

1 HB191
2 216429-2
3 By Representatives Oliver, Isbell, Reynolds, Shaver, Lovvorn,
4 Rafferty, Shiver, Lee and Lipscomb
5 RFD: Health
6 First Read: 01-FEB-22

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to end-of-life care; to amend Section
9 22-8A-11, Code of Alabama 1975; to provide further for the
10 certification of a surrogate designated to make end-of-life
11 decisions for a terminally ill patient.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 22-8A-11, Code of Alabama 1975,
14 is amended to read as follows:

15 "§22-8A-11.

16 "(a) If no advance directive for health care has
17 been made, or if no duly appointed health care proxy is
18 reasonably available, or if a valid advance directive for
19 health care fails to address a particular circumstance,
20 subject to the provisions of subsection (c) ~~hereof~~, a
21 surrogate, in consultation with the attending physician, may,
22 subject to the provisions of Section 22-8A-6, determine
23 whether to provide, withdraw, or withhold life-sustaining
24 treatment or artificially provided nutrition and hydration if
25 all of the following conditions are met:

26 "(1) The attending physician determines, to a
27 reasonable degree of medical certainty, that:

1 "a. The individual is no longer able to understand,
2 appreciate, and direct his or her medical treatment, and

3 "b. The individual has no hope of regaining such
4 ability.

5 "(2) Two physicians, one of whom is the attending
6 physician and one of whom ~~shall be~~ is qualified and
7 experienced in making such diagnosis, have personally examined
8 the individual and have diagnosed and certified in the medical
9 record that the individual has a terminal illness or injury or
10 has a condition of permanent unconsciousness.

11 "(3) The attending physician or other health care
12 provider and the surrogate have no actual knowledge of the
13 existence of a valid advance directive for health care that
14 would give guidance to the provider in treating the
15 individual's condition.

16 "(4) The treating physician determines, to a
17 reasonable degree of medical certainty, that withholding or
18 withdrawing the life-sustaining treatment or artificially
19 provided nutrition and hydration will not result in undue pain
20 or discomfort for the patient.

21 "(b) The surrogate shall be a competent adult.

22 "(c) The surrogate shall consult with the attending
23 physician and make decisions permitted herein that conform as
24 closely as possible to what the patient would have done or
25 intended under the circumstances, taking into account any
26 evidence of the patient's religious, spiritual, personal,
27 philosophical, and moral beliefs and ethics, to the extent

1 these are known to the surrogate. Where possible, the
2 surrogate shall consider how the patient would have weighed
3 the burdens and benefits of initiating or continuing
4 life-sustaining treatment or artificially provided nutrition
5 and hydration against the burdens and benefits to the patient
6 of that treatment~~,L~~ except~~7~~ that any decision by a surrogate
7 regarding the withdrawal or withholding of artificially
8 provided nutrition and hydration from a person who is
9 permanently unconscious shall only be made upon clear and
10 convincing evidence of the patient's desires. The decision to
11 provide, withdraw, or withhold life-sustaining treatment or
12 artificially provided nutrition and hydration by the surrogate
13 shall be made in good faith and without consideration of the
14 financial benefit or burden ~~which~~ that will accrue to the
15 surrogate or the health care provider as a result of the
16 decision.

17 "(d) Any of the following persons, in order of
18 priority stated, when persons in prior classes are not
19 available or willing to serve, may serve as a surrogate
20 pursuant to ~~the provisions of~~ this section:

21 "(1) A judicially appointed guardian, provided the
22 appointment specifically authorizes the guardian to make
23 decisions regarding the withholding of life-sustaining
24 treatment or artificially provided nutrition and hydration.
25 Nothing in this ~~section~~ subsection shall be construed to
26 require a judicial appointment before a decision can be made
27 under this chapter. In addition, this ~~section~~ subsection shall

1 not be construed to require a judicially appointed guardian
2 who has not been specifically authorized by a court to make
3 decisions regarding the providing, withholding, or withdrawing
4 of life-sustaining treatment or artificially provided
5 nutrition and hydration to make those decisions or to seek
6 court approval to make those decisions~~7.~~.

7 "(2) The patient's spouse, unless legally separated
8 or a party to a divorce proceeding~~7.~~.

9 "(3) An adult child of the patient~~7.~~.

10 "(4) One of the patient's parents~~7.~~.

11 "(5) An adult sibling of the patient~~7.~~.

12 "(6) Any one of the patient's surviving adult
13 relatives who are of the next closest degree of kinship to the
14 patient~~7.~~~~or.~~.

