FREE CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

May 21, 2019

**H. 3602**

Introduced by Reps. Rose, Caskey and Weeks

S. Printed 5/8/19--S.

Read the first time April 2, 2019.

**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 A PATIENT WHO IS UNABLE TO CONSENT, SO AS TO ADD AN ADDITIONAL CATEGORY OF PERSONS.

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

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 person given priority to make health care decisions for the patient by another statutory provision;~~

~~(4)~~(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;

~~(5)~~(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;

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

~~(7)~~(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;

~~(8)~~(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;

~~(9)~~(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).”

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~~(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 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~~(8)~~(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.”

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~~(6)~~ of the Adult Health Care Consent Act.”

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

/s/Sen. Tom Davis /s/Rep. Seth Cole Rose

/s/Sen. Michael W. "Mike" Gambrell /s/Rep. George Murrell Smith, Jr.

Sen. Kevin L. Johnson /s/Rep. Jeffery Edwin "Jeff" Johnson

On Part of the Senate. On Part of the House.

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