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**SUBSTITUTE HOUSE BILL 1197**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Riccelli, Tharinger, Cody, Pollet, and Harris-Talley)

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 has designated to make  
21 health care decisions by orally or personally informing a physician,

1 nurse practitioner, or physician assistant who then signs and enters  
2 a document with this information into the patient's health record,  
3 provided that: (A) The physician, nurse practitioner, or physician  
4 assistant determines that the patient has capacity at the time of the  
5 designation and documents it in the patient's health record, and (B)  
6 the patient has not been determined to be incapacitated under RCW  
7 11.125.090;

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

11 ~~((v))~~ (vi) Parents of the patient;  
12 ~~((vi))~~ (vii) Adult brothers and sisters of the patient;  
13 ~~((vii))~~ (viii) Adult grandchildren of the patient who are  
14 familiar with the patient;

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

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

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

28 (V) Provides a declaration under (a) ~~((x))~~ (xi) (B) of this  
29 subsection.

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

36 (I) Meets the requirements of (a) ~~((x))~~ (xi) (A) of this  
37 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) (~~(\*)~~) (xi) (B) of this subsection. The  
9 health care provider or health care facility where services are  
10 rendered is immune from suit in any action, civil or criminal, or  
11 from professional or other disciplinary action when such reliance is  
12 based on a declaration provided in compliance with (a) (~~(\*)~~) (xi) (B)  
13 of this subsection.

14 (b) If the health care provider seeking informed consent for  
15 proposed health care of the patient who is not competent to consent  
16 under RCW 11.88.010(1)(e), other than a person determined to be  
17 incapacitated because he or she is under the age of majority and who  
18 is not otherwise authorized to provide informed consent, makes  
19 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 not competent to consent under RCW  
31 11.88.010(1)(e), other than a person determined to be incapacitated  
32 because he or she is under the age of majority and who is not  
33 otherwise authorized to provide informed consent, exercises that  
34 authority, the person must first determine in good faith that that  
35 patient, if competent, would consent to the proposed health care. If  
36 such a determination cannot be made, the decision to consent to the  
37 proposed health care may be made only after determining that the  
38 proposed health care is in the patient's best interests.

39 (d) No rights under Washington's death with dignity act, chapter  
40 70.245 RCW, may be exercised through a person authorized to provide

1 informed consent to health care on behalf of a patient not competent  
2 to consent under RCW 11.88.010(1)(e).

3 (e) A person may revoke a designation made pursuant to (a)(iii)  
4 of this subsection at any time by personally informing any person  
5 providing care to the patient of the patient's intent to revoke the  
6 designation, which revocation shall be documented in the patient's  
7 health record. A health care provider that relies upon the consent of  
8 an individual designated pursuant to (a)(iii) of this subsection in  
9 order to provide care to a patient is immune from suit in any action,  
10 civil or criminal, or from professional or other disciplinary action  
11 for relying upon such consent unless the health care provider had  
12 actual knowledge of the patient's revocation of that designation at  
13 the time consent was obtained.

14 (2) Informed consent for health care, including mental health  
15 care, for a patient who is not competent, as defined in RCW  
16 11.88.010(1)(e), because he or she is under the age of majority and  
17 who is not otherwise authorized to provide informed consent, may be  
18 obtained from a person authorized to consent on behalf of such a  
19 patient.

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

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

28 (ii) A person authorized by the court to consent to medical care  
29 for a child in out-of-home placement pursuant to chapter 13.32A or  
30 13.34 RCW, if any;

31 (iii) Parents of the minor patient;

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

35 (v) A competent adult representing himself or herself to be a  
36 relative responsible for the health care of such minor patient or a  
37 competent adult who has signed and dated a declaration under penalty  
38 of perjury pursuant to chapter 5.50 RCW stating that the adult person  
39 is a relative responsible for the health care of the minor patient.

1 Such declaration shall be effective for up to six months from the  
2 date of the declaration.

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

8 (A) Consent is necessary for nonemergency, outpatient, primary  
9 care services, including physical examinations, vision examinations  
10 and eyeglasses, dental examinations, hearing examinations and hearing  
11 aids, immunizations, treatments for illnesses and conditions, and  
12 routine follow-up care customarily provided by a health care provider  
13 in an outpatient setting, excluding elective surgeries;

14 (B) The minor patient meets the definition of a "homeless child  
15 or youth" under the federal McKinney-Vento homeless education  
16 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
17 115 Stat. 2005; and

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

21 (ii) A person authorized to consent to care under this subsection  
22 (2)(b) and the person's employing school or school district are not  
23 subject to administrative sanctions or civil damages resulting from  
24 the consent or nonconsent for care, any care, or payment for any  
25 care, rendered pursuant to this section. Nothing in this section  
26 prevents a health care facility or a health care provider from  
27 seeking reimbursement from other sources for care provided to a minor  
28 patient under this subsection (2)(b).

