**A** **BILL**

TO AMEND SECTION 44‑66‑30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY MAKE HEALTH CARE DECISIONS FOR ADULTS UNABLE TO CONSENT, SO AS TO ADD A PERSON GIVEN THE AUTHORITY TO MAKE THOSE HEALTH CARE DECISIONS PURSUANT TO ANOTHER STATUTORY PROVISION; AND TO AMEND SECTIONS 44‑26‑40, 44‑26‑50, AND 44‑26‑60, ALL AS AMENDED, ALL RELATING TO RIGHTS OF CLIENTS OF THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Section 44‑66‑30(A) of the 1976 Code, as last amended by Act 226 of 2016, is further amended to read:

“(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 authority to make health care decisions for the patient by another statutory provision;

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

~~(4)~~(5) 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)~~(6) 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)~~(7) a parent of the patient;

~~(7)~~(8) an adult sibling 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)~~(9) 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;

~~(9)~~(10) 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.”

SECTION 2. Section 44‑26‑40 of the 1976 Code, as last amended by Act 47 of 2011, is further amended to read:

“Section 44‑26‑40. If a client resides in a facility operated by or contracted to by the department, the determination of that client’s competency to consent to or refuse major medical treatment must be made pursuant to ~~Section 44‑66‑20(6) of~~ the Adult Health Care Consent Act. The department shall abide by the decision of a client found competent to consent.”

SECTION 3. Section 44‑26‑50 of the 1976 Code, as last amended by Act 47 of 2011, is further amended to read:

“Section 44‑26‑50. If the client is found incompetent to consent to or refuse major medical treatment, the decisions concerning his health care must be made pursuant to ~~Section 44‑66‑30 of~~ the Adult Health Care Consent Act. An authorized designee of the department may make a health care decision pursuant to Section 44‑66‑30~~(8)~~(3) of the Adult Health Care Consent Act. The person making the decision must be informed of the need for major medical treatment, alternative treatments, and the nature and implications of the proposed health care and shall consult the attending physician before making decisions. When feasible, the person making the decision shall observe or consult with the client found to be incompetent.”

SECTION 4. Section 44‑26‑60(C) of the 1976 Code, as last amended by Act 47 of 2011, is further amended to read:

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

SECTION 5. This act takes effect upon approval by the Governor.

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