

# An Act

ENROLLED SENATE  
BILL NO. 333

By: Standridge of the Senate

and

Roberts (Sean) of the House

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

SUBJECT: Oklahoma Advance Directive Act

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

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

Section 3102.4. A. When an adult patient or a person under eighteen (18) years of age who may consent to have services provided 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, ~~those~~ a person who is reasonably available and willing in the following classes, in the order of priority ~~below~~ set forth in this subsection, ~~are~~ shall be authorized to make health

care decisions for the patient under the same standard as that applicable to making life-sustaining treatment decisions under Section 3101.16 of ~~Title 63 of the Oklahoma Statutes~~ this title, excluding any person who is disqualified from exercising such authority by Section ~~3~~ 3102.5 of this ~~act~~ title. If those within a class disagree, a majority within the class may make a health care decision for the patient. However, a provider of health care to the patient or any member or members of any of the following classes may petition a court that would have jurisdiction over a guardianship proceeding concerning the patient under Section 1-115 of Title 30 of the Oklahoma Statutes to seek an order directing a different health care decision on the ground that the health care decision or decisions made violate the standard required by this section, granting another member or other members from among the following classes (notwithstanding the statutory order of priority) supervening authority to make health care decisions for the patient on the ground that clear and convincing evidence demonstrates they are more likely to adhere to that standard, or both. Upon motion by any party, the court shall issue an order requiring that pending its decision on the merits and the resolution of any appeal the patient be provided with health care of which denial, in reasonable medical judgment, would be likely to result in or hasten the death of the patient, unless its provision would require denial of the same health care to another patient. The classes are as follows:

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

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

3. An attorney-in-fact authorized to act pursuant to the Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of Title 58 of the Oklahoma Statutes, with authority to act regarding the patient's health and medical care decisions, subject to the

limitations under paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes;

4. The patient's spouse;
5. Adult children of the patient;
6. Parents of the patient;
7. Adult siblings;
8. Other adult relatives of the patient in order of kinship; or
9. Close friends of the patient who have maintained regular contact with the patient sufficient to be familiar with the patient's personal values. Execution of an affidavit stating specific facts and circumstances documenting such contact constitutes prima facie evidence of close friendship.

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

"I hereby certify that:

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

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

I have not been criminally charged as a person responsible for the care of a vulnerable adult with a crime resulting in the death or near death of a vulnerable adult."

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

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

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

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Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2019.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_