Rep. Jay Hoffman

Filed: 5/28/2026

AMENDMENT TO SENATE BILL 3398

AMENDMENT NO. _____. Amend Senate Bill 3398 by replacing everything after the enacting clause with the following:

"Section 5. The Health Care Surrogate Act is amended by changing Sections 25 and 30 as follows:

(755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

Sec. 25. Surrogate decision making.

(a) When a patient lacks decisional capacity, the health care provider must make a reasonable inquiry as to the availability and authority of a health care agent under the Powers of Attorney for Health Care Law. When no health care agent is authorized and available, the health care provider must make a reasonable inquiry as to the availability of possible surrogates listed in items (1) through (4) of this subsection. For purposes of this Section, a reasonable inquiry includes, but is not limited to, identifying a member of the

patient's family or other health care agent by examining the patient's personal effects or medical records. If a family member or other health care agent is identified, an attempt to contact that person by telephone must be made within 24 hours after a determination by the provider that the patient lacks decisional capacity. No person shall be liable for civil damages or subject to professional discipline based on a claim of violating a patient's right to confidentiality as a result of making a reasonable inquiry as to the availability of a patient's family member or health care agent, except for willful or wanton misconduct.

The surrogate decision makers, as identified by the attending physician, are then authorized to make decisions as follows: (i) for patients who lack decisional capacity and do not have a qualifying condition, medical treatment decisions may be made in accordance with subsection (b-5) of Section 20; and (ii) for patients who lack decisional capacity and have a qualifying condition, medical treatment decisions including whether to forgo life-sustaining treatment on behalf of the patient may be made without court order or judicial involvement in the following order of priority:

(1) the patient's guardian of the person;

(2) the patient's spouse;

(3) any adult son or daughter of the patient;

(4) either parent of the patient;

(5) any adult brother or sister of the patient;

(6) any adult grandchild of the patient;

(7) a close friend of the patient;

(8) the patient's guardian of the estate;

(9) the patient's temporary custodian appointed under subsection (2) of Section 2-10 of the Juvenile Court Act of 1987 if the court has entered an order granting such authority pursuant to subsection (12) of Section 2-10 of the Juvenile Court Act of 1987.

The health care provider shall have the right to rely on any of the above surrogates if the provider believes after reasonable inquiry that neither a health care agent under the Powers of Attorney for Health Care Law nor a surrogate of higher priority is available.

Where there are multiple surrogate decision makers at the same priority level in the hierarchy, it shall be the responsibility of those surrogates to make reasonable efforts to reach a consensus as to their decision on behalf of the patient regarding the forgoing of life-sustaining treatment. If 2 or more surrogates who are in the same category and have equal priority indicate to the attending physician that they disagree about the health care matter at issue, a majority of the available persons in that category (or the parent with custodial rights) shall control, unless the minority (or the parent without custodial rights) initiates guardianship proceedings in accordance with the Probate Act of 1975. No health care provider or other person is required to seek

appointment of a guardian.

(b) After a surrogate has been identified, the name, address, telephone number, and relationship of that person to the patient shall be recorded in the patient's medical record.

(c) Any surrogate who becomes unavailable for any reason may be replaced by applying the provisions of Section 25 in the same manner as for the initial choice of surrogate.

(d) In the event an individual of a higher priority to an identified surrogate becomes available and willing to be the surrogate, the individual with higher priority may be identified as the surrogate. In the event an individual in a higher, a lower, or the same priority level or a health care provider seeks to challenge the priority of or the life-sustaining treatment decision of the recognized surrogate decision maker, the challenging party may initiate guardianship proceedings in accordance with the Probate Act of 1975.

(e) The surrogate decision maker shall have the same right as the patient to receive medical information and medical records and to consent to disclosure. Except as otherwise provided by law, a health care provider shall, in response to a written request from an individual who was named as a surrogate or any person, entity, or organization presenting a valid authorization for the release of records signed by the surrogate, release the medical records in accordance with Section 8-2001 of the Code of Civil Procedure.

(f) Any surrogate shall have the authority to make decisions for the patient until removed by the patient who no longer lacks decisional capacity, appointment of a guardian of the person, or the patient's death.

(g) Upon a determination that a patient lacks decisional capacity and a health care surrogate is identified, a health care facility shall provide written information, which may be provided electronically, to the surrogate that states:

(1) that a named patient has been determined to lack decisional capacity by the attending physician, the name of the attending physician, and the date of such determination;

(2) that the surrogate was designated under this Section and has the rights and responsibilities prescribed by this Act, including the right to obtain the patient's medical records;

(3) the identification of the surrogate, including the surrogate's name, address, and telephone number, the relationship of that person to the patient, the date the surrogate was identified, and the name of the health care facility where the patient was determined to lack decisional capacity or was incapacitated, as defined in Section 2-3 of the Illinois Power of Attorney Act;

(4) that a copy of this written information shall be placed in the patient's medical record and be provided to any transferring health care provider or health care

facility;

(5) that the health care provider relying upon a surrogate for medical decision making shall ensure the surrogate form is provided to and is accessible to the health care provider's health information or medical records department; and

(6) that each health care provider shall be required to disclose the identity of a patient's health care surrogate to any person qualified under subsection (a) upon proper documentation of the relationship to the patient if any qualified person under subsection (a) requests such information.

(Source: P.A. 100-959, eff. 1-1-19.)

(755 ILCS 40/30) (from Ch. 110 1/2, par. 851-30)

Sec. 30. Reliance on authority of surrogate decision maker.

(a) Every health care provider and other person (a "reliant") shall have the right to rely on any decision or direction by the surrogate decision maker (the "surrogate") that is not clearly contrary to this Act, to the same extent and with the same effect as though the decision or direction had been made or given by a patient with decisional capacity. Any person dealing with the surrogate may presume in the absence of actual knowledge to the contrary that the acts of the surrogate conform to the provisions of this Act. A reliant

will not be protected who has actual knowledge that the surrogate is not entitled to act or that any particular action or inaction is contrary to the provisions of this Act.

(b) A health care provider (a "provider") who relies on and carries out a surrogate's directions, including a request from a surrogate for records under subsection (e) of Section 25, and who acts with due care and in accordance with this Act shall not be subject to any claim based on lack of patient consent or authorization, including, but not limited to, claims of violation of privacy rights, or to criminal prosecution or discipline for unprofessional conduct. Nothing in this Act shall be deemed to protect a provider from liability for the provider's own negligence in the performance of the provider's duties or in carrying out any instructions of the surrogate, and nothing in this Act shall be deemed to alter the law of negligence as it applies to the acts of any surrogate or provider.

(c) A surrogate who acts or fails to act with due care and in accordance with the provisions of this Act shall not be subject to criminal prosecution or any claim based upon lack of surrogate authority or failure to act. The surrogate shall not be liable merely because the surrogate may benefit from the act, has individual or conflicting interests in relation to the care and affairs of the patient, or acts in a different manner with respect to the patient and the surrogate's own care or interests.

(Source: P.A. 87-749.)

Section 99. Effective date. This Act takes effect upon becoming law.".