
Judiciary Committee

HB 2541

Title: An act relating to expanding the classes of persons who may provide informed consent for certain patients who are not competent to consent.

Brief Description: Expanding the classes of persons who may provide informed consent for certain patients who are not competent to consent.

Sponsors: Representatives Kilduff, Rodne and Eslick.

Brief Summary of Bill

- Adds to the list of persons who may give informed consent to health care for an adult who is incapacitated or incompetent.
- Provides immunity to health care providers from liability in any action based upon their reliance on a declaration of an unrelated adult claiming to be a surrogate decision maker.

Hearing Date: 1/30/18

Staff: Ingrid Lewis (786-7289).

Background:

In Washington, a person has the right to make his or her own health care decisions. Under the principle of "informed consent," a patient must be provided all the information necessary to make a knowledgeable decision regarding his or her health care. If a patient is determined to be incapacitated or incompetent to make health care decisions on their own behalf, a surrogate party may speak for him or her, unless the patient indicates otherwise. The parties entitled to give informed consent are designated in order of priority by statute. The following is the list of persons, in order of priority, who may consent to health care decisions on behalf of a patient who is incapacitated or incompetent:

- an appointed guardian;
- a person with durable power of attorney to make health care decisions;

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- a spouse or state registered domestic partner;
- adult children;
- parents; and
- adult siblings.

A health care provider seeking informed consent for a patient who is incapacitated or incompetent is required to make reasonable efforts to secure consent from a surrogate party in descending order. No person may make health care decisions for the incompetent patient if a person in a higher priority can be located. A health care provider's failure to obtain the appropriate consent may give rise to an action for negligence.

A person designated to give informed consent must first determine in good faith that the patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that it is in the patient's best interest.

Summary of Bill:

The list of persons who may provide informed consent for health care decisions for an adult who is incapacitated or incompetent is extended to include, in order of priority:

- adult grandchildren;
- adult nieces and nephews;
- adult aunts and uncles; and
- an unrelated adult who: has exhibited care and concern for the patient; is familiar with the wishes and values of the patient; is reasonably available to make health care decisions; is not a member of the patient's medical or care team; and provides a declaration signed under penalty of perjury stating as such. A declaration is effective for up to six months.

The health care provider may, but is not required to, rely on a declaration provided by an unrelated adult. A health care provider who relies upon the declaration is immune from liability in any suit based upon the reliance.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.