15 "(7) If the patient has no relatives known to the
16 attending physician or to an administrator of the facility
17 where the patient is being treated~~7~~ and none can be found
18 after a reasonable inquiry, a committee composed of the
19 patient's primary treating physician and the ethics committee
20 of the facility where the patient is undergoing treatment or
21 receiving care, acting unanimously; or if there is no ethics
22 committee, by unanimous consent of a committee appointed by
23 the chief of medical staff or chief executive officer of the
24 facility and consisting of at least the following: (i) the
25 primary treating physician; (ii) the chief of medical staff or
26 his or her designee; (iii) the patient's clergyman, if known
27 and available, or a member of the clergy who is associated

1 with, but not employed by or an independent contractor of the
2 facility, or a social worker associated with but neither
3 employed by nor an independent contractor of the facility. In
4 the event a surrogate decision is being made by an ethics
5 committee or appointed committee of the facility where the
6 patient is undergoing treatment or receiving care, the
7 facility shall notify the Alabama Department of Human
8 Resources for the purpose of allowing the department to
9 participate in the review of the matter pursuant to its
10 responsibilities under the Adult Protective Services Act,
11 Chapter 9 of Title 38.

12 "(e) The surrogate shall certify ~~and attest under~~
13 ~~oath~~ that he or she has contacted one or more of the person or
14 persons who is or are in a class equal to or higher than the
15 surrogate and that each class has either consented or
16 expressed no objections to him or her acting as surrogate or
17 to the decision made by the surrogate. The certification shall
18 be included in the medical record.

19 "(f) (1) A surrogate's decision shall nevertheless be
20 valid if: ~~(1) He~~ he or she certifies that he or she is unable
21 to contact an individual whose consent or non-objection would
22 otherwise be required because the individual's whereabouts are
23 unknown, because the individual is in a remote location and
24 cannot be contacted in sufficient time to participate in a
25 decision to provide, withhold, or withdraw the treatment, or
26 because the individual has been adjudged incompetent and
27 remains under that disability; ~~and.~~

1 "~~(2) The surrogate certifies and attests to that~~
2 ~~fact. In that case~~ If the surrogate's decision is valid under
3 subdivision (1), the individual shall not be included in
4 determining whether the individual's class has consented or
5 expressed no objection as required pursuant to subsection (e).

6 "(g) A health care provider who provides, withholds,
7 or withdraws life-sustaining treatment or artificially
8 provided nutrition and hydration from a patient upon the
9 instructions of a surrogate who has certified ~~and attested~~
10 that he or she has qualified as a surrogate as required by
11 this section shall not be subject to civil or criminal
12 liability or be found to have committed an act of
13 unprofessional conduct for providing, withdrawing, or
14 withholding the life-sustaining treatment or artificially
15 provided nutrition and hydration, nor shall the health care
16 provider be deemed to be under a duty to investigate the
17 truthfulness of the information certified ~~and attested to~~ by
18 the surrogate.

19 "(h) A surrogate acting pursuant to this section
20 shall not be subject to civil or criminal liability or found
21 to have committed an act of unprofessional conduct for
22 decisions made in good faith to provide, withhold, withdraw,
23 continue, or institute life-sustaining treatment, or
24 artificially provided nutrition and hydration, unless the
25 surrogate falsely or fraudulently certifies ~~or attests to~~
26 information required by this section.

1 "(i) The Alabama State Board of Health shall
2 prescribe by rule a form, which, when completed by a surrogate
3 ~~and duly notarized~~, shall constitute the certification of the
4 surrogate as required by this chapter.

5 Any form created pursuant to this subsection shall
6 include the following statement: "Under penalty of perjury, I
7 affirm that I am exercising my best independent judgement and
8 agreeing to do what I believe the patient desires.

9 "(j) If any relative, health care provider who is
10 involved directly in the care of the patient, or other
11 individual who is involved directly in providing care to the
12 patient desires to dispute the authority or the decision of a
13 surrogate to determine whether to provide, withhold, or
14 withdraw medical treatment from a patient, he or she may file
15 an action for declaratory and injunctive relief in the circuit
16 court for the county where the patient is under treatment. A
17 health care provider who is confronted by more than one
18 individual who claims authority to act as surrogate for a
19 patient may file an action for declaratory relief in the
20 circuit court for the county where the patient is under
21 treatment.

22 "(k) (1) An individual who knowingly certifies ~~and~~
23 ~~attests to any information which is~~ that meets all of the
24 following criteria shall be guilty of a Class C felony:

25 ~~"(1) Required~~ a. Is required by this chapter~~;~~.

26 ~~"(2) Material~~ b. Is material to his or her
27 authorization to act as a surrogate~~;~~and.

1 "~~(3) False, shall be guilty of a Class C felony c.~~
2 Is false.

3 "(2) This The felony offense described in
4 subdivision (1) shall be in addition to, and not in lieu of,
5 penalties for other offenses of which the surrogate may be
6 guilty by reason of this conduct."

7 Section 2. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Health 01-FEB-22

Read for the second time and placed
on the calendar..... 02-FEB-22

Read for the third time and passed
as amended..... 08-FEB-22

Yeas 82, Nays 7, Abstains 10

Jeff Woodard
Clerk