



Allow Loved Ones to Consent to Long-Term Care for Patients Who Lack Capacity

Background

Due to a recent change in interpretation of state law, a family member can no longer agree to long-term care for a patient who lacks capacity. If the patient didn't appoint a decision maker in a power of attorney document, the only option is a court-appointed guardian. The guardianship process is expensive, time-consuming and highly restrictive. The state's position has led to a significant increase in patients across the state being stuck in hospitals waiting for a court to appoint a guardian. This is not right for patients, delays appropriate long-term care, burdens the court system and ties up hospital beds that should be available for acutely ill patients.

WSHA Position

WSHA supports clarifying state law to allow close family and friends (listed in the state surrogate decision maker law) to consent to long-term care for their loved one.

Key Messages

- State law provides specific “surrogate decision makers” who can speak for a patient who can't consent to their own care. The surrogate decision maker law, RCW 7.70.065, provides a clear hierarchy of family and close friends who can make decisions for a patient who can't make their own decisions. Until last year, these surrogate decision makers could consent to medical care and long-term services and supports – such as admission to a nursing home or adult family home.
- Federal law requires an individual – or the individual's representative – agree to receive long-term care services and supports. Federal law does not require a formal process to determine an individual's representative and defers to state law on who can be a surrogate decision maker for an individual who lacks capacity.
- Nothing has changed in state or federal law to mandate all incapacitated patients need either a power of attorney or guardian to access long-term care. Yet the state has changed its position. As a result, hospitals across Washington have seen double or triple the number of patients stuck in hospitals awaiting the appointment of a guardian.
- The guardianship process is time- and resource- intensive. Even if a friend or family member is willing to be appointed as guardian, the process takes months. If a professional guardian is needed, this adds additional weeks and months.

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