~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 17, 2022

**H. 4600**

Introduced by Reps. West and Bennett

S. Printed 2/17/22--H. [SEC 2/18/22 3:19 PM]

Read the first time January 11, 2022.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 4600) to amend Sections 44‑22‑40 and 44‑22‑140, Code of Laws of South Carolina, 1976, relating to persons who may consent on behalf of, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends the definition of persons who may consent on the behalf of patients to electro-convulsion therapy or major medical treatment in the Rights of Mental Health Patients code. In addition, the bill changes the order of priority of those persons who may consent. DMH is responsible for providing a complete array of medical and support services for children, adults, and families of those who suffer from mental illnesses. According to DHM, this bill does not impact the roles of their agency, and consequently, they do not anticipate any change in caseloads or responsibilities. Therefore, DMH does not expect the bill to have an expenditure impact.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTIONS 44‑22‑40 AND 44‑22‑140, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY CONSENT ON BEHALF OF CERTAIN PATIENTS TO ELECTRO‑CONVULSIVE THERAPY OR MAJOR MEDICAL TREATMENT, SO AS TO CONFORM THE ORDER OF PRIORITY OF SUCH PERSONS TO THE ORDER OF PRIORITY IN THE ADULT HEALTH CARE CONSENT ACT.

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

SECTION 1. Section 44‑22‑40 of the 1976 Code is amended to read:

“Section 44‑22‑40. (A) A patient in need of electro‑convulsive therapy or major medical treatment must be examined by a qualified physician to determine if the patient is able to consent to electro‑convulsive therapy or major medical treatment. Where a patient is determined unable to consent to surgery or electro‑convulsive therapy or major medical therapy or treatment, decisions concerning the need for treatment 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; 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 ~~or child eighteen years of age or older of the patient~~;

(6) ~~a~~ an adult sibling ~~or grandchild eighteen years of age or older of the patient or grandparent~~ 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;

~~(8)~~(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).

(B) Documentation of efforts to locate a decision maker who is a person identified in subsection (A) must be recorded in the patient’s medical record.

~~(B)~~(C) 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 another 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)~~(D) 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 a patient unable to consent as defined in Section 44‑22‑10~~(6)~~.

~~(D)~~(E) 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 subsection (A)~~(5)~~(4) through ~~(8)~~(10) 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)~~(F) 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)~~(G) This section does not affect the application of the Adult Health Care Consent Act, ~~Sections 44‑66‑10 through 44‑66‑80~~ Chapter 66, Title 44, to a patient in need of health care.”

SECTION 2. Section 44‑22‑140(A) of the 1976 Code is amended to read:

“(A) The attending physician, the physician on call, or the authorized health care provider, is responsible for and shall authorize medications and treatment given or administered to a patient. The physician’s or authorized health care provider’s authorization and the medical reasons for it must be entered into the patient’s clinical record. The authorization is not valid for more than ninety days. Medication must not be used as punishment, for the convenience of staff, or as a substitute to or in quantities that interfere with the patient’s treatment program. The patient or his legal guardian may refuse treatment not recognized as standard psychiatric treatment. He may refuse electro-convulsive therapy, aversive reinforcement conditioning, or other unusual or hazardous treatment procedures. If the attending physician or the physician on call decides electro-convulsive therapy is necessary and a statement of the reasons for electro-convulsive therapy is entered in the treatment record of a patient who is considered unable to consent pursuant to Section 44‑22‑10~~(13)~~, permission for the treatment may be given in writing by the persons in order of priority specified in Section 44‑22‑40(A)(1‑~~8~~10).”

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

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