

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

7 Sec. 25. Surrogate decision making.

8 (a) When a patient lacks decisional capacity, the health
9 care provider must make a reasonable inquiry as to the
10 availability and authority of a health care agent under the
11 Powers of Attorney for Health Care Law. When no health care
12 agent is authorized and available, the health care provider
13 must make a reasonable inquiry as to the availability of
14 possible surrogates listed in items (1) through (4) of this
15 subsection. For purposes of this Section, a reasonable inquiry
16 includes, but is not limited to, identifying a member of the
17 patient's family or other health care agent by examining the
18 patient's personal effects or medical records. If a family
19 member or other health care agent is identified, an attempt to
20 contact that person by telephone must be made within 24 hours
21 after a determination by the provider that the patient lacks
22 decisional capacity. No person shall be liable for civil
23 damages or subject to professional discipline based on a claim

1 of violating a patient's right to confidentiality as a result
2 of making a reasonable inquiry as to the availability of a
3 patient's family member or health care agent, except for
4 willful or wanton misconduct.

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

- 15 (1) the patient's guardian of the person;
- 16 (2) the patient's spouse;
- 17 (3) any adult son or daughter of the patient;
- 18 (4) either parent of the patient;
- 19 (5) any adult brother or sister of the patient;
- 20 (6) any adult grandchild of the patient;
- 21 (7) a close friend of the patient;
- 22 (8) the patient's guardian of the estate;
- 23 (9) the patient's temporary custodian appointed under
24 subsection (2) of Section 2-10 of the Juvenile Court Act
25 of 1987 if the court has entered an order granting such
26 authority pursuant to subsection (12) of Section 2-10 of

1 the Juvenile Court Act of 1987.

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

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

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

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

1 (d) In the event an individual of a higher priority to an
2 identified surrogate becomes available and willing to be the
3 surrogate, the individual with higher priority may be
4 identified as the surrogate. In the event an individual in a
5 higher, a lower, or the same priority level or a health care
6 provider seeks to challenge the priority of or the
7 life-sustaining treatment decision of the recognized surrogate
8 decision maker, the challenging party may initiate
9 guardianship proceedings in accordance with the Probate Act of
10 1975.

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

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

24 (g) Upon a determination that a patient lacks decisional
25 capacity and a health care surrogate is identified, a health
26 care facility shall provide written information, which may be

1 provided electronically, to the surrogate that states:

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

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

10 (3) the identification of the surrogate, including the
11 surrogate's name, address, and telephone number, the
12 relationship of that person to the patient, the date the
13 surrogate was identified, and the name of the health care
14 facility where the patient was determined to lack
15 decisional capacity;

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

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

25 (6) that each health care provider shall be required
26 to disclose the identity of a patient's health care

1 surrogate to any person qualified under subsection (a)
2 upon proper documentation of the relationship to the
3 patient if any qualified person under subsection (a)
4 requests such information.

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

6 (755 ILCS 40/30) (from Ch. 110 1/2, par. 851-30)

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

9 (a) Every health care provider and other person (a
10 "reliant") shall have the right to rely on any decision or
11 direction by the surrogate decision maker (the "surrogate")
12 that is not clearly contrary to this Act, to the same extent
13 and with the same effect as though the decision or direction
14 had been made or given by a patient with decisional capacity.
15 Any person dealing with the surrogate may presume in the
16 absence of actual knowledge to the contrary that the acts of
17 the surrogate conform to the provisions of this Act. A reliant
18 will not be protected who has actual knowledge that the
19 surrogate is not entitled to act or that any particular action
20 or inaction is contrary to the provisions of this Act.

21 (b) A health care provider (a "provider") who relies on
22 and carries out a surrogate's directions, including a request
23 from a surrogate for records under subsection (e) of Section
24 25, and who acts with due care and in accordance with this Act
25 shall not be subject to any claim based on lack of patient

1 consent or authorization, including, but not limited to,
2 claims of violation of privacy rights, or to criminal
3 prosecution or discipline for unprofessional conduct. Nothing
4 in this Act shall be deemed to protect a provider from
5 liability for the provider's own negligence in the performance
6 of the provider's duties or in carrying out any instructions
7 of the surrogate, and nothing in this Act shall be deemed to
8 alter the law of negligence as it applies to the acts of any
9 surrogate or provider.

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

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

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