~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 9, 2016

**H. 3999**

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

S. Printed 3/9/16--H.

Read the first time April 16, 2015.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL 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 with amendment:

Amend the bill, as and if amended, by striking all after the enacting language and inserting:

/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)~~(10) ~~a person given authority to make health care decisions for the patient by another statutory provision~~ 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;

(11) a health care professional who must not be employed by the health care provider and must be selected by the health care provider’s ethics committee; however, if the health care provider does not have an ethics committee, the health care provider’s governing body shall designate a committee of the governing body comprised of at least three members to select the health care professional who shall serve as the decision maker pursuant to this item and who must not be employed by the health care provider.

(B)(1) A health care professional serving as the decision maker pursuant to subsection (A)(11) must be notified that, upon request, the health care provider shall make available a physician, not involved in the patient’s care, to assist the health care professional in evaluating treatment options. A decision to withhold or withdraw life‑prolonging procedures must be reviewed by the health care provider’s ethics committee or the committee designated by the health care provider’s governing body pursuant to subsection (A)(11). A person serving as a decision maker pursuant to subsection (A)(11) shall serve as the decision maker for the patient for the entire time the patient is being cared for at the health care provider’s facility. However, if a person authorized to make health care decisions for a patient pursuant to subsections (A)(1)‑(A)(10) is identified after selection of a health care professional pursuant to subsection (A)(11) and that other person agrees to make health care decisions for the patient, the health care professional is no longer authorized to make health care decisions for the patient, and the identified person is authorized to and must make health care decisions for the patient as provided in subsection (A).

(2) Documentation of efforts to locate a decision maker who is a person identified in subsections (A)(1) through (A)(10) 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. /

Renumber sections to conform.

Amend title to conform.

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill is expected to have a minimal expenditure impact on the general fund and no impact on federal funds or other funds. The office did not receive any responses from the counties surveyed and the potential local expenditure impact is undetermined.

**Explanation of Fiscal Impact**

**State Expenditure**

House Bill 3999 amends Section 44-66-30 relating to the Adult Health Care Consent Act by adding additional classes of persons with the authority to make health care decisions for a patient who is unable to consent. The bill provides for a bioethics committee to select the proxy decision maker, for decision makers to consult with a second physician, that decisions to withhold life-prolonging measures be reviewed by a bioethics committee, and that proper documentation related to the selection of a decision maker be placed in the patient’s medical record.

**Department of Health and Environmental Control.** The department reports that this bill will have no expenditure impact on the general fund, federal funds, or other funds.

**Department of Mental Health.** The department indicates that procedures involved in determining an appropriate decision maker would involve a minimal increase in general fund expenditures, which could be absorbed by the agency.

**Local Expenditure**

The Revenue and Fiscal Affairs Office contacted the eight counties in South Carolina that operate county-owned hospitals regarding the expenditure impact of this bill. Since our office received no responses from the counties surveyed, we cannot determine an expenditure impact.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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)~~(10) ~~a person given authority to make health care decisions for the patient by another statutory provision~~ 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;

(11) a clinical social worker licensed pursuant to Chapter 63, Title 40, or an individual who is a graduate of a court‑approved guardianship program.

(B) A person serving as a decision maker pursuant to subsection (A)(11) must be selected by the provider’s bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, the provider’s governing body shall designate a committee of the governing body comprised of at least three members to select the person who shall serve as the decision maker pursuant to subsection (A)(11) and who must not be employed by the provider. The person serving as the decision maker must be notified that, upon request, the provider shall make available a second physician, not involved in the patient’s care, to assist the person in evaluating treatment options. A decision to withhold or withdraw life‑prolonging procedures must be reviewed by the provider’s bioethics committee or the committee designated by the provider’s governing body pursuant to this subsection. Documentation of efforts to locate a decision maker who is a person identified in subsections (A)(1) through (A)(10) 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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