

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1894

By: Calvey

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 Section 2, Chapter 160, O.S.L. 2013 (63 O.S. Supp.
9 2016, Section 3090.2), which relates to the
10 Nondiscrimination in Treatment Act; modifying certain
11 definition; permitting certain classes in certain
12 order of priority to make health care decisions for
13 patient; permitting health care provider or class
14 member to petition court for certain order; requiring
15 court to issue certain order pending its decision and
16 resolution upon appeal; providing for codification;
17 and providing an effective date.

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

21 SECTION 1. AMENDATORY Section 2, Chapter 160, O.S.L.
22 2013 (63 O.S. Supp. 2016, Section 3090.2), is amended to read as
23 follows:

24 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;

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

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

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

14 a. ~~a general guardian of the person appointed pursuant to~~
15 ~~subsection A of Section 3-112 of Title 30 of the~~
16 ~~Oklahoma Statutes, or a limited guardian of the person~~
17 ~~appointed pursuant to subsection B of Section 3-112 of~~
18 ~~Title 30 of the Oklahoma Statutes with authority to~~
19 ~~make personal medical decisions as determined under~~
20 ~~paragraph 5 of subsection B of Section 3-113 of Title~~
21 ~~30 of the Oklahoma Statutes,~~

22 b. ~~a health care proxy (or alternate health care proxy)~~
23 ~~authorized to act pursuant to the Oklahoma Advance~~
24 ~~Directive Act, Sections 3101.1 through 3101.16 of~~

1 ~~Title 63 of the Oklahoma Statutes, as defined in~~
2 ~~paragraph 6 of Section 3101.3 of Title 63 of the~~
3 ~~Oklahoma Statutes,~~

4 ~~e. an attorney-in-fact authorized to act pursuant to the~~
5 ~~Uniform Durable Power of Attorney Act, Sections 1071~~
6 ~~through 1077 of Title 58 of the Oklahoma Statutes with~~
7 ~~authority to act regarding the patient's health and~~
8 ~~medical care decisions, subject to the limitations~~
9 ~~under paragraph 1 of subsection B of Section 1072.1 of~~
10 ~~Title 58 of the Oklahoma Statutes, or~~

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

12 In for the patient pursuant to Section 2 of this act, and in the
13 case of any other minor, it means the minor's custodial parent or
14 guardian.

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

18 When an adult patient or a person under eighteen (18) years of
19 age who may consent to have services provided by health
20 professionals under Section 2602 of Title 63 of the Oklahoma
21 Statutes is persistently unconscious, incompetent or otherwise
22 mentally or physically incapable of communicating, those reasonably
23 available and willing in the following classes, in the order of
24 priority below, are authorized to make health care decisions for the

1 patient under the same standard as that applicable to making life-
2 sustaining treatment decisions under Section 3101.16 of Title 63 of
3 the Oklahoma Statutes. If those within a class disagree, a majority
4 within the class may make a health care decision for the patient.
5 However, a provider of health care to the patient or any member or
6 members of any of the following classes may petition a court that
7 would have jurisdiction over a guardianship proceeding concerning
8 the patient under Section 1-115 of Title 30 of the Oklahoma Statutes
9 to seek an order directing a different health care decision on the
10 ground that the health care decision or decisions made violate the
11 standard required by this section, granting another member or other
12 members from among the following classes (notwithstanding the
13 statutory order of priority) supervening authority to make health
14 care decisions for the patient on the ground that clear and
15 convincing evidence demonstrates they are more likely to adhere to
16 that standard, or both. Upon motion by any party, the court shall
17 issue an order requiring that pending its decision on the merits and
18 the resolution of any appeal the patient be provided with health
19 care whose denial, in reasonable medical judgment, would be likely
20 to result in or hasten the death of the patient, unless its
21 provision would require denial of the same health care to another
22 patient. The classes are as follows:

23 1. A general guardian of the person appointed pursuant to
24 subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes

1 or a limited guardian of the person appointed pursuant to subsection
2 B of Section 3-112 of Title 30 of the Oklahoma Statutes with
3 authority to make personal medical decisions as determined under
4 paragraph 5 of subsection B of Section 3-113 of Title 30 of the
5 Oklahoma Statutes;

6 2. A health care proxy, or alternate health care proxy,
7 designated by the patient, as defined in paragraph 6 of Section
8 3101.3 of Title 63 of the Oklahoma Statutes;

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

15 4. The patient's spouse;

16 5. Adult children of the patient;

17 6. Parents of the patient;

18 7. Adult siblings;

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

20 9. Close friends of the patient who have maintained regular
21 contact with the patient sufficient to be familiar with the
22 patient's personal values. Execution of an affidavit stating
23 specific facts and circumstances documenting such contact
24 constitutes prima facie evidence of close friendship.

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SECTION 3. This act shall become effective November 1, 2017.

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