

STATEMENT OF PURPOSE

RS25042C1

This bill protects the rights of persons who have capacity and do not need or have a guardian to make their own medical choices. This is especially important for persons diagnosed with a developmental disability but who do not need a guardian. The term developmental disability covers a wide range of conditions, many of which do not impair the ability of the person to make competent medical decisions. However, this right has been often denied to such persons, with a demand that the person have a guardian. This is not only a denial of the fundamental rights of the person, it can lead to expensive and unneeded court proceedings. If a person has a general guardian, then that guardian is appropriate to make medical choices. However, if there is no guardian, the health care provider should make the standard checks already existing in the Medical Consent and Natural Death Act for capacity to make medical decisions. If that capacity exists, then the person should be able to make medical choices. This bill also makes some clarifications regarding revocation or suspension of an advance directive (for example, a living will or durable power of attorney for health care or a POST - Physician's Orders For Scope of Treatment) and for presumed consent to resuscitation. The existing language of the statute had left some issues unclear which this bill now makes clear and which reflect actual practice. Finally, the bill amends Section 66-405 where there is a guardian for a person with a developmental disability (called a "respondent") to have the proper legal standards in the statute. The existing statute, written many years ago, did not have those proper standards and could lead to violation of the legal protections for respondents which are required.

FISCAL NOTE

This bill will have no negative fiscal impact. It should lead to reduced court involvement.

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DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).