

1 ENGROSSED SENATE
2 BILL NO. 333

By: Standridge of the Senate

3 and

4 Roberts (Sean) of the House

5
6 An Act relating to the Oklahoma Advance Directive
7 Act; amending Sections 2 and 3, Chapter 144, O.S.L.
8 2017 (63 O.S. Supp. 2018, Sections 3102.4 and
9 3102.5), which relate to persons authorized to make
10 health care decisions; requiring certain persons to
11 provide certain signed statement to health care
12 provider; adding finding by Department of Human
13 Services to show abuse or exploitation by certain
14 person; limiting liability of health care provider or
15 entity under certain circumstances; updating
16 statutory references; and providing an effective
17 date.

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

19 SECTION 1. AMENDATORY Section 2, Chapter 144, O.S.L.
20 2017 (63 O.S. Supp. 2018, Section 3102.4), is amended to read as
21 follows:

22 Section 3102.4. A. When an adult patient or a person under
23 eighteen (18) years of age who may consent to have services provided
24 by health professionals under Section 2602 of ~~Title 63 of the~~
~~Oklahoma Statutes~~ this title is persistently unconscious,
incompetent or otherwise mentally or physically incapable of
communicating, ~~these~~ a person who is reasonably available and

1 willing in the following classes, in the order of priority ~~below~~ set
2 forth in this subsection, ~~are~~ shall be authorized to make health
3 care decisions for the patient under the same standard as that
4 applicable to making life-sustaining treatment decisions under
5 Section 3101.16 of ~~Title 63 of the Oklahoma Statutes~~ this title,
6 excluding any person who is disqualified from exercising such
7 authority by Section ~~3~~ 3102.5 of this ~~act~~ title. If those within a
8 class disagree, a majority within the class may make a health care
9 decision for the patient. However, a provider of health care to the
10 patient or any member or members of any of the following classes may
11 petition a court that would have jurisdiction over a guardianship
12 proceeding concerning the patient under Section 1-115 of Title 30 of
13 the Oklahoma Statutes to seek an order directing a different health
14 care decision on the ground that the health care decision or
15 decisions made violate the standard required by this section,
16 granting another member or other members from among the following
17 classes (notwithstanding the statutory order of priority)
18 supervening authority to make health care decisions for the patient
19 on the ground that clear and convincing evidence demonstrates they
20 are more likely to adhere to that standard, or both. Upon motion by
21 any party, the court shall issue an order requiring that pending its
22 decision on the merits and the resolution of any appeal the patient
23 be provided with health care of which denial, in reasonable medical
24 judgment, would be likely to result in or hasten the death of the

1 patient, unless its provision would require denial of the same
2 health care to another patient. The classes are as follows:

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

10 2. A health care proxy, or alternate health care proxy,
11 designated by the patient, as defined in paragraph 6 of Section
12 3101.3 of Title 63 of the Oklahoma Statutes;

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

19 4. The patient's spouse;

20 5. Adult children of the patient;

21 6. Parents of the patient;

22 7. Adult siblings;

23 8. Other adult relatives of the patient in order of kinship; or
24

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

6 B. Prior to making a health care decision for a patient
7 pursuant to subsection A of this section, a person shall provide to
8 the health care provider or health care entity a signed copy of the
9 following statement to be entered into the patient's medical record:

10 "I hereby certify that:

11 I have not been convicted of, pleaded guilty to or pleaded no
12 contest to the crimes of abuse, verbal abuse, neglect or financial
13 exploitation by a caregiver; exploitation of an elderly person or
14 disabled adult; or abuse, neglect, exploitation or sexual abuse of a
15 child;

16 I have not been found to have committed abuse, verbal abuse or
17 exploitation by a final investigative finding of the State
18 Department of Health or Department of Human Services or by a finding
19 of an administrative law judge, unless it was overturned on appeal;
20 and

21 I have not been criminally charged as a person responsible for
22 the care of a vulnerable adult with a crime resulting in the death
23 or near death of a vulnerable adult."
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SECTION 2. AMENDATORY Section 3, Chapter 144, O.S.L.
2017 (63 O.S. Supp. 2018, Section 3102.5), is amended to read as
follows:

Section 3102.5. A. No person shall be authorized under Section
~~2~~ 3102.4 of this ~~act~~ title to make health care decisions for a
patient if that person:

1. Has been convicted of, pled guilty to, or pled no contest to
any violation of Section 843.1, 843.2, 843.4 or 843.5 of Title 21 of
the Oklahoma Statutes;

2. Has been found to have committed abuse, verbal abuse or
exploitation, as these terms are defined in Section 10-103 of Title
43A of the Oklahoma Statutes, by a final State Department of Health
or Department of Human Services investigative finding or by an
administrative law judge finding, unless that finding has been
overturned through judicial review; or

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

B. No health care provider or health care entity shall be
liable for following in good faith the instructions of a person
otherwise authorized to make health care decisions for a patient and
who has submitted the statement as required by Section 3102.4 of
this title, but whom the health care provider or health care entity

1 does not know or have reason to know is disqualified from exercising
2 such authority by subsection A of this section.

3 SECTION 3. This act shall become effective November 1, 2019.

4 Passed the Senate the 13th day of March, 2019.

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6 _____
7 Presiding Officer of the Senate

8 Passed the House of Representatives the ____ day of _____,
9 2019.

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11 _____
12 Presiding Officer of the House
13 of Representatives
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