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**Civil Rights & Judiciary Committee**

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**SSB 5185**

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

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and Wilson, C.).

**Brief Summary of Substitute Bill**

- Establishes a rebuttable presumption that a person has the capacity to make health care decisions, if they are of age and not subject to a guardianship.
- Makes terminology changes to reflect changes made in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

**Hearing Date:** 3/16/21

**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. Authorization to provide consent proceeds according to a priority list, starting with an appointed guardian, to an individual to whom the person has given a durable power of attorney to make medical decisions on the person's behalf, and then proceeds through a list of family members and interested persons, such as spouse, children, and parents.

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*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.*

Generally, persons under the age of 18 cannot provide consent for their own medical procedures. There are several exceptions if the minor:

- is in need of emergency medical treatment;
- is seeking family planning services or pregnancy care;
- is an emancipated minor or married to someone at or above age 18;
- is age 15 or older and satisfies the court created "mature minor rule," meaning the minor has, based on a number of factors, demonstrated the maturity to provide consent for medical treatment;
- is age 14 or older and is seeking testing or treatment for sexually transmitted diseases; or
- is age 13 or older and seeking behavioral health treatment.

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 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. 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 interests.

#### The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act amended the informed consent laws in 2020 to remove the term competent and its definition as it applies to informed consent and guardianships, effective January 1, 2022, and replaces the term with "capacity".

#### **Summary of Substitute Bill:**

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 decisionmaking. 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.

References to competence in statutory provisions related to informed consent are replaced with terminology that refers instead to capacity.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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