



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4635

Introduced 2/5/2020, by Rep. Debbie Meyers-Martin

SYNOPSIS AS INTRODUCED:

755 ILCS 40/10

from Ch. 110 1/2, par. 851-10

Amends the Health Care Surrogate Act. Removes the requirement that an attending physician or qualified physician be licensed in Illinois. Effective immediately.

LRB101 17493 LNS 66903 b

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 Section 10 as follows:

6 (755 ILCS 40/10) (from Ch. 110 1/2, par. 851-10)

7 Sec. 10. Definitions.

8 "Adult" means a person who is (i) 18 years of age or older
9 or (ii) an emancipated minor under the Emancipation of Minors
10 Act.

11 "Artificial nutrition and hydration" means supplying food
12 and water through a conduit, such as a tube or intravenous
13 line, where the recipient is not required to chew or swallow
14 voluntarily, including, but not limited to, nasogastric tubes,
15 gastrostomies, jejunostomies, and intravenous infusions.
16 Artificial nutrition and hydration does not include assisted
17 feeding, such as spoon or bottle feeding.

18 "Available" means that a person is not "unavailable". A
19 person is unavailable if (i) the person's existence is not
20 known, (ii) the person has not been able to be contacted by
21 telephone or mail, or (iii) the person lacks decisional
22 capacity, refuses to accept the office of surrogate, or is
23 unwilling to respond in a manner that indicates a choice among

1 the treatment matters at issue.

2 "Attending physician" means the physician selected by or
3 assigned to the patient who has primary responsibility for
4 treatment and care of the patient and who is a licensed
5 physician ~~in Illinois~~. If more than one physician shares that
6 responsibility, any of those physicians may act as the
7 attending physician under this Act.

8 "Close friend" means any person 18 years of age or older
9 who has exhibited special care and concern for the patient and
10 who presents an affidavit to the attending physician stating
11 that he or she (i) is a close friend of the patient, (ii) is
12 willing and able to become involved in the patient's health
13 care, and (iii) has maintained such regular contact with the
14 patient as to be familiar with the patient's activities,
15 health, and religious and moral beliefs. The affidavit must
16 also state facts and circumstances that demonstrate that
17 familiarity.

18 "Death" means when, according to accepted medical
19 standards, there is (i) an irreversible cessation of
20 circulatory and respiratory functions or (ii) an irreversible
21 cessation of all functions of the entire brain, including the
22 brain stem.

23 "Decisional capacity" means the ability to understand and
24 appreciate the nature and consequences of a decision regarding
25 medical treatment or forgoing life-sustaining treatment and
26 the ability to reach and communicate an informed decision in

1 the matter as determined by the attending physician.

2 "Forgo life-sustaining treatment" means to withhold,
3 withdraw, or terminate all or any portion of life-sustaining
4 treatment with knowledge that the patient's death is likely to
5 result.

6 "Guardian" means a court appointed guardian of the person
7 who serves as a representative of a minor or as a
8 representative of a person under legal disability.

9 "Health care facility" means a type of health care provider
10 commonly known by a wide variety of titles, including but not
11 limited to, hospitals, medical centers, nursing homes,
12 rehabilitation centers, long term or tertiary care facilities,
13 and other facilities established to administer health care and
14 provide overnight stays in their ordinary course of business or
15 practice.

16 "Health care provider" means a person that is licensed,
17 certified, or otherwise authorized or permitted by the law of
18 this State to administer health care in the ordinary course of
19 business or practice of a profession, including, but not
20 limited to, physicians, nurses, health care facilities, and any
21 employee, officer, director, agent, or person under contract
22 with such a person.

23 "Imminent" (as in "death is imminent") means a
24 determination made by the attending physician according to
25 accepted medical standards that death will occur in a
26 relatively short period of time, even if life-sustaining

1 treatment is initiated or continued.

2 "Life-sustaining treatment" means any medical treatment,
3 procedure, or intervention that, in the judgment of the
4 attending physician, when applied to a patient with a
5 qualifying condition, would not be effective to remove the
6 qualifying condition or would serve only to prolong the dying
7 process. Those procedures can include, but are not limited to,
8 assisted ventilation, renal dialysis, surgical procedures,
9 blood transfusions, and the administration of drugs,
10 antibiotics, and artificial nutrition and hydration.

11 "Minor" means an individual who is not an adult as defined
12 in this Act.

13 "Parent" means a person who is the natural or adoptive
14 mother or father of the child and whose parental rights have
15 not been terminated by a court of law.

16 "Patient" means an adult or minor individual, unless
17 otherwise specified, under the care or treatment of a licensed
18 physician or other health care provider.

19 "Person" means an individual, a corporation, a business
20 trust, a trust, a partnership, an association, a government, a
21 governmental subdivision or agency, or any other legal entity.

22 "Qualifying condition" means the existence of one or more
23 of the following conditions in a patient certified in writing
24 in the patient's medical record by the attending physician and
25 by at least one other qualified physician:

26 (1) "Terminal condition" means an illness or injury for

1 which there is no reasonable prospect of cure or recovery,
2 death is imminent, and the application of life-sustaining
3 treatment would only prolong the dying process.

4 (2) "Permanent unconsciousness" means a condition
5 that, to a high degree of medical certainty, (i) will last
6 permanently, without improvement, (ii) in which thought,
7 sensation, purposeful action, social interaction, and
8 awareness of self and environment are absent, and (iii) for
9 which initiating or continuing life-sustaining treatment,
10 in light of the patient's medical condition, provides only
11 minimal medical benefit.

12 (3) "Incurable or irreversible condition" means an
13 illness or injury (i) for which there is no reasonable
14 prospect of cure or recovery, (ii) that ultimately will
15 cause the patient's death even if life-sustaining
16 treatment is initiated or continued, (iii) that imposes
17 severe pain or otherwise imposes an inhumane burden on the
18 patient, and (iv) for which initiating or continuing
19 life-sustaining treatment, in light of the patient's
20 medical condition, provides only minimal medical benefit.

21 The determination that a patient has a qualifying condition
22 creates no presumption regarding the application or
23 non-application of life-sustaining treatment. It is only after
24 a determination by the attending physician that the patient has
25 a qualifying condition that the surrogate decision maker may
26 consider whether or not to forgo life-sustaining treatment. In

1 making this decision, the surrogate shall weigh the burdens on
2 the patient of initiating or continuing life-sustaining
3 treatment against the benefits of that treatment.

4 "Qualified physician" means a physician licensed to
5 practice medicine in all of its branches ~~in Illinois~~ who has
6 personally examined the patient.

7 "Surrogate decision maker" means an adult individual or
8 individuals who (i) have decisional capacity, (ii) are
9 available upon reasonable inquiry, (iii) are willing to make
10 medical treatment decisions on behalf of a patient who lacks
11 decisional capacity, and (iv) are identified by the attending
12 physician in accordance with the provisions of this Act as the
13 person or persons who are to make those decisions in accordance
14 with the provisions of this Act.

15 (Source: P.A. 95-331, eff. 8-21-07.)

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