to another person except  
34 as authorized by that subsection.

35 (4) The release of sexually transmitted disease information  
36 regarding an offender or detained person, except as provided in  
37 subsection (2)(d) of this section, is governed as follows:

38 (a) The sexually transmitted disease status of a department of  
39 corrections offender who has had a mandatory test conducted pursuant  
40 to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available

1 by department of corrections health care providers and local public  
2 health officers to the department of corrections health care  
3 administrator or infection control coordinator of the facility in  
4 which the offender is housed. The information made available to the  
5 health care administrator or the infection control coordinator under  
6 this subsection (4)(a) may be used only for disease prevention or  
7 control and for protection of the safety and security of the staff,  
8 offenders, and the public. The information may be submitted to  
9 transporting officers and receiving facilities, including facilities  
10 that are not under the department of corrections' jurisdiction  
11 according to the provisions of (d) and (e) of this subsection.

12 (b) The sexually transmitted disease status of a person detained  
13 in a jail who has had a mandatory test conducted pursuant to RCW  
14 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the  
15 local public health officer to a jail health care administrator or  
16 infection control coordinator. The information made available to a  
17 health care administrator under this subsection (4)(b) may be used  
18 only for disease prevention or control and for protection of the  
19 safety and security of the staff, offenders, detainees, and the  
20 public. The information may be submitted to transporting officers and  
21 receiving facilities according to the provisions of (d) and (e) of  
22 this subsection.

23 (c) Information regarding the sexually transmitted disease status  
24 of an offender or detained person is confidential and may be  
25 disclosed by a correctional health care administrator or infection  
26 control coordinator or local jail health care administrator or  
27 infection control coordinator only as necessary for disease  
28 prevention or control and for protection of the safety and security  
29 of the staff, offenders, and the public. Unauthorized disclosure of  
30 this information to any person may result in disciplinary action, in  
31 addition to the penalties prescribed in RCW 70.24.080 or any other  
32 penalties as may be prescribed by law.

33 (d) Notwithstanding the limitations on disclosure contained in  
34 (a), (b), and (c) of this subsection, whenever any member of a jail  
35 staff or department of corrections staff has been substantially  
36 exposed to the bodily fluids of an offender or detained person, then  
37 the results of any tests conducted pursuant to RCW 70.24.340(1),  
38 70.24.360, or 70.24.370, must be immediately disclosed to the staff  
39 person in accordance with the Washington Administrative Code rules  
40 governing employees' occupational exposure to blood-borne pathogens.

1 Disclosure must be accompanied by appropriate counseling for the  
2 staff member, including information regarding follow-up testing and  
3 treatment. Disclosure must also include notice that subsequent  
4 disclosure of the information in violation of this chapter or use of  
5 the information to harass or discriminate against the offender or  
6 detainee may result in disciplinary action, in addition to the  
7 penalties prescribed in RCW 70.24.080, and imposition of other  
8 penalties prescribed by law.

9 (e) The staff member must also be informed whether the offender  
10 or detained person had any other communicable disease, as defined in  
11 RCW 72.09.251(3), when the staff person was substantially exposed to  
12 the offender's or detainee's bodily fluids.

13 (f) The test results of voluntary and anonymous HIV testing or  
14 HIV-related condition, as defined in RCW 70.24.017, may not be  
15 disclosed to a staff person except as provided in this section and  
16 RCW 70.02.050(1)(d) and 70.24.340(~~((4))~~). A health care administrator  
17 or infection control coordinator may provide the staff member with  
18 information about how to obtain the offender's or detainee's test  
19 results under this section and RCW 70.02.050(1)(d) and  
20 70.24.340(~~((4))~~).

21 (5) The requirements of this section do not apply to the  
22 customary methods utilized for the exchange of medical information  
23 among health care providers in order to provide health care services  
24 to the patient, nor do they apply within health care facilities where  
25 there is a need for access to confidential medical information to  
26 fulfill professional duties.

27 (6) Upon request of the victim, disclosure of test results under  
28 this section to victims of sexual offenses under chapter 9A.44 RCW  
29 must be made if the result is negative or positive. The county  
30 prosecuting attorney shall notify the victim of the right to such  
31 disclosure. The disclosure must be accompanied by appropriate  
32 counseling, including information regarding follow-up testing.

33 (7) A person, including a health care facility or health care  
34 provider, shall disclose the identity of any person who has  
35 investigated, considered, or requested a test or treatment for a  
36 sexually transmitted disease and information and records related to  
37 sexually transmitted diseases to federal, state, or local public  
38 health authorities, to the extent the health care provider is  
39 required by law to report health care information; when needed to  
40 determine compliance with state or federal certification or

1 registration rules or laws; or when needed to protect the public  
2 health. Any health care information obtained under this subsection is  
3 exempt from public inspection and copying pursuant to chapter 42.56  
4 RCW.

5 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2022.

Passed by the Senate April 21, 2021.

Passed by the House April 5, 2021.

Approved by the Governor May 12, 2021.

Filed in Office of Secretary of State May 12, 2021.

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