

# HB0704



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

**HB0704**

Introduced 2/8/2021, 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 specifically in Illinois. Effective immediately.

LRB102 12654 LNS 17993 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 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  
10 provider commonly known by a wide variety of titles, including  
11 but not 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  
15 or 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  
21 any employee, officer, director, agent, or person under  
22 contract 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

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

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

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

22 The determination that a patient has a qualifying  
23 condition creates no presumption regarding the application or  
24 non-application of life-sustaining treatment. It is only after  
25 a determination by the attending physician that the patient  
26 has a qualifying condition that the surrogate decision maker

1 may consider whether or not to forgo life-sustaining  
2 treatment. In making this decision, the surrogate shall weigh  
3 the burdens on the patient of initiating or continuing  
4 life-sustaining treatment against the benefits of that  
5 treatment.

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

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

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

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