

SB2258



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2258

Introduced 2/20/2009, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

755 ILCS 40/15
755 ILCS 40/25

from Ch. 110 1/2, par. 851-15
from Ch. 110 1/2, par. 851-25

Amends the Health Care Surrogate Act. Provides that each health care facility shall maintain any advance directives proffered by the patient or other authorized person in the patient's records (instead of patient's records for the duration of the patient's stay). Provides that any surrogate shall have the authority to make decisions until removed by the patient who no longer lacks decision making capacity, appointment of a guardian of the person, or the patient's death. Effective immediately.

LRB096 04251 AJO 14297 b

A BILL FOR

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 15 and 25 as follows:

6 (755 ILCS 40/15) (from Ch. 110 1/2, par. 851-15)

7 Sec. 15. Applicability. This Act applies to patients who
8 lack decisional capacity or who have a qualifying condition.
9 This Act does not apply to instances in which the patient has
10 an operative and unrevoked living will under the Illinois
11 Living Will Act, an operative and unrevoked declaration for
12 mental health treatment under the Mental Health Treatment
13 Preferences Declaration Act, or an authorized agent under a
14 power of attorney for health care under the Illinois Power of
15 Attorney Act and the patient's condition falls within the
16 coverage of the living will, the declaration for mental health
17 treatment, or the power of attorney for health care. In those
18 instances, the living will, declaration for mental health
19 treatment, or power of attorney for health care, as the case
20 may be, shall be given effect according to its terms. This Act
21 does apply in circumstances in which a patient has a qualifying
22 condition but the patient's condition does not fall within the
23 coverage of the living will, the declaration for mental health

1 treatment, or the power of attorney for health care.

2 Each health care facility shall maintain any advance
3 directives proffered by the patient or other authorized person,
4 including a do not resuscitate order, a living will, a
5 declaration for mental health treatment, or a power of attorney
6 for health care, in the patient's medical records ~~for the~~
7 ~~duration of the patient's stay~~. This Act does apply to patients
8 without a qualifying condition. If a patient is an adult with
9 decisional capacity, then the right to refuse medical treatment
10 or life-sustaining treatment does not require the presence of a
11 qualifying condition.

12 (Source: P.A. 90-246, eff. 1-1-98.)

13 (755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

14 Sec. 25. Surrogate decision making.

15 (a) When a patient lacks decisional capacity, the health
16 care provider must make a reasonable inquiry as to the
17 availability and authority of a health care agent under the
18 Powers of Attorney for Health Care Law. When no health care
19 agent is authorized and available, the health care provider
20 must make a reasonable inquiry as to the availability of
21 possible surrogates listed in items (1) through (4) of this
22 subsection. For purposes of this Section, a reasonable inquiry
23 includes, but is not limited to, identifying a member of the
24 patient's family or other health care agent by examining the
25 patient's personal effects or medical records. If a family

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

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

- 20 (1) the patient's guardian of the person;
- 21 (2) the patient's spouse;
- 22 (3) any adult son or daughter of the patient;
- 23 (4) either parent of the patient;
- 24 (5) any adult brother or sister of the patient;
- 25 (6) any adult grandchild of the patient;
- 26 (7) a close friend of the patient;

1 (8) the patient's guardian of the estate.

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.

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

18 (Source: P.A. 92-364, eff. 8-15-01.)

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