
HOUSE BILL 1197

State of Washington

67th Legislature

2021 Regular Session

By Representatives Riccelli, Tharinger, Cody, Pollet, and Harris-Talley

Read first time 01/14/21. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to health care decisions made by a designated
2 person; amending RCW 7.70.065; reenacting and amending RCW 7.70.065;
3 providing an effective date; and providing an expiration date.

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

5 **Sec. 1.** RCW 7.70.065 and 2019 c 232 s 8 and 2019 c 209 s 1 are
6 each reenacted and amended to read 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
10 patient.

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

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

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

20 (iii) The individual to whom the patient, while retaining
21 decision-making capacity, has designated to make health care

1 decisions by orally or personally informing a physician, nurse
2 practitioner, or physician assistant who then signs and enters a
3 document with this information into the patient's health record;

4 (iv) The patient's spouse or state registered domestic partner;
5 ~~((iv))~~ (v) Children of the patient who are at least eighteen
6 years of age;

7 ~~((v))~~ (vi) Parents of the patient;
8 ~~((vi))~~ (vii) Adult brothers and sisters of the patient;
9 ~~((vii))~~ (viii) Adult grandchildren of the patient who are
10 familiar with the patient;

11 ~~((viii))~~ (ix) Adult nieces and nephews of the patient who are
12 familiar with the patient;

13 ~~((ix))~~ (x) Adult aunts and uncles of the patient who are
14 familiar with the patient; and

15 ~~((x))~~ (xi) (A) An adult who:
16 (I) Has exhibited special care and concern for the patient;
17 (II) Is familiar with the patient's personal values;
18 (III) Is reasonably available to make health care decisions;
19 (IV) Is not any of the following: A physician to the patient or
20 an employee of the physician; the owner, administrator, or employee
21 of a health care facility, nursing home, or long-term care facility
22 where the patient resides or receives care; or a person who receives
23 compensation to provide care to the patient; and

24 (V) Provides a declaration under (a) ~~((x))~~ (xi) (B) of this
25 subsection.

26 (B) An adult who meets the requirements of (a) ~~((x))~~ (xi) (A) of
27 this subsection shall provide a declaration, which is effective for
28 up to six months from the date of the declaration, signed and dated
29 under penalty of perjury pursuant to ~~((RCW 9A.72.085))~~ chapter 5.50
30 RCW, that recites facts and circumstances demonstrating that he or
31 she is familiar with the patient and that he or she:

32 (I) Meets the requirements of (a) ~~((x))~~ (xi) (A) of this
33 subsection;

34 (II) Is a close friend of the patient;
35 (III) Is willing and able to become involved in the patient's
36 health care;

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

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

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

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

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

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

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

36 (d) No rights under Washington's death with dignity act, chapter
37 70.245 RCW, may be exercised through a person authorized to provide
38 informed consent to health care on behalf of a patient not competent
39 to consent under RCW 11.88.010(1)(e).

1 (2) Informed consent for health care, including mental health
2 care, for a patient who is not competent, as defined in RCW
3 11.88.010(1)(e), because he or she is under the age of majority and
4 who is not otherwise authorized to provide informed consent, may be
5 obtained from a person authorized to consent on behalf of such a
6 patient.

7 (a) Persons authorized to provide informed consent to health
8 care, including mental health care, on behalf of a patient who is
9 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she
10 is under the age of majority and who is not otherwise authorized to
11 provide informed consent, shall be a member of one of the following
12 classes of persons in the following order of priority:

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

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

18 (iii) Parents of the minor patient;

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

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

29 (b)(i) Informed consent for health care on behalf of a patient
30 who is incapacitated, as defined in RCW 11.88.010(1)(e), because he
31 or she is under the age of majority and who is not otherwise
32 authorized to provide informed consent may be obtained from a school
33 nurse, school counselor, or homeless student liaison when:

34 (A) Consent is necessary for nonemergency, outpatient, primary
35 care services, including physical examinations, vision examinations
36 and eyeglasses, dental examinations, hearing examinations and hearing
37 aids, immunizations, treatments for illnesses and conditions, and
38 routine follow-up care customarily provided by a health care provider
39 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 7.70.065 and 2020 c 312 s 705 are each amended to
17 read as follows:

18 (1) Informed consent for health care for a patient who is a minor
19 or, to consent may be obtained from a person authorized to consent on
20 behalf of such patient.

21 (a) Persons authorized to provide informed consent to health care
22 on behalf of a patient who has been placed under a guardianship under
23 RCW 11.130.265 a minor or, shall be a member of one of the following
24 classes of persons in the following order of priority:

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

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

29 (iii) The individual to whom the patient, while retaining
30 decision-making capacity, has designated to make health care
31 decisions by orally or personally informing a physician, nurse
32 practitioner, or physician assistant who then signs and enters a
33 document with this information into the patient's health record;

34 (iv) The patient's spouse or state registered domestic partner;

35 ~~((iv))~~ (v) Children of the patient who are at least eighteen
36 years of age;

37 ~~((v))~~ (vi) Parents of the patient;

38 ~~((vi))~~ (vii) Adult brothers and sisters of the patient;