29 (iii) Upon request by a health care facility or a health care  
30 provider, a person authorized to consent to care under this  
31 subsection (2)(b) must provide to the person rendering care a  
32 declaration signed and dated under penalty of perjury pursuant to  
33 chapter 5.50 RCW stating that the person is a school nurse, school  
34 counselor, or homeless student liaison and that the minor patient  
35 meets the elements under (b)(i) of this subsection. The declaration  
36 must also include written notice of the exemption from liability  
37 under (b)(ii) of this subsection.

38 (c) A health care provider may, but is not required to, rely on  
39 the representations or declaration of a person claiming to be a  
40 relative responsible for the care of the minor patient, under (a)(v)

1 of this subsection, or a person claiming to be authorized to consent  
2 to the health care of the minor patient under (b) of this subsection,  
3 if the health care provider does not have actual notice of the  
4 falsity of any of the statements made by the person claiming to be a  
5 relative responsible for the health care of the minor patient, or  
6 person claiming to be authorized to consent to the health care of the  
7 minor patient.

8 (d) A health care facility or a health care provider may, in its  
9 discretion, require documentation of a person's claimed status as  
10 being a relative responsible for the health care of the minor  
11 patient, or a person claiming to be authorized to consent to the  
12 health care of the minor patient under (b) of this subsection.  
13 However, there is no obligation to require such documentation.

14 (e) The health care provider or health care facility where  
15 services are rendered shall be immune from suit in any action, civil  
16 or criminal, or from professional or other disciplinary action when  
17 such reliance is based on a declaration signed under penalty of  
18 perjury pursuant to chapter 5.50 RCW stating that the adult person is  
19 a relative responsible for the health care of the minor patient under  
20 (a)(v) of this subsection, or a person claiming to be authorized to  
21 consent to the health care of the minor patient under (b) of this  
22 subsection.

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

26 (4) A person who knowingly provides a false declaration under  
27 this section shall be subject to criminal penalties under chapter  
28 9A.72 RCW.

29 **Sec. 2.** RCW 7.70.065 and 2020 c 312 s 705 are each amended to  
30 read as follows:

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

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

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

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

4 (iii) The individual to whom the patient has designated to make  
5 health care decisions by orally or personally informing a physician,  
6 nurse practitioner, or physician assistant who then signs and enters  
7 a document with this information into the patient's health record,  
8 provided that: (A) The physician, nurse practitioner, or physician  
9 assistant determines that the patient has capacity at the time of the  
10 designation and documents it in the patient's health record, and (B)  
11 the patient has not been determined to be incapacitated under RCW  
12 11.125.090;

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

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

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

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

18 ~~((vii))~~ (viii) Adult grandchildren of the patient who are  
19 familiar with the patient;

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

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

24 ~~((x))~~ (xi) (A) An adult who:

25 (I) Has exhibited special care and concern for the patient;

26 (II) Is familiar with the patient's personal values;

27 (III) Is reasonably available to make health care decisions;

28 (IV) Is not any of the following: A physician to the patient or  
29 an employee of the physician; the owner, administrator, or employee  
30 of a health care facility, nursing home, or long-term care facility  
31 where the patient resides or receives care; or a person who receives  
32 compensation to provide care to the patient; and

33 (V) Provides a declaration under (a) ~~((x))~~ (xi) (B) of this  
34 subsection.

35 (B) An adult who meets the requirements of (a) ~~((x))~~ (xi) (A) of  
36 this subsection shall provide a declaration, which is effective for  
37 up to six months from the date of the declaration, signed and dated  
38 under penalty of perjury pursuant to chapter 5.50 RCW, that recites  
39 facts and circumstances demonstrating that he or she is familiar with  
40 the patient and that he or she:

1 (I) Meets the requirements of (a)(~~(\*)~~) (xi)(A) of this  
2 subsection;

3 (II) Is a close friend of the patient;

4 (III) Is willing and able to become involved in the patient's  
5 health care;

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

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

12 (C) A health care provider may, but is not required to, rely on a  
13 declaration provided under (a)(~~(\*)~~) (xi)(B) of this subsection. The  
14 health care provider or health care facility where services are  
15 rendered is immune from suit in any action, civil or criminal, or  
16 from professional or other disciplinary action when such reliance is  
17 based on a declaration provided in compliance with (a)(~~(\*)~~) (xi)(B)  
18 of this subsection.

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

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

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

32 (c) Before any person authorized to provide informed consent on  
33 behalf of a patient who has been placed under a guardianship under  
34 RCW 11.130.265(~~(7)~~) exercises that authority, the person must first  
35 determine in good faith that that patient, if competent, would  
36 consent to the proposed health care. If such a determination cannot  
37 be made, the decision to consent to the proposed health care may be  
38 made only after determining that the proposed health care is in the  
39 patient's best interests.



