



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

### Background

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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

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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

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- 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.

### Contact Information

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