**South Carolina General Assembly**

123rd Session, 2019-2020

**A85, R106, H3602**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Rose, Caskey and Weeks

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Introduced in the House on January 15, 2019

Introduced in the Senate on April 2, 2019

Last Amended on May 21, 2019

Passed by the General Assembly on May 21, 2019

Governor's Action: May 24, 2019, Signed

Summary: Health care decisions for unable to consent persons

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/15/2019 House Introduced and read first time ([House Journal‑page 80](file:///h:\hj\20190115.docx))

1/15/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 80](file:///h:\hj\20190115.docx))

1/16/2019 House Member(s) request name added as sponsor: Caskey

3/20/2019 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 45](file:///h:\hj\20190320.docx))

3/26/2019 House Requests for debate‑Rep(s).  McCravy, Toole, Thayer, White, Yow, Fry, Daning, Long, Magnuson, Martin, Burns, Hiott, Chumley, Ott ([House Journal‑page 26](file:///h:\hj\20190326.docx))

3/27/2019 House Member(s) request name added as sponsor: Weeks

3/27/2019 House Requests for debate removed‑Rep(s).  McCravy, Ott, Toole, Thayer, Yow, Long, White, Daning, Magnuson, Burns, Martin, Hiott, Fry ([House Journal‑page 23](file:///h:\hj\20190327.docx))

3/27/2019 House Amended ([House Journal‑page 66](file:///h:\hj\20190327.docx))

3/27/2019 House Read second time ([House Journal‑page 66](file:///h:\hj\20190327.docx))

3/27/2019 House Roll call Yeas‑104 Nays‑4 ([House Journal‑page 68](file:///h:\hj\20190327.docx))

3/28/2019 House Read third time and sent to Senate ([House Journal‑page 11](file:///h:\hj\20190328.docx))

4/2/2019 Senate Introduced and read first time ([Senate Journal‑page 11](file:///h:\sj\20190402.docx))

4/2/2019 Senate Referred to Committee on **Medical Affairs** ([Senate Journal‑page 11](file:///h:\sj\20190402.docx))

4/25/2019 Senate Committee report: Favorable **Medical Affairs** ([Senate Journal‑page 6](file:///h:\sj\20190425.docx))

5/7/2019 Senate Amended ([Senate Journal‑page 61](file:///h:\sj\20190507.docx))

5/7/2019 Senate Read second time ([Senate Journal‑page 61](file:///h:\sj\20190507.docx))

5/8/2019 Scrivener's error corrected

5/8/2019 Senate Amended ([Senate Journal‑page 65](file:///h:\sj\20190508.docx))

5/8/2019 Senate Read third time and returned to House with amendments ([Senate Journal‑page 65](file:///h:\sj\20190508.docx))

5/8/2019 Senate Roll call Ayes‑44 Nays‑0 ([Senate Journal‑page 65](file:///h:\sj\20190508.docx))

5/9/2019 House Senate amendment amended ([House Journal‑page 79](file:///h:\hj\20190509.docx))

5/9/2019 House Returned to Senate with amendments ([House Journal‑page 79](file:///h:\hj\20190509.docx))

5/9/2019 Senate Non‑concurrence in House amendment ([Senate Journal‑page 88](file:///h:\sj\20190509.docx))

5/9/2019 House House insists upon amendment and conference committee appointed Reps.  Rose, G.M. Smith, Johnson ([House Journal‑page 190](file:///h:\hj\20190509.docx))

5/9/2019 Senate Conference committee appointed Davis, Gambrell, Johnson ([Senate Journal‑page 89](file:///h:\sj\20190509.docx))

5/20/2019 House Free conference powers granted ([House Journal‑page 56](file:///h:\hj\20190520.docx))

5/20/2019 House Roll call Yeas‑108 Nays‑0 ([House Journal‑page 56](file:///h:\hj\20190520.docx))

5/20/2019 House Free conference committee appointed Rose, G.M. Smith, Johnson ([House Journal‑page 57](file:///h:\hj\20190520.docx))

