
SENATE BILL 5619

State of Washington 60th Legislature 2007 Regular Session

By Senators Pflug, Keiser, Parlette, Marr, Weinstein, Fairley, Kastama, Kline and Kohl-Welles

Read first time 01/25/2007. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to informed consent to health care; amending RCW
2 7.70.020, 7.70.040, 7.70.050, and 7.70.060; creating a new section; and
3 providing an effective date.

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

5 NEW SECTION. **Sec. 1.** (1) Our legal standard for informed consent
6 must balance beneficence and respect for patient autonomy, should tip
7 in favor of autonomy in an equally balanced situation, should strive
8 to protect patients' ability to obtain information and participate in
9 treatment decision making, should permit health care providers to
10 present and support their medical opinions, as well as provide health
11 care providers with a clear understanding of what other information
12 should be disclosed. Under such a standard, the health care providers
13 should: (a) Provide the patient with unbiased information on the risk
14 and benefits of all treatment options; (b) give the patient the health
15 care provider's professional advice; (c) assist the patient in
16 identifying the patient's own values; and (d) decide with the patient
17 which treatment choice is best.

18 (2) Shared decision making is a process in which the health care
19 provider shares with the patient all relevant risk and benefit

1 information on all treatment alternatives and the patient shares with
2 the physician all relevant personal information that might make one
3 treatment or side effect more or less tolerable than others. The goal
4 of shared decision making is for the patient and physician to feel they
5 fully understand the nature of the procedure, the risk and benefits, as
6 well as the individual values and preferences that influence the
7 treatment decision, such that both are willing to sign a statement of
8 agreement that they both fully understand the treatment choice.

9 The legislature finds that shared decision making between providers
10 and patients in the choice of health care treatments improves health
11 outcomes, reduces medical errors, and better ensures the provision of
12 cost-effective care. Although not all information is available with
13 regard to all treatment options, all relevant and available treatment
14 information must be shared with the patient to help with the patient's
15 decision making. The legislature intends that a patient-oriented
16 standard of disclosure means that the health care provider is required
17 to engage in the process of shared decision making with the patient.

18 (3) The legislature finds that widespread variation in medical
19 practices and outcomes in seemingly similar populations has raised
20 serious concerns about the quality of health care. The legislature
21 further finds these variations also reflect inadequate appreciation for
22 the importance of individual patients' well-informed preferences for
23 care and subsequent health outcomes. The legislature finds that
24 patient preference-sensitive care comprises treatments that involve
25 significant trade-offs affecting the patient's quality and/or length of
26 life. The legislature finds that decisions about these interventions
27 ought to reflect patients' personal values and preferences, and ought
28 to be made only after patients have enough information to make an
29 informed choice. The legislature intends to empower patients and
30 improve patient-centered decision quality.

31 (4) The legislature finds that reasonable people may differ
32 substantially on the amount and content of information they would find
33 significant in deciding to undergo a specific treatment. The
34 legislature finds that in order to ensure that patients have the
35 information they require to make an informed patient choice, physicians
36 should disclose all information that a reasonable person could consider
37 significant in making a treatment decision.

1 The legislature finds that one potential method for providing
2 appropriate information to patients is via certified patient decision
3 aids. Patient decision aids assist physicians to deliver: (a) High-
4 quality, up-to-date information about the condition, including the
5 risks and benefits of available options and, if appropriate,
6 information on the limits of scientific knowledge about outcomes; (b)
7 values clarification to help patients sort out their values and
8 preferences, and (c) guidance or coaching in deliberation, designed to
9 improve the patient's involvement in the decision process.

10 (5) The legislature concludes that our state laws regarding
11 informed consent must be modified to become more patient-oriented. The
12 legislature believes that when patients are informed about treatment
13 options and have reviewed patient information about their treatment,
14 they are better able to choose and consent to or refuse a method of
15 treatment. The legislature also finds that patients have a duty to be
16 sure they understand the information they have been given, even if it
17 means going over the information several times with their health care
18 provider.

