**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑66‑75 SO AS TO REQUIRE A HEALTH CARE PROVIDER TO GIVE A PATIENT AN OPPORTUNITY TO AUTHORIZE DISCLOSURE OF CERTAIN INFORMATION TO DESIGNATED FAMILY MEMBERS OR OTHER PEOPLE AND TO AUTHORIZE THE INVOLVEMENT OF DESIGNATED FAMILY MEMBERS OR OTHER PEOPLE IN THE TREATMENT OF THE PATIENT, AND TO SPECIFY INFORMATION THAT MUST BE INCLUDED IN THE AUTHORIZATION, AMONG OTHER THINGS; AND TO AMEND SECTION 44‑66‑20, AS AMENDED, RELATING TO DEFINITIONS IN THE ADULT CARE CONSENT ACT, SO AS TO ADD DEFINITIONS.

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

SECTION 1. Chapter 66, Title 44 of the 1976 Code is amended by adding:

“Section 44‑66‑75. (A) A health care provider must give a patient an opportunity to review, approve, and sign an authorization requiring the provider to:

(1) release specified information concerning the patient and his treatment to family members and other people designated by the patient in the authorization; and

(2) involve those designated family members and other people in the course of the treatment of the patient.

(B) The provider must offer the opportunity required in subsection (A):

(1) when the patient is entering inpatient or outpatient treatment with the provider, including in a hospital emergency department, or other crisis response setting;

(2) periodically after entrance for treatment while the patient remains in treatment; and

(3) upon the written request from a family member to the provider.

(C) The authorization required 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, ‘Who would you like to have involved with your treatment?’;

(3) must include the express option for a patient to authorize the provider to give verbal or written disclosure to designated family members or other people of information concerning:

(a) the nature of the condition and treatment of the patient;

(b) all ongoing treatment recommendations or instructions by the provider to the patient, including, but not limited to, medications for the patient and necessary follow‑up care for the patient; and

(c) recommended limitations on the patient’s diet, activities, or conduct due to his condition or treatment; and

(4) must specify that the patient may revoke or modify any authority granted to any individuals under the authorization.

(D) A provider may disclose information pursuant to an authorization signed by a patient unless the provider has actual knowledge that the authorization has been revoked or modified.

(E) 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 penalization because of this.

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

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

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

(3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members if the patient has not consented to a release of information by the provider.”

SECTION 2. Section 44‑66‑20 of the 1976 Code, as last amended by Act 351 of 2002, is further amended to read:

“Section 44‑66‑20. 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. It 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 a person age sixteen or older who presents or is presented to a health care provider for treatment.

(~~4~~5) ‘Person’ includes, but is not limited to, an individual, a state agency, or a representative of a state agency.

(~~5~~6) ‘Physician’ means an individual who is licensed to practice medicine or osteopathy under Chapter 47 ~~of~~, 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, aliment, defect, abnormality, or complaint, whether of physical or mental origin. It includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.

(~~6~~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 definition does not include 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.”

SECTION 3. This act takes effect upon approval by the Governor.

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