5/20/2019 House Free conference report adopted ([House Journal‑page 57](file:///h:\hj\20190520.docx))

5/20/2019 House Roll call Yeas‑98 Nays‑0 ([House Journal‑page 60](file:///h:\hj\20190520.docx))

5/21/2019 Senate Free conference powers granted ([Senate Journal‑page 14](file:///h:\sj\20190521.docx))

5/21/2019 Senate Roll call Ayes‑46 Nays‑0 ([Senate Journal‑page 14](file:///h:\sj\20190521.docx))

5/21/2019 Senate Free conference committee appointed Davis, Gambrell, Johnson

5/21/2019 Senate Free conference report adopted ([Senate Journal‑page 14](file:///h:\sj\20190521.docx))

5/21/2019 Senate Roll call Ayes‑40 Nays‑0 ([Senate Journal‑page 14](file:///h:\sj\20190521.docx))

5/21/2019 Senate Ordered enrolled for ratification ([Senate Journal‑page 18](file:///h:\sj\20190521.docx))

5/22/2019 Ratified R 106

5/24/2019 Signed By Governor

6/10/2019 Effective date 05/24/19

6/10/2019 Act No.  85

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**VERSIONS OF THIS BILL**

[1/15/2019](file:///p:\pprever\2019-20\3602_20190115.docx)

[3/20/2019](file:///p:\pprever\2019-20\3602_20190320.docx)

[3/27/2019](file:///p:\pprever\2019-20\3602_20190327.docx)

[4/25/2019](file:///p:\pprever\2019-20\3602_20190425.docx)

[5/7/2019](file:///p:\pprever\2019-20\3602_20190507.docx)

[5/8/2019](file:///p:\pprever\2019-20\3602_20190508.docx)

[5/8/2019-A](file:///p:\pprever\2019-20\3602_20190508A.docx)

[5/9/2019](file:///p:\pprever\2019-20\3602_20190509.docx)

[5/21/2019](file:///p:\pprever\2019-20\3602_20190521.docx)

(A85, R106, H3602)

**AN ACT TO AMEND SECTION 44‑66‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR A PATIENT WHO IS UNABLE TO CONSENT, SO AS TO ADD AN ADDITIONAL CATEGORY OF SUCH PERSONS AND FOR OTHER PURPOSES; AND TO AMEND SECTIONS 44‑26‑40, 44‑26‑50, AND 44‑26‑60, ALL RELATING TO HEALTH CARE DECISION MAKING FOR CLIENTS WITH INTELLECTUAL DISABILITIES OR WHO ARE MINORS, SO AS TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES.**

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

**Persons authorized to make health care decisions for a patient unable to consent**

SECTION 1. Section 44‑66‑30(A) of the 1976 Code is 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 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;

(4) 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;

(5) a parent of the patient;

(6) 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;

(7) 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;

(8) 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;

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

(10) if, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient’s wishes but who is not a paid caregiver or a provider of health care services to the patient. For the purposes of this item, a person with an established relationship is an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient’s health care views and desires, and who is willing and able to become involved in the patient’s health care decisions and to act in the patient’s best interest. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other health care facility in which the patient is located, for placement in the patient’s records, setting forth the nature and length of the relationship and certifying that he meets such criteria. Along with the notarized acknowledgment form, the hospital or other health care facility shall include in the patient’s medical record documentation of its effort to locate persons with higher priority under this statute as required by subsection (B).”

**Competency to consent to major medical treatment**

SECTION 2. Section 44‑26‑40 of the 1976 Code is 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 of the Adult Health Care Consent Act. The department shall abide by the decision of a client found competent to consent.”

**Health care decisions of incompetent clients**

SECTION 3. Section 44‑26‑50 of the 1976 Code is 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(A)(9) 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.”

**Health care decisions of minor clients**

SECTION 4. Section 44‑26‑60(C) of the 1976 Code is 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 of the Adult Health Care Consent Act.”

**Time effective**

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

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

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