19 **Sec. 2.** RCW 7.70.020 and 1995 c 323 s 3 are each amended to read
20 as follows:

21 (1) As used in this chapter "health care provider" means either:

22 ~~((1))~~ (a) A person licensed by this state to provide health care
23 or related services, including, but not limited to, a licensed
24 acupuncturist, a physician, osteopathic physician, dentist, nurse,
25 optometrist, podiatric physician and surgeon, chiropractor, physical
26 therapist, psychologist, pharmacist, optician, physician~~((+s))~~
27 assistant, midwife, osteopathic physician's assistant, nurse
28 practitioner, or physician's trained mobile intensive care paramedic,
29 including, in the event such person is deceased, his or her estate or
30 personal representative;

31 ~~((2))~~ (b) An employee or agent of a person described in ~~((part~~
32 ~~(1) above))~~ (a) of this subsection, acting in the course and scope of
33 his or her employment, including, in the event such employee or agent
34 is deceased, his or her estate or personal representative; or

35 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or
36 institution employing one or more persons described in ~~((part~~
37 ~~above))~~ (a) of this subsection, including, but not limited to, a

1 hospital, clinic, health maintenance organization, or nursing home; or
2 an officer, director, employee, or agent thereof acting in the course
3 and scope of his or her employment, including in the event such
4 officer, director, employee, or agent is deceased, his or her estate or
5 personal representative.

6 (2) "Patient decision aid" means: (a) High-quality, up-to-date
7 information about the condition, including risk and benefits of
8 available options and, if appropriate, a discussion of the limits of
9 scientific knowledge about outcomes; (b) values clarification to help
10 patients sort out their values and preferences; and (c) guidance or
11 coaching in deliberation, designed to improve the patient's involvement
12 in the decision process. The patient decision aid must be credentialed
13 by a national credentialing organization approved by the health care
14 authority upon a demonstration that it is competently developed; that
15 it provides a balanced presentation of treatment options benefits and
16 harms; and that the patient decision aid is efficacious at improving
17 decision making through a rigorous evaluation process.

18 (3) "Shared decision making" means a process in which the physician
19 discloses to the patient the risks and benefits associated with all
20 treatment alternatives, including no treatment, that a reasonable
21 person in the patient's situation could consider significant in
22 selecting a particular path of medical care. The patient then shares
23 with the physician all relevant personal information that might make
24 one treatment or side effect more or less desirable than others.

25 **Sec. 3.** RCW 7.70.040 and 1983 c 149 s 2 are each amended to read
26 as follows:

27 The following shall be necessary elements of proof that injury
28 resulted from the failure of the health care provider to follow the
29 accepted standard of care:

30 (1)(a) The health care provider failed to exercise that degree of
31 care, skill, and learning expected of a reasonably prudent health care
32 provider at that time in the profession or class to which he or she
33 belongs, in the state of Washington, acting in the same or similar
34 circumstances; and

35 ~~((+2))~~ (b) Such failure was a proximate cause of the injury
36 complained of; or

1 (2)(a) The health care provider failed to engage in shared decision
2 making with the patient; and

3 (b) Such failure was the proximate cause of the injury.

4 **Sec. 4.** RCW 7.70.050 and 1975-'76 2nd ex.s. c 56 s 10 are each
5 amended to read as follows:

6 (1) The following shall be necessary elements of proof that injury
7 resulted from health care in a civil negligence case or arbitration
8 involving the issue of the alleged breach of the duty to secure an
9 informed consent by a patient or his or her representatives against a
10 health care provider:

11 (a) That the health care provider failed to inform the patient of
12 a (~~material~~) relevant fact or facts relating to the treatment;

13 (b) That the patient consented to the treatment without being aware
14 of or fully informed of such (~~material~~) relevant fact or facts;

15 (c) That (~~a reasonably prudent~~) the patient (~~under similar~~
16 ~~circumstances~~) would not have consented to the treatment if informed
17 of such (~~material~~) relevant fact or facts;

18 (d) That the treatment in question proximately caused injury to the
19 patient.

