

# HB4260



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

**HB4260**

Introduced 1/5/2022, by Rep. William Davis

### SYNOPSIS AS INTRODUCED:

755 ILCS 40/10

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

Amends the Health Care Surrogate Act by reconciling the changes to definitions that were made by Public Acts 102-140 and 102-182. Effective immediately.

LRB102 21425 LNS 30541 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 (Text of Section from P.A. 102-140)

8 Sec. 10. Definitions.

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

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

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

1 unwilling to respond in a manner that indicates a choice among  
2 the treatment matters at issue.

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

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

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

25 "Decisional capacity" means the ability to understand and  
26 appreciate the nature and consequences of a decision regarding

1 medical treatment or forgoing life-sustaining treatment and  
2 the ability to reach and communicate an informed decision in  
3 the matter as determined by the attending physician.

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

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

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

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

26 "Imminent" (as in "death is imminent") means a

1 determination made by the attending physician according to  
2 accepted medical standards that death will occur in a  
3 relatively short period of time, even if life-sustaining  
4 treatment is initiated or continued.

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

14 "Minor" means an individual who is not an adult as defined  
15 in this Act.

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

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

22 "Person" means an individual, a corporation, a business  
23 trust, a trust, a partnership, an association, a government, a  
24 governmental subdivision or agency, or any other legal entity.

25 "Qualifying condition" means the existence of one or more  
26 of the following conditions in a patient certified in writing

1 in the patient's medical record by the attending physician and  
2 by at least one other qualified health care practitioner:

3 (1) "Terminal condition" means an illness or injury  
4 for which there is no reasonable prospect of cure or  
5 recovery, death is imminent, and the application of  
6 life-sustaining treatment would only prolong the dying  
7 process.

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

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

25 The determination that a patient has a qualifying  
26 condition creates no presumption regarding the application or

1 non-application of life-sustaining treatment. It is only after  
2 a determination by the attending physician that the patient  
3 has a qualifying condition that the surrogate decision maker  
4 may consider whether or not to forgo life-sustaining  
5 treatment. In making this decision, the surrogate shall weigh  
6 the burdens on the patient of initiating or continuing  
7 life-sustaining treatment against the benefits of that  
8 treatment.

9 "Qualified health care practitioner" means an individual  
10 who has personally examined the patient and who is licensed in  
11 ~~an~~ Illinois or in the state where the patient is being treated  
12 and who is a licensed physician, advanced practice registered  
13 nurse, physician assistant, or resident with at least one year  
14 of graduate or specialty training ~~in this State~~ who holds a an  
15 ~~Illinois~~ temporary license to practice medicine and is  
16 enrolled in a residency program accredited by the Liaison  
17 Committee on Graduate Medical Education or the Bureau of  
18 Professional Education of the American Osteopathic  
19 Association.

20 "Physician" means a physician licensed to practice  
21 medicine in all its branches in this State or in the state  
22 where the patient is being treated.

23 "Surrogate decision maker" means an adult individual or  
24 individuals who (i) have decisional capacity, (ii) are  
25 available upon reasonable inquiry, (iii) are willing to make  
26 medical treatment decisions on behalf of a patient who lacks

1 decisional capacity, and (iv) are identified by the attending  
2 physician in accordance with the provisions of this Act as the  
3 person or persons who are to make those decisions in  
4 accordance with the provisions of this Act.

5 (Source: P.A. 102-140, eff. 1-1-22.)

6 (Text of Section from P.A. 102-182)

7 Sec. 10. Definitions.

8 "Adult" means a person who is (i) 18 years of age or older  
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10 Act.

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12 and water through a conduit, such as a tube or intravenous  
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14 voluntarily, including, but not limited to, nasogastric tubes,  
15 gastrostomies, jejunostomies, and intravenous infusions.  
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17 feeding, such as spoon or bottle feeding.

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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  
24 the treatment matters at issue.

25 "Attending physician" means the physician selected by or



1 assigned to the patient who has primary responsibility for  
2 treatment and care of the patient and who is a licensed  
3 physician in Illinois or a physician licensed in the state  
4 where the patient is being treated. If more than one physician  
5 shares that responsibility, any of those physicians may act as  
6 the attending physician under this Act.

7 "Close friend" means any person 18 years of age or older  
8 who has exhibited special care and concern for the patient and  
9 who presents an affidavit to the attending physician stating  
10 that he or she (i) is a close friend of the patient, (ii) is  
11 willing and able to become involved in the patient's health  
12 care, and (iii) has maintained such regular contact with the  
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20 cessation of all functions of the entire brain, including the  
21 brain stem.

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24 medical treatment or forgoing life-sustaining treatment and  
25 the ability to reach and communicate an informed decision in  
26 the matter as determined by the attending physician.

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

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6 who serves as a representative of a minor or as a  
7 representative of a person under legal disability.

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

15 "Health care provider" means a person that is licensed,  
16 certified, or otherwise authorized or permitted by the law of  
17 this State or licensed in the state where the patient is being  
18 treated 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 health care practitioner  
26 ~~physician~~:

1           (1) "Terminal condition" means an illness or injury  
2           for which there is no reasonable prospect of cure or  
3           recovery, death is imminent, and the application of  
4           life-sustaining treatment would only prolong the dying  
5           process.

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

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

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

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

7 "Qualified health care practitioner" means an individual  
8 who has personally examined the patient and who is licensed in  
9 Illinois or in the state where the patient is being treated and  
10 who is a physician, advanced practice registered nurse,  
11 physician assistant, or resident with at least one year of  
12 graduate or specialty training who holds a temporary license  
13 to practice medicine and is enrolled in a residency program  
14 accredited by the Liaison Committee on Graduate Medical  
15 Education or the Bureau of Professional Education of the  
16 American Osteopathic Association.

17 "Physician" means a physician licensed to practice  
18 medicine in all its branches in this State or in the state  
19 where the patient is being treated.

20 ~~"Qualified physician" means a physician licensed to~~  
21 ~~practice medicine in all of its branches in Illinois or a~~  
22 ~~physician licensed in the state where the patient is being~~  
23 ~~treated who has personally examined the patient.~~

24 "Surrogate decision maker" means an adult individual or  
25 individuals who (i) have decisional capacity, (ii) are  
26 available upon reasonable inquiry, (iii) are willing to make

1 medical treatment decisions on behalf of a patient who lacks  
2 decisional capacity, and (iv) are identified by the attending  
3 physician in accordance with the provisions of this Act as the  
4 person or persons who are to make those decisions in  
5 accordance with the provisions of this Act.

6 (Source: P.A. 102-182, eff. 7-30-21.)

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