

1 AN ACT in relation to health care surrogates.

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 25 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  
16 inquiry" might include identifying a member of the patient's  
17 family by examining the patient's personal effects or medical  
18 records. An attempt to contact the family member by  
19 telephone must be made within 24 hours after a determination  
20 that the patient lacks decisional capacity by the provider.

21 The surrogate decision makers, as identified by the  
22 attending physician, are then authorized to make decisions as  
23 follows: (i) for patients who lack decisional capacity and  
24 do not have a qualifying condition, medical treatment  
25 decisions may be made in accordance with subsection (b-5) of  
26 Section 20; and (ii) for patients who lack decisional  
27 capacity and have a qualifying condition, medical treatment  
28 decisions including whether to forgo life-sustaining  
29 treatment on behalf of the patient may be made without court  
30 order or judicial involvement in the following order of  
31 priority:

- 1 (1) the patient's guardian of the person;
- 2 (2) the patient's spouse;
- 3 (3) any adult son or daughter of the patient;
- 4 (4) either parent of the patient;
- 5 (5) any adult brother or sister of the patient;
- 6 (6) any adult grandchild of the patient;
- 7 (7) a close friend of the patient;
- 8 (8) the patient's guardian of the estate.

9 The health care provider shall have the right to rely on  
10 any of the above surrogates if the provider believes after  
11 reasonable inquiry that neither a health care agent under the  
12 Powers of Attorney for Health Care Law nor a surrogate of  
13 higher priority is available.

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

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

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

1           (d) In the event an individual of a higher priority to  
2 an identified surrogate becomes available and willing to be  
3 the 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  
8 surrogate decision maker, the challenging party may initiate  
9 guardianship proceedings in accordance with the Probate Act  
10 of 1975.

11           (e) The surrogate decision maker shall have the same  
12 right as the patient to receive medical information and  
13 medical records and to consent to disclosure.

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

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