

# Changes to NC Informed Consent Law

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October 2008

# Informed consent – basics

- Need informed consent to provide medical treatment.
- Ordinarily, adults consent for themselves. But if an adult lacks the ability to make health care decisions, someone else must consent.

# Old law

- “No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or the patient’s spouse, parent, guardian, nearest relative, or other person authorized to give consent for the patient ... ”

# New law: Lists, in order, who may consent to treatment for incapacitated adult

1. Legal guardian of the person\*
2. Person with health care power of attorney (POA)
3. Person with general or durable POA, *if* the POA document says the person may make health care decisions
4. Patient's spouse
5. Majority of patient's reasonably available parents and children age 18+
6. Majority of patient's reasonably available siblings age 18+
7. Other person with established relationship with the patient who acts in good faith and can reliably convey patient's wishes

# Questions new law raises

- How do you determine who's in the class of persons? How far do you have to go?
- What does it mean to be “reasonably available”?
- What if you can't get a majority to agree on treatment?

# Example: J.D.



- 75 years old
- No guardian
- No power of attorney
- No spouse
- Living relatives:
  - 97-year-old mother
  - 3 children over age 18
  - 5 siblings over age 18
  - 9 grandchildren (2 of whom are 18 or older)

# Other Issues with GS 90-21.13

- Seeking consent of another when a person lacks capacity to communicate health care decisions
- Consider LHD's duty to provide capacity:
  - Interpreters for limited-English proficient
  - Assistance for hearing-impaired
- Minors
  - Addressed elsewhere (GS Ch. 90, Art. 1A)