1 (~~(vii)~~) (viii) Adult grandchildren of the patient who are
2 familiar with the patient;
3 (~~(viii)~~) (ix) Adult nieces and nephews of the patient who are
4 familiar with the patient;
5 (~~(ix)~~) (x) Adult aunts and uncles of the patient who are
6 familiar with the patient; and
7 (~~(x)~~) (xi) (A) An adult who:
8 (I) Has exhibited special care and concern for the patient;
9 (II) Is familiar with the patient's personal values;
10 (III) Is reasonably available to make health care decisions;
11 (IV) Is not any of the following: A physician to the patient or
12 an employee of the physician; the owner, administrator, or employee
13 of a health care facility, nursing home, or long-term care facility
14 where the patient resides or receives care; or a person who receives
15 compensation to provide care to the patient; and
16 (V) Provides a declaration under (a)(~~(x)~~) (xi) (B) of this
17 subsection.
18 (B) An adult who meets the requirements of (a)(~~(x)~~) (xi) (A) of
19 this subsection shall provide a declaration, which is effective for
20 up to six months from the date of the declaration, signed and dated
21 under penalty of perjury pursuant to chapter 5.50 RCW, that recites
22 facts and circumstances demonstrating that he or she is familiar with
23 the patient and that he or she:
24 (I) Meets the requirements of (a)(~~(x)~~) (xi) (A) of this
25 subsection;
26 (II) Is a close friend of the patient;
27 (III) Is willing and able to become involved in the patient's
28 health care;
29 (IV) Has maintained such regular contact with the patient as to
30 be familiar with the patient's activities, health, personal values,
31 and morals; and
32 (V) Is not aware of a person in a higher priority class willing
33 and able to provide informed consent to health care on behalf of the
34 patient.
35 (C) A health care provider may, but is not required to, rely on a
36 declaration provided under (a)(~~(x)~~) (xi) (B) of this subsection. The
37 health care provider or health care facility where services are
38 rendered is immune from suit in any action, civil or criminal, or
39 from professional or other disciplinary action when such reliance is

1 based on a declaration provided in compliance with (a) (~~(x)~~) (xi) (B)
2 of this subsection.

3 (b) If the health care provider seeking informed consent for
4 proposed health care of the patient who has been placed under a
5 guardianship under RCW 11.130.265(~~(7)~~) makes reasonable efforts to
6 locate and secure authorization from a competent person in the first
7 or succeeding class and finds no such person available, authorization
8 may be given by any person in the next class in the order of
9 descending priority. However, no person under this section may
10 provide informed consent to health care:

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

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

16 (c) Before any person authorized to provide informed consent on
17 behalf of a patient who has been placed under a guardianship under
18 RCW 11.130.265(~~(7)~~) exercises that authority, the person must first
19 determine in good faith that that patient, if competent, would
20 consent to the proposed health care. If such a determination cannot
21 be made, the decision to consent to the proposed health care may be
22 made only after determining that the proposed health care is in the
23 patient's best interests.

24 (d) No rights under Washington's death with dignity act, chapter
25 70.245 RCW, may be exercised through a person authorized to provide
26 informed consent to health care on behalf of a patient who is a minor
27 or has been placed under a guardianship under RCW 11.130.265.

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

32 (a) Persons authorized to provide informed consent to health
33 care, including mental health care, on behalf of a patient who is
34 under the age of majority and who is not otherwise authorized to
35 provide informed consent, shall be a member of one of the following
36 classes of persons in the following order of priority:

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

1 (ii) A person authorized by the court to consent to medical care
2 for a child in out-of-home placement pursuant to chapter 13.32A or
3 13.34 RCW, if any;

4 (iii) Parents of the minor patient;

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

8 (v) A competent adult representing himself or herself to be a
9 relative responsible for the health care of such minor patient or a
10 competent adult who has signed and dated a declaration under penalty
11 of perjury pursuant to chapter 5.50 RCW stating that the adult person
12 is a relative responsible for the health care of the minor patient.
13 Such declaration shall be effective for up to six months from the
14 date of the declaration.

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

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

25 (B) The minor patient meets the definition of a "homeless child
26 or youth" under the federal McKinney-Vento homeless education
27 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
28 115 Stat. 2005; and

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

32 (ii) A person authorized to consent to care under this subsection
33 (2)(b) and the person's employing school or school district are not
34 subject to administrative sanctions or civil damages resulting from
35 the consent or nonconsent for care, any care, or payment for any
36 care, rendered pursuant to this section. Nothing in this section
37 prevents a health care facility or a health care provider from
38 seeking reimbursement from other sources for care provided to a minor
39 patient under this subsection (2)(b).

1 (iii) Upon request by a health care facility or a health care
2 provider, a person authorized to consent to care under this
3 subsection (2)(b) must provide to the person rendering care a
4 declaration signed and dated under penalty of perjury pursuant to
5 chapter 5.50 RCW stating that the person is a school nurse, school
6 counselor, or homeless student liaison and that the minor patient
7 meets the elements under (b)(i) of this subsection. The declaration
8 must also include written notice of the exemption from liability
9 under (b)(ii) of this subsection.

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

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

26 (e) The health care provider or health care facility where
27 services are rendered shall be immune from suit in any action, civil
28 or criminal, or from professional or other disciplinary action when
29 such reliance is based on a declaration signed under penalty of
30 perjury pursuant to chapter 5.50 RCW stating that the adult person is
31 a relative responsible for the health care of the minor patient under
32 (a)(v) of this subsection, or a person claiming to be authorized to
33 consent to the health care of the minor patient under (b) of this
34 subsection.

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

38 (4) A person who knowingly provides a false declaration under
39 this section shall be subject to criminal penalties under chapter
40 9A.72 RCW.

1 NEW SECTION. **Sec. 3.** Section 1 of this act expires January 1,
2 2022.

3 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect January
4 1, 2022.

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