

**Testimony**  
**Engrossed Senate Bill No. 2297**  
**House Human Services Committee**  
**Representative Ruby, Chairman**  
March 12, 2025

Chairman Ruby, and members of the House Human Services Committee, I am Jonathan Alm, Chief Legal Officer with the Department of Health and Human Services (Department). I appear before you to present an amendment to Engrossed Senate Bill No. 2297 to incorporate some of the proposed changes in Section 1 of Engrossed Senate Bill No. 2291, which was heard by this committee on Monday, March 10th.

The attached amendment would update who can determine an individual to be an incapacitated patient. The proposed amendment on page 1, lines 12 through 16, would allow a psychologist to determine if an individual is incapacitated. This change would be consistent with the State's civil commitment, fitness to proceed, and lack of criminal responsibility statutes that allows for a physician, which includes a psychiatrist, or psychologist to determine if someone is incapacitated or lacks capacity. The proposed amendment to page 4, lines 21 through 24, reflects the addition of a psychologist to the list of who can determine an individual to be incapacitated.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

## PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2297

Page 1, lines 12 through 16:

- a. "Incapacitated patient" means an adult unable to understand and appreciate the nature and consequence of a health care decision, including the benefits, harms, and reasonable alternatives to proposed health care, and unable to communicate a health care decision, as certified by the patient's attending physician or psychologist and filed in the patient's medical record.

Page 4, lines 21 through 24:

- ~~5.7.~~ If a patient who is determined by a physician or psychologist to be an incapacitated ~~person~~patient, or a ~~person~~an individual interested in the patient's welfare, objects to a determination of incapacity made pursuant ~~to~~ in accordance with this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the issue of incapacity.