

SENATE BILL REPORT

SHB 1281

As Reported By Senate Committee On:
Human Services & Corrections, March 31, 2005

Title: An act relating to adding to the list of persons who may give informed consent to medical care for minors and providing immunity to health care providers and facilities for reliance on the representation of a person claiming to be responsible for the care of the minor.

Brief Description: Adding to the list of persons who may give informed consent to medical care for minors and providing immunity to health care providers and facilities when they rely upon the representation of a person claiming to be responsible for the care of the minor.

Sponsors: House Committee on Children & Family Services (originally sponsored by Representatives Pettigrew, Hinkle, Kagi, Walsh, Schual-Berke, McDonald, Clibborn, Dickerson, Dunn, P. Sullivan, Orcutt, Darneille, Morrell, Campbell, Wallace and Chase).

Brief History: Passed House: 3/07/05, 93-0.

Committee Activity: Human Services & Corrections: 3/28/05, 3/31/05 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, McAuliffe and Thibaudeau.

Staff: Edith Rice (786-7444)

Background: In 2001, the Legislature directed the Washington State Institute for Public Policy (WSIPP) to study the prevalence and needs of families who are raising related children. In June 2002, the WSIPP issued a report describing kinship care issues.

The Department of Social and Health Services (DSHS) convened the Kinship Caregiver Workgroup in 2002 to develop a briefing for the Legislature identifying the policy issues related to kinship caregivers, the federal and state statutes associated with these issues, and options to address the issues.

The Kinship Care Workgroup presented recommendations to the Legislature in November 2002 including the recommendation that the Legislature mandate and fund an ongoing committee of relative caregivers and others to oversee the implementation of the recommendations in the report and continue future work on kinship care in the state.

In 2003, the Legislature passed HB 1233 which related to improving services for kinship caregivers. The bill created an oversight committee charged with the responsibility to monitor, guide, and report on kinship care recommendations and implementation activities.

The committee was required to report to the Legislature by December 1, 2004 and was due to expire in January 2005.

A recommendation contained in the December 2004 report addressed the issue of creating an educational/medical consent waiver to allow relative caregivers to enroll the child in school and obtain medical care for the child.

Current state law provides that a person under age 18 is considered to lack capacity to make most health care decisions. Consent for health care must be obtained from a person authorized to consent on behalf of the minor. Persons who are considered to have such authority listed in order of priority are:

- 1) a guardian;
- 2) a person with durable power of attorney including health care decision-making authority;
- 3) a spouse;
- 4) parents; and
- 5) adult brothers and sisters of the patient.

Kinship caregivers are not listed as having the authority to consent to medical treatment for a child in his or her care.

Summary of Amended Bill: A separate list of persons authorized to provide consent for medical care for persons under 18 is created. The list in order of priority is:

- 1) the appointed guardian or legal custodian of the minor if any ;
- 2) a person authorized by the court under 13.32A or 13.34 RCW if any;
- 2) parents of the minor; and
- 3) a competent adult with an affidavit signed and dated under penalty of perjury, representing himself or herself to be a relative responsible for the health care of the minor child. Such authorization shall be effective for up to six months.

The health care provider may rely upon the representations of a person claiming to be responsible for the care of the minor child, but is not required to do so, as long as the provider does not have actual knowledge that the representation is false. The health care provider may request additional documentation of such status but is not required to do so. An immunity clause is added for the health care provider who relies upon the representation of any person with an affidavit who claims to be a relative responsible for the health care of the child.

Amended Bill Compared to Original Bill: A competent adult is now required to present a signed, dated affidavit representing himself as a relative responsible for the health care of the minor child. Such authorization is effective for up to six months.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: The Kinship Care Oversight Committee has identified this as a need that grandparents have in getting grandchildren they are caring for, basic medical attention. Many kinship caregivers are grandparents of the children they are caring for, but they are not the legal guardians. Sometimes they can't even find the parents of the child to get permission for

health care decisions. We have some concerns about this bill and confusion it may create for children who are in agency care.

Testimony Against: None.

Who Testified: PRO: Representative Pettigrew, prime sponsor; Ruth Shearer, Oscar and Brunilda Lleras, grandparents; Edith Owen, Pierce County Relatives Raising Children; Uma Ahluwalia, Children's Administration, DSHS; Laurie Lippold, Children's Home Society.