20 (2) Under the provisions of this section a fact is defined as or
21 considered to be a (~~material~~) relevant fact, if a reasonably prudent
22 person in the position of the patient or his or her representative
23 (~~would~~) could attach significance to it deciding whether or not to
24 submit to the proposed treatment.

25 (3) (~~Material~~) Relevant facts under the provisions of this
26 section which must be established by expert testimony shall be either:

27 (a) The nature and character of the treatment proposed and
28 administered;

29 (b) The anticipated results of the treatment proposed and
30 administered;

31 (c) The recognized possible alternative forms of treatment; or

32 (d) The recognized serious possible risks, complications, and
33 anticipated benefits involved in the treatment administered and in the
34 recognized possible alternative forms of treatment, including
35 nontreatment.

36 (4) If a recognized health care emergency exists and the patient is

1 not legally competent to give an informed consent and/or a person
2 legally authorized to consent on behalf of the patient is not readily
3 available, his or her consent to required treatment will be implied.

4 **Sec. 5.** RCW 7.70.060 and 1975-'76 2nd ex.s. c 56 s 11 are each
5 amended to read as follows:

6 (1) Once the patient: (a) Understands the risk or seriousness of
7 the disease or condition to be prevented; (b) understands the available
8 treatment alternatives, including the risks, benefits, and
9 uncertainties; and (c) has weighted his or her values regarding the
10 potential benefits and harms associated with the services, then the
11 patient may engage in the treatment decision-making process at a level
12 he or she feels appropriate and select a final treatment plan.

13 (2) Both the physician and the patient must sign an informed
14 consent form that sets forth that: (a) The patient and the physician
15 engaged in shared decision making; (b) the patient acknowledges receipt
16 of risk and benefit information on all treatment alternatives; (c) the
17 patient has had the opportunity to ask questions and receive additional
18 information; and (d) the patient and physician have agreed upon the
19 listed treatment option.

20 (3) If a patient while legally competent, or his or her
21 representative if he or she is not competent, signs a consent form
22 after participating in shared decision making in conjunction with the
23 use of a patient decision aid which sets forth the following, the
24 signed consent form shall constitute prima facie evidence that the
25 patient gave his or her informed consent to the treatment administered
26 and the patient has the burden of rebutting this by a preponderance of
27 the evidence:

28 ~~((1))~~ (a) A description, in language the patient could reasonably
29 be expected to understand, of:

30 ~~((a))~~ (i) The diagnosis;
31 (ii) The seriousness of the diagnosis;
32 (iii) The nature and character of ~~((the proposed))~~ methods of
33 treatment that were recommended;

34 ~~((b) The anticipated results of the proposed treatment;~~

35 ~~((c))~~ (iv) The other recognized ~~((possible alternative forms of))~~
36 treatment options, including nontreatment; ~~((and~~

1 ~~(d)~~) (v) The benefits of the recommended and alternative
2 treatments, including nontreatment;
3 (vi) The recognized ~~((serious—possible))~~ risks~~((r))~~ and
4 complications~~((, and anticipated benefits involved in the treatment and~~
5 ~~in the recognized possible))~~ of the recommended and alternative ~~((forms~~
6 ~~of treatment, including nontreatment))~~ treatments;
7 (vii) The discomforts associated with the treatments;
8 (viii) The methods that will be used to prevent or relieve these
9 discomforts;
10 (ix) The recognized side effects of the treatment - immediate,
11 short term, and long term;
12 (x) The impact treatment, or not having treatment, will have on
13 normal functions and activities;
14 (xi) Length of treatment;
15 (xii) Length of time before resumption of normal activities; and
16 (xiii) Cost of treatment;
17 ~~((2))~~ (b) Or as an alternative, a statement that the patient
18 elects not to be informed of the elements set forth in (a) of this
19 subsection ~~((1) of this section)~~.

20 (4) Failure to use a form shall not be admissible as evidence of
21 failure to obtain informed consent.

22 NEW SECTION. Sec. 6. (1) This act takes effect January 1, 2009.
23 (2) The health care authority may take steps before the effective
24 date of this act to select and approve a patient decision aid so that
25 it is available on the effective date of this act.

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