
HOUSE BILL 3139

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By Representatives Pettigrew, Haler, Dickerson, Kagi, Dunn, Walsh, Darneille, Roberts, Hinkle, Morrell and Kenney

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1 AN ACT Relating to kinship caregivers' consent for mental health
2 care of minors; and amending RCW 7.70.065, 71.34.020, 71.34.500, and
3 71.34.530.

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

5 **Sec. 1.** RCW 7.70.065 and 2005 c 440 s 2 are each amended to read
6 as follows:

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

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

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

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

19 (iii) The patient's spouse;

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

3 (v) Parents of the patient; and

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

5 (b) If the health care provider seeking informed consent for
6 proposed health care of the patient who is not competent to consent
7 under RCW 11.88.010(1)(e), other than a person determined to be
8 incapacitated because he or she is under the age of majority and who is
9 not otherwise authorized to provide informed consent, makes reasonable
10 efforts to locate and secure authorization from a competent person in
11 the first or succeeding class and finds no such person available,
12 authorization may be given by any person in the next class in the order
13 of descending priority. However, no person under this section may
14 provide informed consent to health care:

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

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

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

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

34 (a) Persons authorized to provide informed consent to health care,
35 including mental health care, on behalf of a patient who is
36 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is
37 under the age of majority and who is not otherwise authorized to

1 provide informed consent, shall be a member of one of the following
2 classes of persons in the following order of priority:

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

5 (ii) A person authorized by the court to consent to medical care
6 for a child in out-of-home placement pursuant to chapter 13.32A or
7 13.34 RCW, if any;

8 (iii) Parents of the minor patient;

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

12 (v) A competent adult representing himself or herself to be a
13 relative responsible for the health care of such minor patient or a
14 competent adult who has signed and dated a declaration under penalty of
15 perjury pursuant to RCW 9A.72.085 stating that the adult person is a
16 relative responsible for the health care of the minor patient. Such
17 declaration shall be effective for up to six months from the date of
18 the declaration.

19 (b) A health care provider may, but is not required to, rely on the
20 representations or declaration of a person claiming to be a relative
21 responsible for the care of the minor patient, under (a)(v) of this
22 subsection, if the health care provider does not have actual notice of
23 the falsity of any of the statements made by the person claiming to be
24 a relative responsible for the health care of the minor patient.

25 (c) A health care facility or a health care provider may, in its
26 discretion, require documentation of a person's claimed status as being
27 a relative responsible for the health care of the minor patient.
28 However, there is no obligation to require such documentation.

29 (d) The health care provider or health care facility where services
30 are rendered shall be immune from suit in any action, civil or
31 criminal, or from professional or other disciplinary action when such
32 reliance is based on a declaration signed under penalty of perjury
33 pursuant to RCW 9A.72.085 stating that the adult person is a relative
34 responsible for the health care of the minor patient under (a)(v) of
35 this subsection.

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

1 **Sec. 2.** RCW 71.34.020 and 1998 c 296 s 8 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Child psychiatrist" means a person having a license as a
6 physician and surgeon in this state, who has had graduate training in
7 child psychiatry in a program approved by the American Medical
8 Association or the American Osteopathic Association, and who is board
9 eligible or board certified in child psychiatry.

10 (2) "Children's mental health specialist" means:

11 (a) A mental health professional who has completed a minimum of one
12 hundred actual hours, not quarter or semester hours, of specialized
13 training devoted to the study of child development and the treatment of
14 children; and

15 (b) A mental health professional who has the equivalent of one year
16 of full-time experience in the treatment of children under the
17 supervision of a children's mental health specialist.

18 (3) "Commitment" means a determination by a judge or court
19 commissioner, made after a commitment hearing, that the minor is in
20 need of inpatient diagnosis, evaluation, or treatment or that the minor
21 is in need of less restrictive alternative treatment.

22 (4) "~~((County-d))~~ Designated mental health professional" means a
23 mental health professional designated by one or more counties to
24 perform the functions of a ~~((county-))~~designated mental health
25 professional described in this chapter.

26 (5) "Department" means the department of social and health
27 services.

28 (6) "Evaluation and treatment facility" means a public or private
29 facility or unit that is certified by the department to provide
30 emergency, inpatient, residential, or outpatient mental health
31 evaluation and treatment services for minors. A physically separate
32 and separately-operated portion of a state hospital may be designated
33 as an evaluation and treatment facility for minors. A facility which
34 is part of or operated by the department or federal agency does not
35 require certification. No correctional institution or facility,
36 juvenile court detention facility, or jail may be an evaluation and
37 treatment facility within the meaning of this chapter.

1 (7) "Evaluation and treatment program" means the total system of
2 services and facilities coordinated and approved by a county or
3 combination of counties for the evaluation and treatment of minors
4 under this chapter.

5 (8) "Gravely disabled minor" means a minor who, as a result of a
6 mental disorder, is in danger of serious physical harm resulting from
7 a failure to provide for his or her essential human needs of health or
8 safety, or manifests severe deterioration in routine functioning
9 evidenced by repeated and escalating loss of cognitive or volitional
10 control over his or her actions and is not receiving such care as is
11 essential for his or her health or safety.

12 (9) "Inpatient treatment" means twenty-four-hour-per-day mental
13 health care provided within a general hospital, psychiatric hospital,
14 or residential treatment facility certified by the department as an
15 evaluation and treatment facility for minors.

16 (10) "Less restrictive alternative" or "less restrictive setting"
17 means outpatient treatment provided to a minor who is not residing in
18 a facility providing inpatient treatment as defined in this chapter.

