

TOBACCO CESSATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Thomas W. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill permits a minor to consent to and participate in tobacco and nicotine cessation services.

Highlighted Provisions:

This bill:

- ▶ permits a minor to consent to and participate in tobacco and nicotine cessation services that are delivered or contracted for by the Department of Health and Human Services or a local health department.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-406, as last amended by Laws of Utah 2021, Chapter 262

ENACTS:

26B-7-501, Utah Code Annotated 1953

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

Section 1. Section **26B-7-501** is enacted to read:



26B-7-501. Tobacco and nicotine cessation services for minors.

(1) As used in this section:

(a) "Minor" means an individual who is younger than 18 years old.

(b) (i) "Tobacco and nicotine cessation services" means a program that is:

(A) specifically designed for minors who use tobacco products, electronic cigarette products, or nicotine products; and

(B) is operated by the department, a local health department, or a contractor that is approved by the department or a local health department.

(ii) "Tobacco and nicotine cessation services" includes:

(A) providing general information about the services offered by the department or a contractor that is approved by the department prior to the minor's registration and participation in the program; and

(B) providing the minor with access to guided cessation services which may include assessment, phone counseling, web-based resources, and coaching through technology-based communication tools.

(iii) "Tobacco and nicotine cessation services" does not include offering or distributing nicotine replacement therapy.

(2) A minor may consent to and participate in tobacco and nicotine cessation services.

(3) A minor is not required to inform or obtain consent from the minor's parent or legal guardian in order to participate in tobacco and nicotine cessation services.

Section 2. Section **78B-3-406** is amended to read:

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

(1) (a) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done.

(b) For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

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

(ii) the health care provider rendered health care to the patient;

59 (iii) the patient suffered personal injuries arising out of the health care rendered;
60 (iv) the health care rendered carried with it a substantial and significant risk of causing
61 the patient serious harm;
62 (v) the patient was not informed of the substantial and significant risk;
63 (vi) a reasonable, prudent person in the patient's position would not have consented to
64 the health care rendered after having been fully informed as to all facts relevant to the decision
65 to give consent; and
66 (vii) the unauthorized part of the health care rendered was the proximate cause of
67 personal injuries suffered by the patient.

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

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

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

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

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

81 (d) the health care provider, after considering all of the attendant facts and
82 circumstances, used reasonable discretion as to the manner and extent to which risks were
83 disclosed, if the health care provider reasonably believed that additional disclosures could be
84 expected to have a substantial and adverse effect on the patient's condition; or

85 (e) the patient or the patient's representative executed a written consent which sets forth
86 the nature and purpose of the intended health care and which contains a declaration that the
87 patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired
88 beneficial results of health care and which acknowledges that health care providers involved
89 have explained the patient's condition and the proposed health care in a satisfactory manner and

that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or the patient's representative.

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

(5) This act may not be construed to prevent any person 18 years old or over from refusing to consent to health care for the patient's own person upon personal or religious grounds.

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

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

(b) any married person, for a spouse;

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

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

(e) any patient 18 years old or over;

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

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

(h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;

(i) an emancipated minor as provided in Section 80-7-105;

(j) a minor who has contracted a lawful marriage; ~~and~~

(k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years old or older~~[-]~~; and

(l) a minor receiving tobacco and nicotine cessation services under Section 26B-7-501.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.

121 (8) Notwithstanding any other provision of this section, if a health care provider fails to
122 comply with the requirement in Section 58-1-509, the health care provider is presumed to have
123 lacked informed consent with respect to the patient examination, as defined in Section
124 58-1-509.