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Indicates New Matter

COMMITTEE REPORT

May 19, 2016

**H. 3999**

Introduced by Reps. Henderson, G.M. Smith, Ridgeway and Atwater

S. Printed 5/19/16--S.

Read the first time March 22, 2016.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (H. 3999) to amend Section 44‑66‑30, Code of Laws of South Carolina, 1976, relating to persons who may make health care decisions for patients who are unable to, etc., respectfully

**REPORT:**

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

RAYMOND E. CLEARY III for Committee.

**A** **BILL**

TO AMEND SECTION 44‑66‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY MAKE HEALTH CARE DECISIONS FOR PATIENTS WHO ARE UNABLE TO PROVIDE CONSENT, SO AS TO CHANGE THE PROCESS FOR CERTAIN RELATIVES AND OTHER INDIVIDUALS TO MAKE THESE HEALTH CARE DECISIONS, TO ADD ADDITIONAL CLASSES OF PERSONS WITH THE AUTHORITY TO MAKE THESE HEALTH CARE DECISIONS, TO REQUIRE A BIOETHICS COMMITTEE TO SELECT CERTAIN DECISION MAKERS, TO ENABLE CERTAIN DECISION MAKERS TO CONSULT WITH A SECOND PHYSICIAN BEFORE MAKING A HEALTH CARE DECISION, TO REQUIRE THAT DECISIONS TO WITHHOLD OR WITHDRAW LIFE‑PROLONGING MEASURES BE REVIEWED BY A BIOETHICS COMMITTEE, AND TO REQUIRE CERTAIN DOCUMENTATION RELATED TO SELECTION OF A DECISION MAKER.

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

SECTION 1. Section 44‑66‑30 of the 1976 Code is amended to read:

“Section 44‑66‑30. (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

(1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

(2) an attorney‑in‑fact appointed by the patient in a durable power of attorney executed pursuant to Section 62‑5‑501, if the decision is within the scope of his authority;

(3) a person given priority to make health care decisions for the patient by another statutory provision;

(4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(5) ~~a parent or~~ an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(6) a parent of the patient;

~~(6)~~(7) an adult sibling~~, grandparent, or adult grandchild~~ of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

(8) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;

~~(7)~~(9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation;

~~(8)~~ ~~a person given authority to make health care decisions for the patient by another statutory provision.~~

(10) a close friend of the patient who is an adult and reasonably is believed by the health care professional to have a close personal relationship with the patient.

(B) Documentation of efforts to locate a decision maker who is a person identified in subsections (A) must be recorded in the patient’s medical record.

~~(B)~~(C) If persons of equal priority disagree on whether certain health care should be provided to a patient who is unable to consent, an authorized person, a health care provider involved in the care of the patient, or any other person interested in the welfare of the patient may petition the probate court for an order determining what care is to be provided or for appointment of a temporary or permanent guardian.

~~(C)~~(D) Priority ~~under~~ pursuant to this section must not be given to a person if a health care provider responsible for the care of a patient who is unable to consent determines that the person is not reasonably available, is not willing to make health care decisions for the patient, or is unable to consent as defined in Section 44‑66‑20~~(6)~~(8).

~~(D)~~(E) An attending physician or other health care professional responsible for the care of a patient who is unable to consent may not give priority or authority ~~under~~ pursuant to subsections (A)(5) through ~~(8)~~ (A)(10) to a person if the attending physician or health care professional has actual knowledge that, before becoming unable to consent, the patient did not want that person involved in decisions concerning his care.

~~(E)~~(F) This section does not authorize a person to make health care decisions on behalf of a patient who is unable to consent if, in the opinion of the certifying physicians, the patient’s inability to consent is temporary, and the attending physician or other health care professional responsible for the care of the patient determines that the delay occasioned by postponing treatment until the patient regains the ability to consent will not result in significant detriment to the patient’s health.

~~(F)~~(G) A person authorized to make health care decisions ~~under~~ pursuant to subsection (A) ~~of this section must~~ shall base those decisions on the patient’s wishes to the extent that the patient’s wishes can be determined. Where the patient’s wishes cannot be determined, the person ~~must~~ shall base the decision on the patient’s best interest.

~~(G)~~(H) A person authorized to make health care decisions ~~under~~ pursuant to subsection (A) ~~of this section~~ either may consent or withhold consent to health care on behalf of the patient.”

SECTION 2. This act takes effect upon approval by the Governor.

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