State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

445N0184

HOUSE ENGROSSED NO. SB 74 - 02/27/2007

Introduced by: Senators Hunhoff, Heidepriem, Knudson, Koetzle, and Turbak and Representatives Feinstein, Cutler, Gillespie, and Moore

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding health care decisions for persons incapable of giving consent.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 34-12C-1 be amended to read as follows:

34-12C-1. Terms used in this chapter mean:

(1) "Attending physician," the physician who ~~at the time of reference~~ has primary responsibility for the ~~health care of a person~~ <u>treatment and care of the patient</u>;

(2) "Durable power of attorney for health care," an instrument executed pursuant to § 59-7-2.1 that authorizes its attorney in fact to make a health care decision or to consent to health care on behalf of its principal;

(3) "Health care," any care, treatment, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition. The term also includes admission to, and personal and custodial care provided by, a licensed health care facility as defined in § 34-12-1.1;

(4) "Health care decision," the determination of the health care to be provided to a

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Deletions from existing statutes are indicated by ~~overstrikes~~.

person;

(5) "Health care provider," any licensed health care facility and any person, corporation, or organization licensed, certified, or otherwise authorized or permitted by law to administer health care, and any physician licensed pursuant to chapter 36-4;

(6) "Incapacitated person," any person who is incapable of giving informed consent to health care;

(7) "Person available to consent," any person who is authorized to make a health care decision for an incapacitated person and whose existence is known to the health care provider and who, in the good faith judgment of the health care provider, is reasonably available for consultation and is willing and competent to make an informed health care decision;

(8) "Close friend," any adult who has provided significant care and exhibited concern for the patient, and has maintained regular contact with the patient so as to be familiar with the patient's activities, health, and religious or moral beliefs.

Section 2. That § 34-12C-3 be amended to read as follows:

34-12C-3. In the absence of a durable power of attorney for health care or the appointment of a guardian of the person, or if neither the attorney in fact nor guardian is available to consent, a health care decision for an incapacitated person may be made by the following persons or members of the incapacitated person's family who are available to consent, in the order stated:

(1) The spouse, if not legally separated;

(2) An adult child;

(3) A parent;

(4) An adult sibling;

(5) A grandparent or an adult grandchild;

(6) An adult aunt or uncle, adult cousin, or an adult niece or nephew;

(7) Close friend.

However, any person may, before a judicial adjudication of incompetence or incapacity, disqualify any member of ~~his~~ the person's family from making a health care decision for ~~him~~ the person. The disqualification shall appear in a document signed by the person or may be made by a notation in ~~his~~ the person's medical record, if made at ~~his~~ the person's direction.

Any member of the incapacitated person's family may delegate the authority to make a health care decision to another family member in the same or succeeding class. The delegation shall be signed and may specify conditions on the authority delegated.

Any person authorized to make a health care decision for an incapacitated person shall be guided by the express wishes of the incapacitated person, if known, and shall otherwise act in good faith, in the incapacitated person's best interest, and may not arbitrarily refuse consent. Whenever making any health care decision for the incapacitated person, the person available to consent shall consider the recommendation of the attending physician, the decision the incapacitated person would have made if the incapacitated person then had decisional capacity, if known, and the decision that would be in the best interest of the incapacitated person.