
SUBSTITUTE HOUSE BILL 1641

State of Washington

65th Legislature

2017 Regular Session

By House Judiciary (originally sponsored by Representatives McBride, Caldier, Graves, Jinkins, Fey, Clibborn, and Stanford)

READ FIRST TIME 02/13/17.

1 AN ACT Relating to informed consent for nonemergency, outpatient,
2 primary health care services for unaccompanied homeless youth under
3 the federal McKinney-Vento homeless assistance act; amending RCW
4 7.70.065; and repealing RCW 28A.320.147.

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

6 **Sec. 1.** RCW 7.70.065 and 2007 c 156 s 11 are each amended to
7 read as follows:

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

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

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

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

21 (iii) The patient's spouse or state registered domestic partner;

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
9 is not otherwise authorized to provide informed consent, makes
10 reasonable efforts to locate and secure authorization from a
11 competent person in the first or succeeding class and finds no such
12 person available, authorization may be given by any person in the
13 next class in the order of descending priority. However, no person
14 under this section may 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
18 the decision is not unanimous among all available members of that
19 class.

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

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

36 (a) Persons authorized to provide informed consent to health
37 care, including mental health care, on behalf of a patient who is
38 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she
39 is 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
4 pursuant 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
15 of perjury pursuant to RCW 9A.72.085 stating that the adult person is
16 a 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)(i) Informed consent for health care on behalf of a patient
20 who is incapacitated, as defined in RCW 11.88.010(1)(e), because he
21 or she is under the age of majority and who is not otherwise
22 authorized to provide informed consent may be obtained from a school
23 nurse, school counselor, or homeless student liaison when:

24 (A) Consent is necessary for nonemergency, outpatient, primary
25 care services, including physical examinations, vision examinations
26 and eyeglasses, dental examinations, hearing examinations and hearing
27 aids, immunizations, treatments for illnesses and conditions, and
28 routine follow-up care customarily provided by a health care provider
29 in an outpatient setting, excluding elective surgeries;

30 (B) The minor patient meets the definition of a "homeless child
31 or youth" under the federal McKinney-Vento homeless education
32 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
33 115 Stat. 2005; and

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

37 (ii) A person authorized to consent to care under this subsection
38 (2)(b) and the person's employing school or school district are not
39 subject to administrative sanctions or civil damages resulting from

1 the consent or nonconsent for care, any care, or payment for any
2 care, rendered pursuant to this section.

3 (iii) Upon request by a health care facility or a health care
4 provider, a person authorized to consent to care under this
5 subsection (2)(b) must provide to the person rendering care a
6 declaration signed and dated under penalty of perjury pursuant to RCW
7 9A.72.085 stating that the person is a school nurse, school
8 counselor, or homeless student liaison and that the minor patient
9 meets the elements under (b)(i) of this subsection. The declaration
10 must also include written notice of the exemption from liability
11 under (b)(ii) of this subsection.

12 (c) A health care provider may, but is not required to, rely on
13 the representations or declaration of a person claiming to be a
14 relative responsible for the care of the minor patient, under (a)(v)
15 of this subsection, or a person claiming to be authorized to consent
16 to the health care of the minor patient under (b) of this subsection,
17 if the health care provider does not have actual notice of the
18 falsity of any of the statements made by the person claiming to be a
19 relative responsible for the health care of the minor patient, or
20 person claiming to be authorized to consent to the health care of the
21 minor patient.

22 ~~((+e))~~ (d) A health care facility or a health care provider may,
23 in its discretion, require documentation of a person's claimed status
24 as being a relative responsible for the health care of the minor
25 patient, or a person claiming to be authorized to consent to the
26 health care of the minor patient under (b) of this subsection.
27 However, there is no obligation to require such documentation.

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

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

1 NEW SECTION. **Sec. 2.** RCW 28A.320.147 ("Homeless child or
2 youth"—Informed consent for health care for patient under the age of
3 majority—Exemption from liability) and 2016 c 157 s 7 are each
4 repealed.

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