~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 21, 2013

**S. 117**

Introduced by Senators Hayes, Courson, O’Dell, Verdin and Ford

S. Printed 3/21/13--S.

Read the first time January 8, 2013.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (S. 117) to amend the Code of Laws of South Carolina, 1976, by adding Section 44‑66‑75 so as to require a health care provider to give a patient an, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting:

/ A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑66‑75 SO AS TO REQUIRE A HEALTH CARE PROVIDER TO GIVE A PATIENT AN OPPORTUNITY TO ALLOW DISCLOSURE OF CERTAIN INFORMATION TO DESIGNATED FAMILY MEMBERS AND OTHER INDIVIDUALS AND TO AUTHORIZE THE INVOLVEMENT OF THESE FAMILY MEMBERS AND OTHER INDIVIDUALS IN THE TREATMENT OF THE PATIENT; TO SPECIFY THE CONTENTS OF THE AUTHORIZATION; AND TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR GOOD FAITH DISCLOSURE OF INFORMATION; AND TO AMEND SECTION 44‑66‑20, AS AMENDED, RELATING TO DEFINITIONS IN THE ADULT HEALTH CARE CONSENT ACT, SO AS TO DEFINE “PATIENT” AND “TREATMENT” AND TO AMEND OTHER DEFINITIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 66, Title 44 of the 1976 Code is amended by adding:

“Section 44‑66‑75. (A) A health care provider or the provider’s agent shall provide on the patient information form or by electronic health records, the opportunity for the patient to designate a family member or other individual they choose as a person with whom the provider may discuss the patient's medical condition and treatment plan.

(B) The authorization provided for in subsection (A):

(1) satisfies the requirements of Title 42 of the Code of Federal Regulations, relating to public health, and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(2) must present the question in bold print and capitalized or by electronic means **'DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION? IF YES, WHOM?'**; and

(3) must specify that the patient may revoke or modify an authorization with regard to any family member or other individual designated by the patient in the authorization and that the revocation or modification must be in writing.

(C) A health care provider may disclose information pursuant to an authorization unless the provider has actual knowledge that the authorization has been revoked or modified.

(D) A health care provider who in good faith discloses information in accordance with an authorization signed by a patient pursuant to this section is not subject to civil liability, criminal liability, or disciplinary sanctions because of this disclosure.

(E) Nothing in this section may be construed to:

(1) require a health care provider to disclose information that he otherwise may withhold or limit;

(2) limit or prevent a provider from disclosing information without written authorization from the patient if this disclosure is otherwise lawful or permissible;

(3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members; and

(4) conflict with an individual’s health care power of attorney as provided for in the South Carolina Probate Code.

(F) Notwithstanding any other provision of this chapter, this Section does not apply to nursing homes, as defined in Section 44-7-130 or a dentist, dental hygienist or dental technician licensed or registered in Chapter 15 of Title 40”

SECTION 2. Section 44‑66‑20 of the 1976 Code, as last amended by Act 351 of 2002, is further amended to read:

“Section 44‑66‑20. As used in this chapter:

(1) ‘Health care’ means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. ~~It~~ Health care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

(2) ‘Health care provider’ or ‘provider’ means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(3) ‘Health care professional’ means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.

(4) ‘Patient’ means an individual sixteen years of age or older who presents or is presented to a health care provider for treatment.

(5) ‘Person’ includes, but is not limited to, an individual, a state agency, or a representative of a state agency.

(~~5~~6) ‘Physician’ means an individual who is licensed to practice medicine or osteopathy ~~under~~ pursuant to Chapter 47 ~~of~~, Title 40.

(7) ‘Treatment’ means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, aliment, defect, abnormality, or complaint, whether of physical or mental origin. Treatment includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.

(~~6~~8) ‘Unable to consent’ means unable to appreciate the nature and implications of the patient’s condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This ~~definition~~ term does not ~~include~~ apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient’s inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient’s inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient’s record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient’s health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.”

