

SENATE BILL REPORT

SHB 1641

As Reported by Senate Committee On:
Health Care, March 28, 2017

Title: An act relating to informed consent for nonemergency, outpatient, primary health care services for unaccompanied homeless youth under the federal McKinney-Vento homeless assistance act.

Brief Description: Concerning informed consent for nonemergency, outpatient, primary health care services for unaccompanied homeless youth under the federal McKinney-Vento homeless assistance act.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives McBride, Caldier, Graves, Jinkins, Fey, Clibborn and Stanford).

Brief History: Passed House: 2/27/17, 90-7.

Committee Activity: Health Care: 3/13/17, 3/28/17 [DPA, DNP].

Brief Summary of Amended Bill

- Changes the provisions regarding consent for nonemergency outpatient primary care services for homeless students, consolidating these with other laws concerning consent for health care for minors in general.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended.

Signed by Senators Rivers, Chair; Becker, Vice Chair; Cleveland, Ranking Minority Member; Kuderer, Assistant Ranking Minority Member; Bailey, Conway, Fain, Keiser, Mullet, O'Ban and Walsh.

Minority Report: Do not pass.

Signed by Senator Miloscia.

Staff: Evan Klein (786-7483)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Consent for Medical Treatment of a Minor, in General. Generally, persons under the age of 18 cannot provide consent for their own medical procedures in Washington State. There are some exceptions to this general rule if the minor:

- is in need of emergency medical treatment;
- is seeking family planning services or pregnancy care;
- is aged 16 or older and the court has entered a decree of emancipation;
- is aged 15 or older and satisfies the court created mature minor rule—meaning the minor has, based on a number of factors, demonstrated the maturity to provide consent for medical treatment;
- is aged 13 or older and seeking mental health treatment; or
- is aged 13 or older and seeking outpatient substance abuse treatment.

If a minor's consent is not sufficient to access health care services, an individual authorized by statute must furnish consent for a health care provider to treat the patient. State law provides that informed consent for health care may be obtained from a member of one of the following classes of persons in the following order of priority:

1. the court-appointed guardian or custodian of the patient, if any;
2. a person authorized by the court to consent to medical care for a child in out-of-home placement pursuant to the dependency and termination of parental rights statutes, if applicable;
3. parents of the minor patient;
4. the individual, if any, to whom the minor's parent has given signed authorization to make health care decisions for the minor patient; or
5. a competent adult representing oneself to be a relative responsible for the healthcare of such a minor patient or a competent adult who has signed and dated a declaration under penalty of perjury stating that the adult person is a relative responsible for the health care of the minor patient.

A health care provider may, but is not required to, rely on the representation of a person claiming to be a relative responsible for the care of a minor patient, as long as the health care provider does not have actual notice of the falsity of the statement. The provider or a health care facility may, in its discretion, require documentation of a person's claimed status as being a relative responsible for the health care of the minor patient, but there is no obligation to require such documentation. Providers and facilities are immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury stating that the adult person is a relative responsible for the health care of the minor patient.

Consent for Medical Treatment of a Homeless Minor. The school code separately provides that a school nurse, school counselor, or homeless student liaison are authorized to provide consent for health care for a homeless student if all of the following conditions are met:

- consent is necessary for nonemergency outpatient primary care services, including physical examinations, vision examinations and eyeglasses, dental examinations, hearing examinations and hearing aids, immunizations, treatments for illnesses and conditions, and routine follow-up care customarily provided by a health care provider in an outpatient setting, excluding elective surgeries;
- the patient meets the definition of a homeless child or youth under the federal McKinney-Vento Homeless Assistance Act; and

- the patient is not under the supervision or control of a parent, custodian, or legal guardian.

Under this latter provision, a person consenting to care and the person's employing school are not liable for any care or payment for care. Written notice of this exemption from liability must be given to the person providing care.

Summary of Amended Bill: The provision in the school code authorizing a school nurse, school counselor, or homeless student liaison to consent for health care for a homeless student under certain conditions is repealed, and the authorizing language is moved to the section which deals generally with informed consent for health care for minors and others not competent to consent.

A school nurse, school counselor, or homeless student liaison remain authorized to provide consent for health care for a homeless student under the following conditions:

- consent is necessary for nonemergency outpatient primary care services, including physical examinations, vision examinations and eyeglasses, dental examinations, hearing examinations and hearing aids, immunizations, treatments for illnesses and conditions, and routine follow-up care customarily provided by a health care provider in an outpatient setting, excluding elective surgeries.
- the patient meets the definition of a homeless child or youth under the federal McKinney-Vento Homeless Assistance Act; and
- the patient is not under the supervision or control of a parent, custodian, or legal guardian and is not in the care and custody of the Department of Social and Health Services.

The person authorized to consent to care and the person's school or school district are not subject to administrative sanctions or civil damages resulting from the consent or nonconsent for care, any care, or payment for any care. Health care facilities and providers are not prohibited from seeking reimbursement for care from other sources.

Upon request by a health care facility or provider, the person authorized to consent must provide a declaration signed and dated under penalty of perjury stating that the person is a school nurse, school counselor, or homeless student liaison and that the minor patient meets the statutory requirements. The declaration must also include written notice of exemption from liability.

A health care provider may, but is not required to, rely on the representation of a school nurse, school counselor, or homeless student liaison authorized to consent to health care of the minor patient if the health care provider does not have actual notice of the falsity of the statement. A health care provider or facility may, in its discretion, require documentation of a person's claimed status as being a school nurse, school counselor, or homeless student liaison authorized to consent, but there is no obligation to require such documentation. Civil and criminal immunity is provided to providers and facilities when reliance is based on a declaration signed under penalty of perjury stating that the adult person is a person claiming to be authorized to consent to the health care of the homeless student.

EFFECT OF HEALTH CARE COMMITTEE AMENDMENT(S):

- Clarifies that health care providers are not prohibited from seeking reimbursement for care provided to a minor patient.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is a clean-up bill. These changes are necessary to make this more usable. These students tend to be older students, who are not in the ward of the state and are not in direct contact with their parents. This bill only applies to outpatient, routine health care. This language merely moves the consent provisions and adds some liability protections for the providers who care for these children.

CON: This bill is laudable, but there are some serious unintended consequences. One problem is with the definition of these children. As soon as a school nurse confirms that a student does not have a parent or guardian, the child is in the DSHS system. This process triggers the opening of a case by Child Protective Services. The school nurse has to confirm that the student is homeless and that the student's parents are unavailable.

Persons Testifying: PRO: Representative Joan McBride, Prime Sponsor; Lisa Thatcher, Washington State Hospital Association.

CON: March Twisdale, citizen.

Persons Signed In To Testify But Not Testifying: No one.