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Title 44 - Health

~~CHAPTER 66~~

Adult Health Care Consent Act

SECTION 44-66-10. Short title.

This chapter may be cited as the "Adult Health Care Consent Act".

HISTORY: 1990 Act No. 472, Section 1.

SECTION 44-66-20. Definitions.

As used in this chapter:

- (1) "Health care" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. Health care also includes the provision of intermediate or skilled nursing care, services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.
- (2) "Health care provider" or "provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.
- (3) "Health care professional" means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.
- (4) "Patient" means an individual sixteen years of age or older who presents or is presented to a health care provider for treatment.
- (5) "Person" includes, but is not limited to, an individual, a state agency, or a representative of a state agency.
- (6) "Physician" means an individual who is licensed to practice medicine or osteopathy pursuant to Chapter 47, Title 40.
- (7) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. Treatment includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.
- (8) "Unable to consent" means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This term does not apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.

HISTORY: 1990 Act No. 472, Section 1; 1992 Act No. 306, Section 3; 2002 Act No. 351, Sections 2, eff July 20, 2002; 2013 Act No. 39, Section 2, eff January 1, 2014.

Effect of Amendment

The 2002 amendment, in paragraph (6), added the last sentence relating to certification requirements for a hospice patient unable to consent.

The 2013 amendment substituted "Health care" for "it" in the second sentence in paragraph (1); inserted new text in paragraph (4) and redesignated former paragraphs (4) and (5) as paragraph (5) and (6); inserted paragraph (7); redesignated former paragraph (6) as paragraph (8); substituted "pursuant to Chapter 47, Title 40" for "under Chapter 47 of Title 40" in paragraph (6); and substituted "This term does not apply to minors" for "This definition does not include minors" in paragraph (8).

SECTION 44-66-30. Persons who may make health care decisions for patient who is unable to consent; order of priority; exceptions.

(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;
 - (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 adult child of the patient;
 - (6) an adult sibling, grandparent, or adult grandchild of the patient;
 - (7) any other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient;
 - (8) a person given authority to make health care decisions for the patient by another statutory provision.
- (B) 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) Priority under 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).
- (D) 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 subsections (A)(5) through (8) 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) 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) A person authorized to make health care decisions under subsection (A) of this section must 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 base the decision on the patient's best interest.
- (G) A person authorized to make health care decisions under subsection (A) of this section either may consent or withhold consent to health care on behalf of the patient.

HISTORY: 1990 Act No. 472, Section 1; 1992 Act No. 306, Section 4.

SECTION 44-66-40. Provision of health care without consent where there is serious threat to health of patient, or to relieve suffering; person having highest priority to make health care decision.

(A) Health care may be provided without consent to a patient who is unable to consent if no person authorized by Section 44-66-30 to make health care decisions for the patient is available immediately, and in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the delay occasioned by attempting to locate an authorized person, or by continuing to attempt to locate an authorized person, presents a substantial risk of death, serious permanent disfigurement, or loss or impairment of the functioning of a bodily member or organ, or other serious threat to the health of the patient. Health care for the relief of suffering may be provided without consent at any time that an authorized person is unavailable.

(B) Health care decisions on behalf of a patient who is unable to consent may be made by a person named in Section 44-66-31 if no person having higher priority under that section is available immediately, and in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the delay occasioned by attempting to locate a person having higher priority presents a substantial risk of death, serious permanent disfigurement, loss or impairment of the functioning of a bodily member or organ, or other serious threat to the health of the patient.

HISTORY: 1990 Act No. 472, Section 1.

SECTION 44-66-50. Provision of health care without consent to relieve suffering, restore bodily function, or to preserve life, health or bodily integrity of patient.

Health care may be provided without consent to a patient who is unable to consent if no person authorized by Section 44-66-30 to make health care decisions for the patient is reasonably available and willing to make the decisions, and, in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the health care is necessary for the relief of suffering or restoration of bodily function or to preserve the life, health, or bodily integrity of the patient.

HISTORY: 1990 Act No. 472, Section 1.

SECTION 44-66-60. No authority to provide health care to patient who is unable to consent where health care is against religious beliefs of patient, or patient's prior instructions.

(A) Unless the patient, while able to consent, has stated a contrary intent to the attending physician or other health care professional responsible for the care of the patient, this chapter does not authorize the provision of health care to a patient who is unable to consent if the attending physician or other health care professional responsible for the care of the patient has actual knowledge that the health care is contrary to the religious beliefs of the patient.

(B) This chapter does not authorize the provision of health care to a patient who is unable to consent if the attending physician or other health care professional responsible for the care of the patient has actual knowledge that the health care is contrary to the patient's unambiguous and uncontradicted instructions expressed at a time when the patient was able to consent.

(C) This section does not limit the evidence on which a court may base a determination of a patient's intent in a judicial proceeding.

HISTORY: 1990 Act No. 472, Section 1.

SECTION 44-66-70. Person who makes health care decision for another not subject to civil or criminal liability, nor liable for costs of care; health care provider not subject to civil or criminal liability.

(A) A person who in good faith makes a health care decision as provided in Section 44-66-30 is not subject to civil or criminal liability on account of the substance of the decision.

