

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1894

By: Calvey of the House

and

Sykes of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to public health and safety; amending
12 Section 2, Chapter 160, O.S.L. 2013 (63 O.S. Supp.
13 2016, Section 3090.2), which relates to the
14 Nondiscrimination in Treatment Act; modifying certain
15 definition; permitting certain classes in certain
16 order of priority to make health care decisions for
17 patient; permitting health care provider or class
18 member to petition court for certain order; requiring
19 court to issue certain order pending its decision and
20 resolution upon appeal; proscribing certain persons
21 from making health care decisions for patient;
22 providing for codification; and providing an
23 effective date.

24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 160, O.S.L.
2013 (63 O.S. Supp. 2016, Section 3090.2), is amended to read as
follows:

Section 3090.2 As used in the Nondiscrimination in Treatment

Act:

1. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to practice a health care or healing arts profession or who administers health care in the ordinary course of business;

2. "Health care service" means any phase of patient medical care, treatment or procedure, including, but not limited to, therapy, testing, diagnosis or prognosis, prescribing, dispensing or administering any device, drug or medication, surgery, or any other care or treatment rendered by health care providers;

3. "Life-preserving health care service" means a health care service, the denial of which, in reasonable medical judgment, will result in or hasten the death of the patient; and

4. "Person legally authorized to make health care decisions" means, in the case of an adult patient, or of a minor patient who may consent to have services provided by health professionals under Section 2602 of Title 63 of the Oklahoma Statutes, the person or persons designated to make health care decisions:

a. ~~a general guardian of the person appointed pursuant to subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes, or a limited guardian of the person appointed pursuant to subsection B of Section 3-112 of Title 30 of the Oklahoma Statutes with authority to~~

1 ~~make personal medical decisions as determined under~~
2 ~~paragraph 5 of subsection B of Section 3-113 of Title~~
3 ~~30 of the Oklahoma Statutes,~~

4 ~~b. a health care proxy (or alternate health care proxy)~~
5 ~~authorized to act pursuant to the Oklahoma Advance~~
6 ~~Directive Act, Sections 3101.1 through 3101.16 of~~
7 ~~Title 63 of the Oklahoma Statutes, as defined in~~
8 ~~paragraph 6 of Section 3101.3 of Title 63 of the~~
9 ~~Oklahoma Statutes,~~

10 ~~c. an attorney-in-fact authorized to act pursuant to the~~
11 ~~Uniform Durable Power of Attorney Act, Sections 1071~~
12 ~~through 1077 of Title 58 of the Oklahoma Statutes with~~
13 ~~authority to act regarding the patient's health and~~
14 ~~medical care decisions, subject to the limitations~~
15 ~~under paragraph 1 of subsection B of Section 1072.1 of~~
16 ~~Title 58 of the Oklahoma Statutes, or~~

17 ~~d. another person with such authority under common law.~~

18 ~~In~~ for the patient pursuant to Section 2 of this act, and in the
19 case of any other minor, it means the minor's custodial parent or
20 guardian.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3102.4 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

1 When an adult patient or a person under eighteen (18) years of
2 age who may consent to have services provided by health
3 professionals under Section 2602 of Title 63 of the Oklahoma
4 Statutes is persistently unconscious, incompetent or otherwise
5 mentally or physically incapable of communicating, those reasonably
6 available and willing in the following classes, in the order of
7 priority below, are authorized to make health care decisions for the
8 patient under the same standard as that applicable to making life-
9 sustaining treatment decisions under Section 3101.16 of Title 63 of
10 the Oklahoma Statutes, excluding any person who is disqualified from
11 exercising such authority by Section 3 of this act. If those within
12 a class disagree, a majority within the class may make a health care
13 decision for the patient. However, a provider of health care to the
14 patient or any member or members of any of the following classes may
15 petition a court that would have jurisdiction over a guardianship
16 proceeding concerning the patient under Section 1-115 of Title 30 of
17 the Oklahoma Statutes to seek an order directing a different health
18 care decision on the ground that the health care decision or
19 decisions made violate the standard required by this section,
20 granting another member or other members from among the following
21 classes (notwithstanding the statutory order of priority)
22 supervening authority to make health care decisions for the patient
23 on the ground that clear and convincing evidence demonstrates they
24 are more likely to adhere to that standard, or both. Upon motion by

1 any party, the court shall issue an order requiring that pending its
2 decision on the merits and the resolution of any appeal the patient
3 be provided with health care of which denial, in reasonable medical
4 judgment, would be likely to result in or hasten the death of the
5 patient, unless its provision would require denial of the same
6 health care to another patient. The classes are as follows:

7 1. A general guardian of the person appointed pursuant to
8 subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes
9 or a limited guardian of the person appointed pursuant to subsection
10 B of Section 3-112 of Title 30 of the Oklahoma Statutes with
11 authority to make personal medical decisions as determined under
12 paragraph 5 of subsection B of Section 3-113 of Title 30 of the
13 Oklahoma Statutes;

14 2. A health care proxy, or alternate health care proxy,
15 designated by the patient, as defined in paragraph 6 of Section
16 3101.3 of Title 63 of the Oklahoma Statutes;

17 3. An attorney-in-fact authorized to act pursuant to the
18 Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of
19 Title 58 of the Oklahoma Statutes, with authority to act regarding
20 the patient's health and medical care decisions, subject to the
21 limitations under paragraph 1 of subsection B of Section 1072.1 of
22 Title 58 of the Oklahoma Statutes;

23 4. The patient's spouse;

24 5. Adult children of the patient;

1 6. Parents of the patient;

2 7. Adult siblings;

3 8. Other adult relatives of the patient in order of kinship; or

4 9. Close friends of the patient who have maintained regular
5 contact with the patient sufficient to be familiar with the
6 patient's personal values. Execution of an affidavit stating
7 specific facts and circumstances documenting such contact
8 constitutes prima facie evidence of close friendship.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3102.5 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 No person shall be authorized under Section 2 of this act to
13 make health care decisions for a patient if that person:

14 1. Has been convicted of, plead guilty to, or plead "no
15 contest" to any violation of Sections 843.1, 843.2, 843.4 or 843.5
16 of Title 21 of the Oklahoma Statutes;

17 2. Has been found to have committed abuse, verbal abuse or
18 exploitation, as these terms are defined in Section 10-103 of Title
19 43A of the Oklahoma Statutes, by a final State Department of Health
20 investigative finding or by an Administrative Law Judge finding,
21 unless that finding has been overturned through judicial review; or

22 3. Has been criminally charged as described in Section 10-
23 110.1B of Title 43A of the Oklahoma Statutes, unless the person has
24 been acquitted or those charges have been finally dismissed.

SECTION 4. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
ENVIRONMENTAL, dated 02/15/2017 - DO PASS, As Amended and
Coauthored.