

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**

SUBSTITUTE SENATE BILL 5185

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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