

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

SYNOPSIS: Under existing law, a surrogate may be designated to determine whether to provide, withdraw, or withhold life-sustaining treatment or artificially provided nutrition and hydration to a terminally ill patient if the patient has no advance directive for health care, provided the surrogate meets certain qualifications and certifies and attests to meeting the qualifications.

This bill would remove the requirement that a surrogate's certification be notarized.

A BILL
TO BE ENTITLED
AN ACT

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§22-8A-11.

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

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

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

19 "b. The individual has no hope of regaining such
20 ability.

21 "(2) Two physicians, one of whom is the attending
22 physician and one of whom ~~shall be~~ is qualified and
23 experienced in making such diagnosis, have personally examined
24 the individual and have diagnosed and certified in the medical
25 record that the individual has a terminal illness or injury or
26 has a condition of permanent unconsciousness.

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

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

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

12 "(c) The surrogate shall consult with the attending
13 physician and make decisions permitted herein that conform as
14 closely as possible to what the patient would have done or
15 intended under the circumstances, taking into account any
16 evidence of the patient's religious, spiritual, personal,
17 philosophical, and moral beliefs and ethics, to the extent
18 these are known to the surrogate. Where possible, the
19 surrogate shall consider how the patient would have weighed
20 the burdens and benefits of initiating or continuing
21 life-sustaining treatment or artificially provided nutrition
22 and hydration against the burdens and benefits to the patient
23 of that treatment, ~~7~~ except ~~7~~ that any decision by a surrogate
24 regarding the withdrawal or withholding of artificially
25 provided nutrition and hydration from a person who is
26 permanently unconscious shall only be made upon clear and
27 convincing evidence of the patient's desires. The decision to

1 provide, withdraw, or withhold life-sustaining treatment or
2 artificially provided nutrition and hydration by the surrogate
3 shall be made in good faith and without consideration of the
4 financial benefit or burden ~~which~~ that will accrue to the
5 surrogate or the health care provider as a result of the
6 decision.

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

11 "(1) A judicially appointed guardian, provided the
12 appointment specifically authorizes the guardian to make
13 decisions regarding the withholding of life-sustaining
14 treatment or artificially provided nutrition and hydration.
15 Nothing in this ~~section~~ subsection shall be construed to
16 require a judicial appointment before a decision can be made
17 under this chapter. In addition, this ~~section~~ subsection shall
18 not be construed to require a judicially appointed guardian
19 who has not been specifically authorized by a court to make
20 decisions regarding the providing, withholding, or withdrawing
21 of life-sustaining treatment or artificially provided
22 nutrition and hydration to make those decisions or to seek
23 court approval to make those decisions~~7.~~

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

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

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

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

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

5 "(7) If the patient has no relatives known to the
6 attending physician or to an administrator of the facility
7 where the patient is being treated~~7~~ and none can be found
8 after a reasonable inquiry, a committee composed of the
9 patient's primary treating physician and the ethics committee
10 of the facility where the patient is undergoing treatment or
11 receiving care, acting unanimously; or if there is no ethics
12 committee, by unanimous consent of a committee appointed by
13 the chief of medical staff or chief executive officer of the
14 facility and consisting of at least the following: (i) the
15 primary treating physician; (ii) the chief of medical staff or
16 his or her designee; (iii) the patient's clergyman, if known
17 and available, or a member of the clergy who is associated
18 with, but not employed by or an independent contractor of the
19 facility, or a social worker associated with but neither
20 employed by nor an independent contractor of the facility. In
21 the event a surrogate decision is being made by an ethics
22 committee or appointed committee of the facility where the
23 patient is undergoing treatment or receiving care, the
24 facility shall notify the Alabama Department of Human
25 Resources for the purpose of allowing the department to
26 participate in the review of the matter pursuant to its

1 responsibilities under the Adult Protective Services Act,
2 Chapter 9 of Title 38.

3 "(e) The surrogate shall certify ~~and attest under~~
4 ~~oath~~ that he or she has contacted one or more of the person or
5 persons who is or are in a class equal to or higher than the
6 surrogate and that each class has either consented or
7 expressed no objections to him or her acting as surrogate or
8 to the decision made by the surrogate. The certification shall
9 be included in the medical record.

10 "(f) (1) A surrogate's decision shall nevertheless be
11 valid if: ~~(1) He~~ he or she certifies that he or she is unable
12 to contact an individual whose consent or non-objection would
13 otherwise be required because the individual's whereabouts are
14 unknown, because the individual is in a remote location and
15 cannot be contacted in sufficient time to participate in a
16 decision to provide, withhold, or withdraw the treatment, or
17 because the individual has been adjudged incompetent and
18 remains under that disability; ~~and.~~

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

24 "(g) A health care provider who provides, withholds,
25 or withdraws life-sustaining treatment or artificially
26 provided nutrition and hydration from a patient upon the
27 instructions of a surrogate who has certified ~~and attested~~

1 that he or she has qualified as a surrogate as required by
2 this section shall not be subject to civil or criminal
3 liability or be found to have committed an act of
4 unprofessional conduct for providing, withdrawing, or
5 withholding the life-sustaining treatment or artificially
6 provided nutrition and hydration, nor shall the health care
7 provider be deemed to be under a duty to investigate the
8 truthfulness of the information certified ~~and attested to~~ by
9 the surrogate.

10 "(h) A surrogate acting pursuant to this section
11 shall not be subject to civil or criminal liability or found
12 to have committed an act of unprofessional conduct for
13 decisions made in good faith to provide, withhold, withdraw,
14 continue, or institute life-sustaining treatment, or
15 artificially provided nutrition and hydration, unless the
16 surrogate falsely or fraudulently certifies ~~or attests~~ to
17 information required by this section.

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

22 "(j) If any relative, health care provider who is
23 involved directly in the care of the patient, or other
24 individual who is involved directly in providing care to the
25 patient desires to dispute the authority or the decision of a
26 surrogate to determine whether to provide, withhold, or
27 withdraw medical treatment from a patient, he or she may file

1 an action for declaratory and injunctive relief in the circuit
2 court for the county where the patient is under treatment. A
3 health care provider who is confronted by more than one
4 individual who claims authority to act as surrogate for a
5 patient may file an action for declaratory relief in the
6 circuit court for the county where the patient is under
7 treatment.

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

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

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

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

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

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