

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

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ENROLLED, 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.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§22-8A-11.

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

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

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

1            "b. The individual has no hope of regaining such  
2            ability.

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

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

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

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

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

1 require a judicial appointment before a decision can be made  
 2 under this chapter. In addition, this ~~section~~ subsection shall  
 3 not be construed to require a judicially appointed guardian  
 4 who has not been specifically authorized by a court to make  
 5 decisions regarding the providing, withholding, or withdrawing  
 6 of life-sustaining treatment or artificially provided  
 7 nutrition and hydration to make those decisions or to seek  
 8 court approval to make those decisions~~7.~~

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

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

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

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

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

17           "(7) If the patient has no relatives known to the  
 18 attending physician or to an administrator of the facility  
 19 where the patient is being treated~~7~~ and none can be found  
 20 after a reasonable inquiry, a committee composed of the  
 21 patient's primary treating physician and the ethics committee  
 22 of the facility where the patient is undergoing treatment or  
 23 receiving care, acting unanimously; or if there is no ethics  
 24 committee, by unanimous consent of a committee appointed by  
 25 the chief of medical staff or chief executive officer of the

1 facility and consisting of at least the following: (i) the  
2 primary treating physician; (ii) the chief of medical staff or  
3 his or her designee; (iii) the patient's clergyman, if known  
4 and available, or a member of the clergy who is associated  
5 with, but not employed by or an independent contractor of the  
6 facility, or a social worker associated with but neither  
7 employed by nor an independent contractor of the facility. In  
8 the event a surrogate decision is being made by an ethics  
9 committee or appointed committee of the facility where the  
10 patient is undergoing treatment or receiving care, the  
11 facility shall notify the Alabama Department of Human  
12 Resources for the purpose of allowing the department to  
13 participate in the review of the matter pursuant to its  
14 responsibilities under the Adult Protective Services Act,  
15 Chapter 9 of Title 38.

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

23 "(f) (1) A surrogate's decision shall nevertheless be  
24 valid if: ~~(1) He~~ he or she certifies that he or she is unable  
25 to contact an individual whose consent or non-objection would

1 otherwise be required because the individual's whereabouts are  
2 unknown, because the individual is in a remote location and  
3 cannot be contacted in sufficient time to participate in a  
4 decision to provide, withhold, or withdraw the treatment, or  
5 because the individual has been adjudged incompetent and  
6 remains under that disability; ~~and.~~

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

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

1           "(h) A surrogate acting pursuant to this section  
2 shall not be subject to civil or criminal liability or found  
3 to have committed an act of unprofessional conduct for  
4 decisions made in good faith to provide, withhold, withdraw,  
5 continue, or institute life-sustaining treatment, or  
6 artificially provided nutrition and hydration, unless the  
7 surrogate falsely or fraudulently certifies ~~or attests~~ to  
8 information required by this section.

9           "(i) The Alabama State Board of Health shall  
10 prescribe by rule a form, which, when completed by a surrogate  
11 ~~and duly notarized and signed in the presence of two witnesses~~  
12 who are at least 19 years of age, shall constitute the  
13 certification of the ~~surrogate as required by this chapter.~~

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

18           surrogate as required by this chapter. To be valid,  
19 a certification requires the signature of the surrogate and  
20 both witnesses. Any form created pursuant to this subsection  
21 shall state the provisions set forth in subsections (a)  
22 through (f) and include the following statement: "Under  
23 penalty of perjury, I affirm that I am exercising my best  
24 independent judgement and agreeing to do what I believe the  
25 patient desires." Under no circumstances may the patient's

1 health care provider, or an employee of the patient's health  
 2 care provider who is not a relative of the patient, serve as a  
 3 witness to the certification of the surrogate.

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

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

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

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

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

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

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 08-FEB-22, as amended.

Jeff Woodard  
Clerk

Senate	17-MAR-22	Amended and Passed
House	07-APR-22	Concurred in Senate Amendment