

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Health Care Surrogate Act is amended by changing Sections 15 and 25 as follows:

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

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

treatment, or the power of attorney for health care.

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

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

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

Sec. 25. Surrogate decision making.

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

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

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

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

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

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

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

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

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

(d) In the event an individual of a higher priority to an identified surrogate becomes available and willing to be the surrogate, the individual with higher priority may be identified as the surrogate. In the event an individual in a higher, a lower, or the same priority level or a health care provider seeks to challenge the priority of or the life-sustaining treatment decision of the recognized surrogate decision maker, the challenging party may initiate guardianship proceedings in accordance with the Probate Act of 1975.

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

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

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

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