

A Long Term Care and Senior Housing Law Update

07/26/07

New Washington Domestic Partnership Legislation Affects Providers of Long Term Care and Senior Housing

As widely reported in the media, on July 22, 2007, legislation providing certain unmarried couples with many of the same rights and benefits held by married couples became effective in Washington. SSB 5336 created a state domestic partnership registry in the office of the Secretary of State, as well as amending a variety of existing laws to include state registered domestic partners in their coverage. Individuals seeking a state-registered domestic partnership must meet all of the following requirements: (a) share a common residence; (b) be 18 years of age or older; (c) not be married to or in a state-registered domestic partnership with someone other than the person with whom they are seeking domestic partnership; (d) have capacity to consent to domestic partnership; (e) be no nearer in kindred than second cousin, nor be a sibling, child, grandchild, aunt, uncle, niece or nephew to the other person and; (f) be members of the same sex, or one person in the domestic partnership must be at least 62 years old.

While SSB 5336 addressed a number of other subjects (for example, employee benefits for state employees, probate and inheritance rights), providers of long term care and senior housing will find the following provisions particularly relevant:

- **Health care facility visitation rights.** SSB 5336 granted state registered domestic partners the same rights given spouses under RCW 48.43.005 with respect to visitation of a resident or patient. (SSB 5336 § 8.)
- **Ability to grant informed consent for health care for a patient who is incompetent.** The bill amended RCW 7.70.065(a)(iii) to add state registered domestic partners among the class of people authorized to give informed consent for health care treatment. Under the amendment, a domestic partner now has the same authority and level of priority with regard to providing informed consent to health care treatment as does a spouse. (SSB 5336 § 11.)
- **Authority of health care providers to disclose patient information.** The bill amended RCW 70.02.050(1)(e) to add state registered domestic partners to the class of people to whom a health care provider may disclose health care information without first obtaining the patient's authorization. The disclosure authority granted by the new legislation is the same as for spouses and still requires that: (i) there be "a need to know the information" on the part of the recipient; (ii) the disclosure be

made in accordance with good medical or other professional practice; and (iii) the patient has not previously instructed the health care provider or health care facility in writing not to make the disclosure. (SSB 5336 § 12.) **Note also that HIPAA may affect the practical application of this Washington statute.*

- **Automatic revocation of a durable power of attorney in favor of a state-registered domestic partner upon termination of the registration of domestic partnership.** The bill amended RCW 11.94.080 to add termination of a state registered domestic partnership to the set of circumstances that automatically revoke authority under a durable power of attorney. As of the date of the filing of the certificate of termination of the state registered domestic partnership, the state registered domestic partner will be treated as having resigned as attorney-in-fact, unless the durable power of attorney specifically provides otherwise. (SSB 5336 § 14.)
- **Autopsy rights, disposition of remains and rights regarding anatomical gifts.** The bill amended RCW Chapter 68.50 to treat state registered domestic partners the same as spouses with regard to consent to autopsies and autopsy reports, disposition of remains and organ donations. (SSB 5336 §§ 21 through 26.)
- **Right to benefit from wrongful death and survivorship actions.** The bill amended RCW 4.20.020 and RCW 4.20.060 to add state registered domestic partners to the list of persons, at the same level of priority as spouses, for whose benefit actions for wrongful death and actions for personal injury resulting in death may be brought. (SSB 5336 §§ 29 and 30.)

It remains to be seen how many certificates of domestic partnership will be issued by the Secretary of State in the coming years. And, of course, many residents already designate their “domestic partners” or “significant others” as their agents or attorneys-in-fact for healthcare decision-making in legally enforceable documents, such as durable powers of attorney. Such documents will certainly continue to be effective, without regard to whether the individuals are also registered as domestic partners with the State of Washington. Nonetheless, providers of long term care and senior housing will want to train staff regarding these issues, as residents may choose to register as domestic partners and to present proof of such registration as evidence of their partners’ decision-making authority.

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