

SHORT TITLE: Health care; authorizing surrogates to make health care decisions; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 16

By: Cain

AS INTRODUCED

An Act relating to health care; authorizing certain persons to act as surrogates for a patient in making health care decisions; stating when surrogate may make certain decisions; giving priority to certain classes of persons to serve as surrogate; stating duties of surrogates; providing for resolution of disagreements regarding health care decisions; making decisions by surrogates effective without judicial approval; providing for disqualification of certain persons to act as surrogate; authorizing health care provider to require declaration of authority to make decisions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent, guardian, or proxy has been appointed or the agent, guardian, or proxy is not reasonably available.

B. An adult or emancipated minor may designate any individual to act as surrogate by personally informing the health care provider. In the absence of a designation, or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

1. The spouse, unless legally separated;
2. An adult child;
3. A parent; or
4. An adult brother or sister.

C. If none of the individuals eligible to act as surrogate under subsection B of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

D. A surrogate shall communicate his or her assumption of authority as promptly as practicable to the members of the patient's family specified in subsection B of this section who can be readily contacted.

E. If more than one member of a class assumes authority to act as surrogate, and they do not agree on a health care decision and the health care provider is so informed, the health care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health care decision and the supervising health care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

F. A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's

determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

G. A health care decision made by a surrogate for a patient is effective without judicial approval.

H. An individual at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the health care provider of the disqualification.

I. Unless related to the patient by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a residential long-term health care institution at which the patient is receiving care.

J. A health care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

K. For the purposes of this section, "surrogate" means an individual authorized under this section to make a health care decision for the patient.

SECTION 2. This act shall become effective November 1, 1997.

46-1-0069

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