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 minor  
4 or has been placed under a guardianship under RCW 11.130.265.

5 (e) A person may revoke a designation made pursuant to (a)(iii)  
6 of this subsection at any time by personally informing any person  
7 providing care to the patient of the patient's intent to revoke the  
8 designation, which revocation shall be documented in the patient's  
9 health record. A health care provider that relies upon the consent of  
10 an individual designated pursuant to (a)(iii) of this subsection in  
11 order to provide care to a patient is immune from suit in any action,  
12 civil or criminal, or from professional or other disciplinary action  
13 for relying upon such consent unless the health care provider had  
14 actual knowledge of the patient's revocation of that designation at  
15 the time consent was obtained.

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

20 (a) Persons authorized to provide informed consent to health  
21 care, including mental health care, on behalf of a patient who is  
22 under the age of majority and who is not otherwise authorized to  
23 provide informed consent, shall be a member of one of the following  
24 classes of persons in the following order of priority:

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

27 (ii) A person authorized by the court to consent to medical care  
28 for a child in out-of-home placement pursuant to chapter 13.32A or  
29 13.34 RCW, if any;

30 (iii) Parents of the minor patient;

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

34 (v) A competent adult representing himself or herself to be a  
35 relative responsible for the health care of such minor patient or a  
36 competent adult who has signed and dated a declaration under penalty  
37 of perjury pursuant to chapter 5.50 RCW stating that the adult person  
38 is a relative responsible for the health care of the minor patient.  
39 Such declaration shall be effective for up to six months from the  
40 date of the declaration.

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

5 (A) Consent is necessary for nonemergency, outpatient, primary  
6 care services, including physical examinations, vision examinations  
7 and eyeglasses, dental examinations, hearing examinations and hearing  
8 aids, immunizations, treatments for illnesses and conditions, and  
9 routine follow-up care customarily provided by a health care provider  
10 in an outpatient setting, excluding elective surgeries;

11 (B) The minor patient meets the definition of a "homeless child  
12 or youth" under the federal McKinney-Vento homeless education  
13 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,  
14 115 Stat. 2005; and

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

18 (ii) A person authorized to consent to care under this subsection  
19 (2)(b) and the person's employing school or school district are not  
20 subject to administrative sanctions or civil damages resulting from  
21 the consent or nonconsent for care, any care, or payment for any  
22 care, rendered pursuant to this section. Nothing in this section  
23 prevents a health care facility or a health care provider from  
24 seeking reimbursement from other sources for care provided to a minor  
25 patient under this subsection (2)(b).

26 (iii) Upon request by a health care facility or a health care  
27 provider, a person authorized to consent to care under this  
28 subsection (2)(b) must provide to the person rendering care a  
29 declaration signed and dated under penalty of perjury pursuant to  
30 chapter 5.50 RCW stating that the person is a school nurse, school  
31 counselor, or homeless student liaison and that the minor patient  
32 meets the elements under (b)(i) of this subsection. The declaration  
33 must also include written notice of the exemption from liability  
34 under (b)(ii) of this subsection.

35 (c) A health care provider may, but is not required to, rely on  
36 the representations or declaration of a person claiming to be a  
37 relative responsible for the care of the minor patient, under (a)(v)  
38 of this subsection, or a person claiming to be authorized to consent  
39 to the health care of the minor patient under (b) of this subsection,  
40 if the health care provider does not have actual notice of the

1 falsity of any of the statements made by the person claiming to be a  
2 relative responsible for the health care of the minor patient, or  
3 person claiming to be authorized to consent to the health care of the  
4 minor patient.

5 (d) A health care facility or a health care provider may, in its  
6 discretion, require documentation of a person's claimed status as  
7 being a relative responsible for the health care of the minor  
8 patient, or a person claiming to be authorized to consent to the  
9 health care of the minor patient under (b) of this subsection.  
10 However, there is no obligation to require such documentation.

11 (e) The health care provider or health care facility where  
12 services are rendered shall be immune from suit in any action, civil  
13 or criminal, or from professional or other disciplinary action when  
14 such reliance is based on a declaration signed under penalty of  
15 perjury pursuant to chapter 5.50 RCW stating that the adult person is  
16 a relative responsible for the health care of the minor patient under  
17 (a)(v) of this subsection, or a person claiming to be authorized to  
18 consent to the health care of the minor patient under (b) of this  
19 subsection.

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

23 (4) A person who knowingly provides a false declaration under  
24 this section shall be subject to criminal penalties under chapter  
25 9A.72 RCW.

26 NEW SECTION. **Sec. 3.** Section 1 of this act expires January 1,  
27 2022.

28 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect January  
29 1, 2022.

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