SECTION 3. This act takes effect January 1, 2014. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑66‑75 SO AS TO REQUIRE A HEALTH CARE PROVIDER TO GIVE A PATIENT AN OPPORTUNITY TO AUTHORIZE DISCLOSURE OF CERTAIN INFORMATION TO DESIGNATED FAMILY MEMBERS AND OTHER INDIVIDUALS AND TO AUTHORIZE THE INVOLVEMENT OF THESE FAMILY MEMBERS AND OTHER INDIVIDUALS IN THE TREATMENT OF THE PATIENT; TO SPECIFY WHEN THE OPPORTUNITY TO SIGN AN AUTHORIZATION MUST BE PROVIDED TO A PATIENT AND TO SPECIFY THE CONTENTS OF THE AUTHORIZATION; AND TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR GOOD FAITH DISCLOSURE OF INFORMATION; AND TO AMEND SECTION 44‑66‑20, AS AMENDED, RELATING TO DEFINITIONS IN THE ADULT HEALTH CARE CONSENT ACT, SO AS TO DEFINE “PATIENT” AND “TREATMENT” AND TO AMEND OTHER DEFINITIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 66, Title 44 of the 1976 Code is amended by adding:

“Section 44‑66‑75. (A) A health care provider or the provider’s agent shall provide a patient the opportunity to review, approve, and sign an authorization requiring the provider to:

(1) release specified information concerning the patient and his treatment to family members and other individuals designated by the patient in the authorization; and

(2) involve those designated family members and other individuals in the course of the patient’s treatment.

(B) The health care provider or the provider’s agent shall offer the patient the opportunity to sign an authorization:

(1) when the patient is entering inpatient or outpatient treatment with the provider, including in a hospital emergency department, or other crisis response setting;

(2) in an outpatient setting at a minimum of once a year and in an inpatient setting at a minimum of once a week while the patient remains in treatment unless previously executed; and

(3) upon the written request to the provider from a family member of a patient receiving treatment.

(C) The authorization provided for in subsection (A):

(1) satisfies the requirements of Title 42 of the Code of Federal Regulations, relating to public health, and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(2) must present the question, ‘Who would you like to have involved with your treatment?’;

(3) must include the express option for a patient to authorize the provider to give verbal or written disclosure of information to designated family members or individuals concerning:

(a) the nature of the patient’s condition and treatment of the patient;

(b) all ongoing treatment recommendations or instructions by the provider to the patient, including, but not limited to, medications prescribed and necessary follow‑up care; and

(c) recommended limitations on the patient’s diet, activities, or conduct due to his condition or treatment; and

(4) must specify that the patient may revoke or modify an authorization with regard to any family member or other individual designated by the patient in the authorization and that the revocation or modification must be in writing.

(D) A health care provider may disclose information pursuant to an authorization unless the provider has actual knowledge that the authorization has been revoked or modified.

(E) A health care provider who in good faith discloses information in accordance with an authorization signed by a patient pursuant to this section is not subject to civil liability, criminal liability, or disciplinary sanctions because of this disclosure.

(F) Nothing in this section may be construed to:

(1) require a health care provider to disclose information that he otherwise may withhold or limit;

(2) limit or prevent a provider from disclosing information without written authorization from the patient if this disclosure is otherwise lawful or permissible;

(3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members; and

(4) conflict with an individual’s health care power of attorney as provided for in Section 62‑5‑504.”

SECTION 2. Section 44‑66‑20 of the 1976 Code, as last amended by Act 351 of 2002, is further amended to read:

“Section 44‑66‑20. As used in this chapter:

(1) ‘Health care’ means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. ~~It~~ Health care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

(2) ‘Health care provider’ or ‘provider’ means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(3) ‘Health care professional’ means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.

(4) ‘Patient’ means an individual sixteen years of age or older who presents or is presented to a health care provider for treatment.

(5) ‘Person’ includes, but is not limited to, an individual, a state agency, or a representative of a state agency.

(~~5~~6) ‘Physician’ means an individual who is licensed to practice medicine or osteopathy ~~under~~ pursuant to Chapter 47 ~~of~~, Title 40.

(7) ‘Treatment’ means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, aliment, defect, abnormality, or complaint, whether of physical or mental origin. Treatment includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.

(~~6~~8) ‘Unable to consent’ means unable to appreciate the nature and implications of the patient’s condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This ~~definition~~ term does not ~~include~~ apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient’s inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient’s inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient’s record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient’s health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.”

SECTION 3. This act takes effect upon approval by the Governor.

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