

SENATE BILL REPORT

SB 5185

As of January 26, 2021

Title: An act relating to capacity to provide informed consent for health care decisions.

Brief Description: Concerning capacity to provide informed consent for health care decisions.

Sponsors: Senators Pedersen, Holy and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/26/21.

Brief Summary of Bill

- Establishes a presumption that an adult who is not subject to a guardianship that includes health care decision-making has the capacity to make health care decisions.
- Allows a health care provider to overcome the presumption of capacity by reasonably determining that the adult has demonstrated an inability to understand and appreciate the nature and consequences of a health care condition or proposed treatment.
- Changes terminology referring to persons who have an appointed guardian and persons who are competent or not legally competent to instead refer to whether or not they have capacity.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: Washington law provides procedures for a person to give informed consent to a health care decision in place of another person who is not competent to provide the decision. Authorization to provide consent proceeds according to a priority list, starting with an appointed guardian or individual to whom the person has given a durable power of

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attorney to make medical decisions on the person's behalf, and proceeds through a list of family members, such as spouse, children, and parents. A health care provider must make reasonable efforts to locate and secure authorization from the highest class of persons who is authorized to provide informed consent, before proceeding to the next class of persons. A decision authorizing health care must be unanimous among all persons in the class, and may not be contradicted by any person authorized to make a decision who is of a higher class.

Informed consent laws were amended in 2020, effective January 1, 2022, to remove the term competent. The term competent and its definition as it applied to informed consent and guardianships was repealed in 2019, effective January 1, 2022, by the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act.

The age of majority in Washington is 18 years unless otherwise specified by law. Washington law allows adolescents to make health care decisions on their own behalf at age 13 related to behavioral health treatment, at age 14 related to testing for sexually transmitted diseases, and allows decisions related to personal reproductive health care to be made at any age.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): An adult is presumed to have capacity, unless subject to a guardianship that includes health care decision making. The presumption of capacity may be overcome if the health care provider reasonably determines an adult lacks capacity to make a particular health care decision due to a demonstrated inability to understand and appreciate the nature and consequences of a health care condition or proposed treatment, and the health care provider documents the basis for the determination in the medical record.

For the purpose of informed consent, treatment during a recognized health care emergency, and the ability of an adolescent to prevent disclosure of information related to sexually transmitted diseases, terminology referring to persons who are placed under a guardianship and to persons who are competent or not legally competent to make health care decisions is replaced with terminology referring to persons who do or do not have the capacity to make health care decisions.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony On Proposed Substitute: PRO: Last year's

guardianship trailer bill created some problems by garbling some language in the informed consent statute. Fortunately we have a chance to fix these problems and make some improvements before it goes into effect. This is carefully crafted in a way that is clear and workable. The informed consent law is vitally important to hospitals and health care providers. Capacity is more appropriate terminology than competence. We appreciate the delineation of adults and minors who have the ability to make a medical decision from minors who do not have that ability due to their age.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Zosia Stanley, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: No one.