(B) A person who consents to health care as provided in Section 44-66-30 does not by virtue of that consent become liable for the costs of care provided to the patient.

(C) A health care provider who in good faith relies on a health care decision made by a person authorized under Section 44-66-30 is not subject to civil or criminal liability or disciplinary penalty on account of his reliance on the decision.

(D) A health care provider who in good faith provides health care pursuant to Sections 44-66-40 or 44-66-50 is not subject to civil or criminal liability or disciplinary penalty on account of the provision of care. However, this section does not affect a health care provider's liability arising from provision of care in a negligent manner.

HISTORY: 1990 Act No. 472, Section 1.

SECTION 44-66-75. Designating a family member with whom provider may discuss medical condition; exemptions.

(A) A health care provider or the provider's agent shall provide on the patient information form or by electronic health records, the opportunity for the patient to designate a family member or other individual they choose as a person with whom the provider may discuss the patient's medical condition and treatment plan.

(B) The authorization provided for in subsection (A):

(1) satisfies the requirements of Title 42 of the Code of Federal Regulations, relating to public health, and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(2) must present the question in bold print and capitalized, or by electronic means: "DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION? IF YES, WHOM?"; and

(3) must specify that the patient may revoke or modify an authorization with regard to any family member or other individual designated by the patient in the authorization and that the revocation or modification must be in writing.

(C) A health care provider may disclose information pursuant to an authorization unless the provider has actual knowledge that the authorization has been revoked or modified.

(D) A health care provider who in good faith discloses information in accordance with an authorization signed by a patient pursuant to this section is not subject to civil liability, criminal liability, or disciplinary sanctions because of this disclosure.

(E) Nothing in this section may be construed to:

(1) require a health care provider to disclose information that he otherwise may withhold or limit;

(2) limit or prevent a provider from disclosing information without written authorization from the patient if this disclosure is otherwise lawful or permissible;

(3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members; and

(4) conflict with an individual's health care power of attorney as provided for in the South Carolina Probate Code.

(F) Notwithstanding any other provision of this chapter, this section does not apply to nursing homes, as defined in Section 44-7-130 or a dentist, dental hygienist, or dental technician licensed or registered in Chapter 15, Title 40.

HISTORY: 2013 Act No. 39, Section 1, eff January 1, 2014.

SECTION 44-66-80. Other laws mandating or allowing testing or treatment without consent unaffected.

No provision in this chapter affects the ability of a state agency or health care provider working in conjunction with a state agency to conduct testing or provide treatment, which is mandated or allowed by other provisions of law.

HISTORY: 1990 Act No. 472, Section 1.

HEALTH CARE FOR ADULTS UNABLE TO CONSENT

This form is designed to conform to the requirements for obtaining surrogate consent for adults unable to consent to health care in accordance with Adult Healthcare Consent Act (hereinafter the "AHCCA"), S. C. Code Ann § 44-66-10, et seq. (Supp.2010) and DDSN Directive 535-07-DD: Obtaining Consent for Minors and Adults.

(USE BLACK INK AND WRITE LEGIBLY)

Name of Person: _____
Date: _____

I. **Proposed Health Care:** Non-Emergency Emergency

II. Certification of Inability to Consent

The undersigned two licensed physicians certify that he/she has examined the person and, based on independent examination, it is their professional opinion and judgment that: (Check all that apply).

- The person is unable to appreciate the nature and implications of his/her conditions and the proposed health care.
- The person is unable to make a reasoned decision concerning the proposed health care.
- The person is unable to communicate a decision concerning the proposed health care in an unambiguous manner.

The basis for this medical opinion and conclusion is supported by the following facts and observations:

- 1) The **Cause** of the person's inability to consent is: _____
- 2) The **Nature** of the person's inability to consent is: _____

- 3) The **Extent** of the individual's inability to consent is: _____
- 4) The **Probable Duration** of the individual's inability to consent is: _____

- 5) A **Delay In Application** of the proposed health care beyond the above stated time presents a substantial risk of death, impairment of functioning of a bodily organ, or other serious threat to the health and safety of the patient.
 Yes No

I, the undersigned, hereby state that I am a licensed physician and have personally examined the above named person and, based on my observations and conclusions as stated above, believe that the person is unable to consent to the proposed health care and is in need of a surrogate that can make health decisions in the best interest of this person.

First Physician: _____ Second Physician: _____

Date of Exam: _____ Date of Exam: _____

Additional Observations/Impressions: _____

III. Surrogate Selection

- 1) Court Appointed Guardian: _____
(Attach court papers)
- 2) Durable Power of Attorney: _____
(Attach legal papers)
- 3) Other Statutory Provision: _____
(Attach documents verifying authority)
- 4) Spouse: _____
- 5) Parent or Adult Child: _____
- 6) Adult sibling, Grandchild, or Grandparent: _____
- 7) Relative by blood or marriage who reasonably is believed to have a close personal relationship with person
unable to consent: _____
- 8) Person given authority by other statutory provision: _____

Surrogate Information

Full Name: _____

Address: _____

Phone number: _____

