

1 AN ACT in relation to health care surrogates.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Health Care Surrogate Act is amended by
5 changing Section 25 as follows:

6 (755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

7 Sec. 25. Surrogate decision making.

8 (a) When a patient lacks decisional capacity, the health
9 care provider must make a reasonable inquiry as to the
10 availability and authority of a health care agent under the
11 Powers of Attorney for Health Care Law. When no health care
12 agent is authorized and available, the health care provider
13 must make a reasonable inquiry as to the availability of
14 possible surrogates listed in items (1) through (4) of this
15 subsection. For purposes of this Section, a reasonable
16 inquiry includes, but is not limited to, identifying a member
17 of the patient's family or other health care agent by
18 examining the patient's personal effects or medical records.
19 If a family member or other health care agent is identified,
20 an attempt to contact that person by telephone must be made
21 within 24 hours after a determination by the provider that
22 the patient lacks decisional capacity. No person shall be
23 liable for civil damages or subject to professional
24 discipline based on a claim of violating a patient's right to
25 confidentiality as a result of making a reasonable inquiry as
26 to the availability of a patient's family member or health
27 care agent, except for willful or wanton misconduct.

28 The surrogate decision makers, as identified by the
29 attending physician, are then authorized to make decisions as
30 follows: (i) for patients who lack decisional capacity and
31 do not have a qualifying condition, medical treatment

1 decisions may be made in accordance with subsection (b-5) of
2 Section 20; and (ii) for patients who lack decisional
3 capacity and have a qualifying condition, medical treatment
4 decisions including whether to forgo life-sustaining
5 treatment on behalf of the patient may be made without court
6 order or judicial involvement in the following order of
7 priority:

- 8 (1) the patient's guardian of the person;
- 9 (2) the patient's spouse;
- 10 (3) any adult son or daughter of the patient;
- 11 (4) either parent of the patient;
- 12 (5) any adult brother or sister of the patient;
- 13 (6) any adult grandchild of the patient;
- 14 (7) a close friend of the patient;
- 15 (8) the patient's guardian of the estate.

16 The health care provider shall have the right to rely on
17 any of the above surrogates if the provider believes after
18 reasonable inquiry that neither a health care agent under the
19 Powers of Attorney for Health Care Law nor a surrogate of
20 higher priority is available.

21 Where there are multiple surrogate decision makers at the
22 same priority level in the hierarchy, it shall be the
23 responsibility of those surrogates to make reasonable efforts
24 to reach a consensus as to their decision on behalf of the
25 patient regarding the forgoing of life-sustaining treatment.
26 If 2 or more surrogates who are in the same category and have
27 equal priority indicate to the attending physician that they
28 disagree about the health care matter at issue, a majority of
29 the available persons in that category (or the parent with
30 custodial rights) shall control, unless the minority (or the
31 parent without custodial rights) initiates guardianship
32 proceedings in accordance with the Probate Act of 1975. No
33 health care provider or other person is required to seek
34 appointment of a guardian.

1 (b) After a surrogate has been identified, the name,
2 address, telephone number, and relationship of that person to
3 the patient shall be recorded in the patient's medical
4 record.

5 (c) Any surrogate who becomes unavailable for any reason
6 may be replaced by applying the provisions of Section 25 in
7 the same manner as for the initial choice of surrogate.

8 (d) In the event an individual of a higher priority to
9 an identified surrogate becomes available and willing to be
10 the surrogate, the individual with higher priority may be
11 identified as the surrogate. In the event an individual in a
12 higher, a lower, or the same priority level or a health care
13 provider seeks to challenge the priority of or the
14 life-sustaining treatment decision of the recognized
15 surrogate decision maker, the challenging party may initiate
16 guardianship proceedings in accordance with the Probate Act
17 of 1975.

18 (e) The surrogate decision maker shall have the same
19 right as the patient to receive medical information and
20 medical records and to consent to disclosure.

21 (Source: P.A. 90-246, eff. 1-1-98.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.