19 (11) "Likelihood of serious harm" means either: (a) A substantial
20 risk that physical harm will be inflicted by an individual upon his or
21 her own person, as evidenced by threats or attempts to commit suicide
22 or inflict physical harm on oneself; (b) a substantial risk that
23 physical harm will be inflicted by an individual upon another, as
24 evidenced by behavior which has caused such harm or which places
25 another person or persons in reasonable fear of sustaining such harm;
26 or (c) a substantial risk that physical harm will be inflicted by an
27 individual upon the property of others, as evidenced by behavior which
28 has caused substantial loss or damage to the property of others.

29 (12) "Medical necessity" for inpatient care means a requested
30 service which is reasonably calculated to: (a) Diagnose, correct,
31 cure, or alleviate a mental disorder; or (b) prevent the worsening of
32 mental conditions that endanger life or cause suffering and pain, or
33 result in illness or infirmity or threaten to cause or aggravate a
34 handicap, or cause physical deformity or malfunction, and there is no
35 adequate less restrictive alternative available.

36 (13) "Mental disorder" means any organic, mental, or emotional
37 impairment that has substantial adverse effects on an individual's
38 cognitive or volitional functions. The presence of alcohol abuse, drug

1 abuse, juvenile criminal history, antisocial behavior, or mental
2 retardation alone is insufficient to justify a finding of "mental
3 disorder" within the meaning of this section.

4 (14) "Mental health professional" means a psychiatrist,
5 psychologist, psychiatric nurse, or social worker, and such other
6 mental health professionals as may be defined by rules adopted by the
7 secretary under this chapter.

8 (15) "Minor" means any person under the age of eighteen years.

9 (16) "Outpatient treatment" means any of the nonresidential
10 services mandated under chapter 71.24 RCW and provided by licensed
11 services providers as identified by RCW 71.24.025(~~(+3)~~).

12 (17) (a) Except for the purposes of RCW 71.34.600 through
13 71.34.660, "parent" means:

14 (~~(+a)~~) (i) A biological or adoptive parent who has legal custody
15 of the child, including either parent if custody is shared under a
16 joint custody agreement; or

17 (~~(+b)~~) (ii) A person or agency judicially appointed as legal
18 guardian or custodian of the child.

19 (b) For the purposes of RCW 71.34.600 through 71.34.660, "parent"
20 means:

21 (i) A biological or adoptive parent who has legal custody of the
22 child, including either parent if custody is shared under a joint
23 custody agreement;

24 (ii) A person who is authorized to consent on behalf of the minor
25 pursuant to RCW 7.70.065; or

26 (iii) A person or agency judicially appointed as legal guardian or
27 custodian of the child.

28 (18) "Professional person in charge" or "professional person" means
29 a physician or other mental health professional empowered by an
30 evaluation and treatment facility with authority to make admission and
31 discharge decisions on behalf of that facility.

32 (19) "Psychiatric nurse" means a registered nurse who has a
33 bachelor's degree from an accredited college or university, and who has
34 had, in addition, at least two years' experience in the direct
35 treatment of mentally ill or emotionally disturbed persons, such
36 experience gained under the supervision of a mental health
37 professional. "Psychiatric nurse" shall also mean any other registered
38 nurse who has three years of such experience.

1 (20) "Psychiatrist" means a person having a license as a physician
2 in this state who has completed residency training in psychiatry in a
3 program approved by the American Medical Association or the American
4 Osteopathic Association, and is board eligible or board certified in
5 psychiatry.

6 (21) "Psychologist" means a person licensed as a psychologist under
7 chapter 18.83 RCW.

8 (22) "Responsible other" means the minor, the minor's parent or
9 estate, or any other person legally responsible for support of the
10 minor.

11 (23) "Secretary" means the secretary of the department or
12 secretary's designee.

13 (24) "Start of initial detention" means the time of arrival of the
14 minor at the first evaluation and treatment facility offering inpatient
15 treatment if the minor is being involuntarily detained at the time.
16 With regard to voluntary patients, "start of initial detention" means
17 the time at which the minor gives notice of intent to leave under the
18 provisions of this chapter.

19 **Sec. 3.** RCW 71.34.500 and 2005 c 371 s 2 are each amended to read
20 as follows:

21 (1) A minor thirteen years or older may admit himself or herself to
22 an evaluation and treatment facility for inpatient mental treatment,
23 without parental consent. The admission shall occur only if the
24 professional person in charge of the facility concurs with the need for
25 inpatient treatment. Parental authorization, or authorization from a
26 person who may consent on behalf of the minor pursuant to RCW 7.70.065,
27 is required for inpatient treatment of a minor under the age of
28 thirteen.

29 (2) When, in the judgment of the professional person in charge of
30 an evaluation and treatment facility, there is reason to believe that
31 a minor is in need of inpatient treatment because of a mental disorder,
32 and the facility provides the type of evaluation and treatment needed
33 by the minor, and it is not feasible to treat the minor in any less
34 restrictive setting or the minor's home, the minor may be admitted to
35 an evaluation and treatment facility.

36 (3) Written renewal of voluntary consent must be obtained from the

1 applicant no less than once every twelve months. The minor's need for
2 continued inpatient treatments shall be reviewed and documented no less
3 than every one hundred eighty days.

4 **Sec. 4.** RCW 71.34.530 and 1998 c 296 s 12 are each amended to read
5 as follows:

6 Any minor thirteen years or older may request and receive
7 outpatient treatment without the consent of the minor's parent.
8 Parental authorization, or authorization from a person who may consent
9 on behalf of the minor pursuant to RCW 7.70.065, is required for
10 outpatient treatment of a minor under the age of thirteen.

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