

1 **HOMELESS YOUTH HEALTH CARE AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian E. Shiozawa**

5 House Sponsor: Michael S. Kennedy

7 **LONG TITLE**

8 **General Description:**

9 This bill amends consent provisions of the Utah Health Care Malpractice Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ authorizes an unaccompanied, homeless minor, who is age 15 or older, to consent to
13 certain health care services; and
14 ▶ makes other conforming amendments.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **78B-3-406**, as renumbered and amended by Laws of Utah 2008, Chapter 3

23 *Be it enacted by the Legislature of the state of Utah:*

24 Section 1. Section **78B-3-406** is amended to read:

25 **78B-3-406. Failure to obtain informed consent -- Proof required of patient --**
26 **Defenses -- Consent to health care.**

27 (1) When a person submits to health care rendered by a health care provider, it is



28 presumed that actions taken by the health care provider are either expressly or impliedly
29 authorized to be done. For a patient to recover damages from a health care provider in an
30 action based upon the provider's failure to obtain informed consent, the patient must prove the
31 following:

32 (a) that a provider-patient relationship existed between the patient and health care
33 provider;

34 (b) the health care provider rendered health care to the patient;

35 (c) the patient suffered personal injuries arising out of the health care rendered;

36 (d) the health care rendered carried with it a substantial and significant risk of causing
37 the patient serious harm;

38 (e) the patient was not informed of the substantial and significant risk;

39 (f) a reasonable, prudent person in the patient's position would not have consented to
40 the health care rendered after having been fully informed as to all facts relevant to the decision
41 to give consent; and

42 (g) the unauthorized part of the health care rendered was the proximate cause of
43 personal injuries suffered by the patient.

44 (2) In determining what a reasonable, prudent person in the patient's position would do
45 under the circumstances, the finder of fact shall use the viewpoint of the patient before health
46 care was provided and before the occurrence of any personal injuries alleged to have arisen
47 from said health care.

48 (3) It shall be a defense to any malpractice action against a health care provider based
49 upon alleged failure to obtain informed consent if:

50 (a) the risk of the serious harm which the patient actually suffered was relatively
51 minor;

52 (b) the risk of serious harm to the patient from the health care provider was commonly
53 known to the public;

54 (c) the patient stated, prior to receiving the health care complained of, that he would
55 accept the health care involved regardless of the risk; or that he did not want to be informed of
56 the matters to which he would be entitled to be informed;

57 (d) the health care provider, after considering all of the attendant facts and
58 circumstances, used reasonable discretion as to the manner and extent to which risks were

59 disclosed, if the health care provider reasonably believed that additional disclosures could be
60 expected to have a substantial and adverse effect on the patient's condition; or

61 (e) the patient or his representative executed a written consent which sets forth the
62 nature and purpose of the intended health care and which contains a declaration that the patient
63 accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial
64 results of health care and which acknowledges that health care providers involved have
65 explained his condition and the proposed health care in a satisfactory manner and that all
66 questions asked about the health care and its attendant risks have been answered in a manner
67 satisfactory to the patient or his representative.

68 (4) The written consent shall be a defense to an action against a health care provider
69 based upon failure to obtain informed consent unless the patient proves that the person giving
70 the consent lacked capacity to consent or shows by clear and convincing evidence that the
71 execution of the written consent was induced by the defendant's affirmative acts of fraudulent
72 misrepresentation or fraudulent omission to state material facts.

73 (5) This act may not be construed to prevent any person 18 years of age or over from
74 refusing to consent to health care for his own person upon personal or religious grounds.

75 (6) Except as provided in Section [76-7-304.5](#), the following persons are authorized and
76 empowered to consent to any health care not prohibited by law:

77 (a) any parent, whether an adult or a minor, for the parent's minor child;

78 (b) any married person, for a spouse;

79 (c) any person temporarily standing in loco parentis, whether formally serving or not,
80 for the minor under that person's care and any guardian for the guardian's ward;

81 (d) any person 18 years of age or over for that person's parent who is unable by reason
82 of age, physical or mental condition, to provide such consent;

83 (e) any patient 18 years of age or over;

84 (f) any female regardless of age or marital status, when given in connection with her
85 pregnancy or childbirth;

86 (g) in the absence of a parent, any adult for the adult's minor brother or sister; [~~and~~]

87 (h) in the absence of a parent, any grandparent for the grandparent's minor
88 grandchild[-];

89 (i) an emancipated minor as provided in Section [78A-6-805](#);

- 90 (j) a minor who has contracted a lawful marriage; and
- 91 (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento
- 92 Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years of age or older.
- 93 (7) A person who in good faith consents or authorizes health care treatment or
- 94 procedures for another as provided by this act may not be subject to civil liability.

Legislative Review Note
Office of Legislative Research and General Counsel