

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 333

By: Standridge of the Senate

and

Roberts (Sean) of the House

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

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

24 SECTION 1. AMENDATORY Section 2, Chapter 144, O.S.L.
25 2017 (63 O.S. Supp. 2018, Section 3102.4), is amended to read as
26 follows:

27 Section 3102.4. A. When an adult patient or a person under
28 eighteen (18) years of age who may consent to have services provided
29 by health professionals under Section 2602 of ~~Title 63 of the~~

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

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

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

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

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

22 4. The patient's spouse;

23 5. Adult children of the patient;

24 6. Parents of the patient;

1 7. Adult siblings;

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

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

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

12 "I hereby certify that:

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

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

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

4 SECTION 2. AMENDATORY Section 3, Chapter 144, O.S.L.
5 2017 (63 O.S. Supp. 2018, Section 3102.5), is amended to read as
6 follows:

7 Section 3102.5. A. No person shall be authorized under Section
8 ~~2~~ 3102.4 of this ~~act~~ title to make health care decisions for a
9 patient if that person:

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

13 2. Has been found to have committed abuse, verbal abuse or
14 exploitation, as these terms are defined in Section 10-103 of Title
15 43A of the Oklahoma Statutes, by a final State Department of Health
16 or Department of Human Services investigative finding or by an
17 administrative law judge finding, unless that finding has been
18 overturned through judicial review; or

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

23 B. No health care provider or health care entity shall be
24 liable for following in good faith the instructions of a person

1 otherwise authorized to make health care decisions for a patient and
2 who has submitted the statement as required by Section 3102.4 of
3 this title, but whom the health care provider or health care entity
4 does not know or have reason to know is disqualified from exercising
5 such authority by subsection A of this section.

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

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8 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/09/2019 -
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