

CHAPTER 407

S.B. No. 332

AN ACT

relating to consent for medical treatment by surrogate decision-makers on behalf of incapacitated or comatose patients.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 313 to read as follows:

CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT

Sec. 313.001. SHORT TITLE. This chapter may be cited as the Consent to Medical Treatment Act.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

(4) "Hospital" means a facility licensed under Chapter 241.

(5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

(7) "Nursing home" means a facility licensed under Chapter 242.

(8) "Patient" means a person who is admitted to a hospital or residing in a nursing home.

(9) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) *a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.*

(10) *"Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.*

Sec. 313.003. EXCEPTIONS AND APPLICATION. (a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal patients under the terms of Chapter 672;

(2) a health care decision made under a durable power of attorney for health care under Chapter 135, Civil Practice and Remedies Code, or under Chapter XII, Texas Probate Code;

(3) consent to medical treatment of minors under Chapter 35, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

Sec. 313.004. CONSENT FOR MEDICAL TREATMENT. (a) If an adult patient in a hospital or nursing home is comatose, incapacitated, or otherwise mentally or physically incapable of communication, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;

(3) a majority of the patient's reasonably available adult children;

(4) the patient's parents; or

(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction under Chapter V, Texas Probate Code.

(c) Any medical treatment consented to under Subsection (a) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

(1) voluntary inpatient mental health services;

(2) electro-convulsive treatment; or

(3) the appointment of another surrogate decision-maker.

Sec. 313.005. PREREQUISITES FOR CONSENT. (a) If an adult patient in a hospital or nursing home is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

(1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and

(2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the hospital or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

Sec. 313.006. LIABILITY FOR MEDICAL TREATMENT COSTS. *Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.*

Sec. 313.007. LIMITATION ON LIABILITY. *(a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.*

(b) An attending physician, hospital, or nursing home or a person acting as an agent for or under the control of the physician, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and

(2) does not constitute a failure to exercise due care in the provision of the medical treatment.

SECTION 2. This Act takes effect September 1, 1993.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 28, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 23, 1993, by a viva-voce vote; passed the House, with amendments, on May 21, 1993, by a non-record vote.

Approved June 6, 1993.

Effective Sept. 1, 1993.