
Civil Rights & Judiciary Committee

HB 2083

Brief Description: Addressing consent to long-term care placement and services.

Sponsors: Representatives Macri, Harris, Santos and Gilday.

Brief Summary of Bill

- Provides that a person authorized to provide informed health care consent for a patient who does not have capacity to make health care decisions is also authorized to provide consent for long-term care.
- Requires a person consenting for long-term care on behalf of a patient to actively assist in any initiation of guardianship, conservatorship, or other protective arrangements.
- Authorizes the Department of Social and Health Services, a hospital, or an interested party to file for guardianship, conservatorship, or other protective arrangements.
- Permits the court, instead of appointing a guardian, to authorize a discharge from an acute care hospital to home or to a long-term care setting, or to direct a plan of care required to receive Medicaid or other government-funded services.
- Adds authorization for Medicaid and other government-funded services to the list of actions the court may order instead of appointing a conservator.
- Requires superior courts to prioritize guardianship petitions for any respondent who is a patient in an acute care hospital at the time the petition is filed.

Hearing Date: 1/26/22

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Background:

Long-Term Care and Information on Options to be Provided to Patients.

"Long-term care" means care and supports delivered indefinitely, intermittently, or over a sustained time to persons who are functionally disabled due to chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not curable, or is long-lasting and severely limits their mental or physical capacity for self-care.

The Department of Social and Health Services (DSHS) administers Medicaid funded long-term services and supports to eligible individuals in Washington. For an individual to receive long-term services and supports, they must be determined by the DSHS to be both functionally and financially eligible. Once an individual is determined eligible for long-term services and supports, they have the option to receive services in their home, from a community residential services provider, or in a skilled nursing facility.

The DSHS, in consultation with hospitals and acute care facilities, is required to develop, distribute, and make available long-term care resource materials and information to hospitals and other appropriate settings to be used for patients needing discharge services. The information must include, at a minimum:

- an identification and detailed description of each long-term care service available in the state;
- functional, cognitive, and Medicaid eligibility criteria that may be required for placement or admission to each long-term care service; and
- a long-term care services resource manual for each hospital, identifying the long-term care services operating within each hospital's patient service area.

During the course of a patient's hospital stay, hospitals are required to promote the patient's family members' and legal representative's understanding of available long-term care service discharge options by:

- discussing the various and relevant long-term care services available, including eligibility criteria;
- making available to patients, their family members, and legal representative a copy of the most current long-term care services resource manual;
- responding to long-term care questions posed by patients, their family members, and legal representative;
- assisting the patient, their family members, and legal representative in contacting appropriate persons or entities to respond to the questions posed; and
- linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support.

Informed Consent for Health Care Decisions.

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.

A person who is of the age of consent to make a health care decision is presumed to have capacity, provided the person is not subject to a guardianship that includes health care decision making. The presumption of capacity may be overcome if the health care provider reasonably determines the person lacks the 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. The health care provider must document the basis for the determination of capacity in the medical record.

If a patient is determined to not have capacity to make health care decisions on his or her own behalf, a surrogate party may speak for him or her, unless the patient indicates otherwise. The following persons, in order of priority, may consent to health care decisions on behalf of a patient who lacks capacity:

- an appointed guardian;
- a person with durable power of attorney to make health care decisions;
- a spouse or state registered domestic partner;
- adult children;
- parents;
- adult siblings; 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; does not receive compensation to provide care to the patient; attests that he or she does not have knowledge of a willing and available person in a higher priority class; and provides a declaration signed under penalty of perjury stating as such.

A health care provider seeking informed consent for a patient who is determined to not have capacity 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 patient who lacks capacity if a person of higher priority has refused to provide informed consent, or if there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

A person designated to give informed consent must first determine in good faith that the patient would consent to the proposed health care, if the patient had the capacity to make the health care decision. 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 interests.

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

Adopted in 2019, the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA) covers guardianships, conservatorships, and protective arrangements for both minors and adults.

Basis for Appointment of Guardian for an Adult.

"Guardian" means a person appointed by the court to make decisions with respect to the personal affairs, support, care, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations. Any person interested in an adult's welfare may petition for appointment of a guardian for the adult. A determination by the court that a basis for the appointment of a guardian exists is a legal decision, and not a medical decision.

The court may appoint a guardian for an adult if the court finds by clear and convincing evidence that:

- the adult respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the adult is unable to receive and evaluate information to make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
- the adult's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives; and
- appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care.

Arrangements instead of Guardianship for an Adult.

If the court makes the findings required to appoint a guardian, the court may, instead of appointing a guardian, order an arrangement that is less restrictive than guardianship. The court may also authorize or direct any transaction necessary to meet the adult respondent's needs for health, safety, or care, including a particular medical treatment or refusal of a particular medical treatment, or visitation or supervised visitation between the adult and another person.

Basis for Appointment of Conservator.

"Conservator" means a person appointed by the court to make decisions with respect to the property or financial affairs of an individual, adult or minor, subject to conservatorship. A person interested in the estate, financial affairs, or welfare of an adult, including a person that would be adversely affected by lack of effective management of property or financial affairs of the adult, may petition for appointment of a conservator.

The court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that:

- the adult respondent is unable to manage property or financial affairs because of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision-making, or because the adult respondent is missing, detained, or unable to return to the United States;
- the appointment is necessary to either avoid harm to the adult or significant dissipation of the adult's property, or to provide support for the adult or for an individual entitled to such support from the adult; and
- the adult respondent's identified needs cannot be met by a protective arrangement instead

of conservatorship or other less restrictive alternatives.

Arrangements instead of Conservatorship.

If the court makes the findings required to appoint a conservator for an adult, the court may, instead of appointing a conservator, restrict access to the adult respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm. The court may also authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

- an action to establish eligibility for benefits;
- payment, delivery, deposit, or retention of funds or property;
- sale, mortgage, lease, or other transfer of property;
- purchase of an annuity;
- entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;
- addition to or establishment of a trust;
- ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; or
- settlement of a claim.

Summary of Bill:

The requirement to provide patients with long-term care resource materials and information is expanded to provide that if a patient does not have the capacity to make health care decisions and requires long-term care when discharged from the hospital setting, consent for long-term care may be provided on behalf of the patient by the persons authorized to provide informed consent to health care, in the same order of priority.

A person providing consent for long-term care on behalf of a patient who lacks capacity must sign a declaration, under penalty of perjury, that the person will actively assist in any initiation of guardianship, conservatorship, or other protective arrangement proceedings under the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGA). The Department of Social and Health Services, the hospital, or an interested party may file for guardianship, conservatorship, or other protective arrangement proceedings under the UGA, as necessary.

The court's authority under the UGA to make arrangements instead of appointing a guardian or conservator is expanded. If the court makes the findings required to appoint a guardian, the court may, instead of appointing a guardian, authorize or direct:

- discharge from an acute care hospital to home or to a licensed or certified long-term care setting capable of meeting the health and safety needs of the respondent and willing to provide care to the respondent; or
- a plan of care required to receive Medicaid or other services funded by a governmental entity.

The court's authority under the UGA to authorize or direct certain transactions to protect the financial interest or property of the respondent instead of appointing a conservator is expanded to include authorization of Medicaid or other services funded by a governmental entity.

Superior courts are required to prioritize guardianship petitions for any respondent who is a patient in an acute care hospital at the time the petition is filed.

Appropriation: None.

Fiscal Note: Available.

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