



Sen. Sara Feigenholtz

Filed: 4/14/2021

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LRB102 10223 LNS 23908 a

1 AMENDMENT TO SENATE BILL 109

2 AMENDMENT NO. _____. Amend Senate Bill 109 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Health Care Surrogate Act is amended by
5 changing Sections 10, 20, and 65 as follows:

6 (755 ILCS 40/10) (from Ch. 110 1/2, par. 851-10)

7 Sec. 10. Definitions.

8 "Adult" means a person who is (i) 18 years of age or older
9 or (ii) an emancipated minor under the Emancipation of Minors
10 Act.

11 "Artificial nutrition and hydration" means supplying food
12 and water through a conduit, such as a tube or intravenous
13 line, where the recipient is not required to chew or swallow
14 voluntarily, including, but not limited to, nasogastric tubes,
15 gastrostomies, jejunostomies, and intravenous infusions.
16 Artificial nutrition and hydration does not include assisted

1 feeding, such as spoon or bottle feeding.

2 "Available" means that a person is not "unavailable". A
3 person is unavailable if (i) the person's existence is not
4 known, (ii) the person has not been able to be contacted by
5 telephone or mail, or (iii) the person lacks decisional
6 capacity, refuses to accept the office of surrogate, or is
7 unwilling to respond in a manner that indicates a choice among
8 the treatment matters at issue.

9 "Attending physician" means the physician selected by or
10 assigned to the patient who has primary responsibility for
11 treatment and care of the patient and who is a licensed
12 physician in Illinois. If more than one physician shares that
13 responsibility, any of those physicians may act as the
14 attending physician under this Act.

15 "Close friend" means any person 18 years of age or older
16 who has exhibited special care and concern for the patient and
17 who presents an affidavit to the attending physician stating
18 that he or she (i) is a close friend of the patient, (ii) is
19 willing and able to become involved in the patient's health
20 care, and (iii) has maintained such regular contact with the
21 patient as to be familiar with the patient's activities,
22 health, and religious and moral beliefs. The affidavit must
23 also state facts and circumstances that demonstrate that
24 familiarity.

25 "Death" means when, according to accepted medical
26 standards, there is (i) an irreversible cessation of

1 circulatory and respiratory functions or (ii) an irreversible
2 cessation of all functions of the entire brain, including the
3 brain stem.

4 "Decisional capacity" means the ability to understand and
5 appreciate the nature and consequences of a decision regarding
6 medical treatment or forgoing life-sustaining treatment and
7 the ability to reach and communicate an informed decision in
8 the matter as determined by the attending physician.

9 "Forgo life-sustaining treatment" means to withhold,
10 withdraw, or terminate all or any portion of life-sustaining
11 treatment with knowledge that the patient's death is likely to
12 result.

13 "Guardian" means a court appointed guardian of the person
14 who serves as a representative of a minor or as a
15 representative of a person under legal disability.

16 "Health care facility" means a type of health care
17 provider commonly known by a wide variety of titles, including
18 but not limited to, hospitals, medical centers, nursing homes,
19 rehabilitation centers, long term or tertiary care facilities,
20 and other facilities established to administer health care and
21 provide overnight stays in their ordinary course of business
22 or practice.

23 "Health care provider" means a person that is licensed,
24 certified, or otherwise authorized or permitted by the law of
25 this State to administer health care in the ordinary course of
26 business or practice of a profession, including, but not

1 limited to, physicians, nurses, health care facilities, and
2 any employee, officer, director, agent, or person under
3 contract with such a person.

4 "Imminent" (as in "death is imminent") means a
5 determination made by the attending physician according to
6 accepted medical standards that death will occur in a
7 relatively short period of time, even if life-sustaining
8 treatment is initiated or continued.

9 "Life-sustaining treatment" means any medical treatment,
10 procedure, or intervention that, in the judgment of the
11 attending physician, when applied to a patient with a
12 qualifying condition, would not be effective to remove the
13 qualifying condition or would serve only to prolong the dying
14 process. Those procedures can include, but are not limited to,
15 assisted ventilation, renal dialysis, surgical procedures,
16 blood transfusions, and the administration of drugs,
17 antibiotics, and artificial nutrition and hydration.

18 "Minor" means an individual who is not an adult as defined
19 in this Act.

20 "Parent" means a person who is the natural or adoptive
21 mother or father of the child and whose parental rights have
22 not been terminated by a court of law.

23 "Patient" means an adult or minor individual, unless
24 otherwise specified, under the care or treatment of a licensed
25 physician or other health care provider.

26 "Person" means an individual, a corporation, a business

1 trust, a trust, a partnership, an association, a government, a
2 governmental subdivision or agency, or any other legal entity.

3 "Qualifying condition" means the existence of one or more
4 of the following conditions in a patient certified in writing
5 in the patient's medical record by the attending physician and
6 by at least one other qualified health care practitioner
7 ~~physician~~:

8 (1) "Terminal condition" means an illness or injury
9 for which there is no reasonable prospect of cure or
10 recovery, death is imminent, and the application of
11 life-sustaining treatment would only prolong the dying
12 process.

13 (2) "Permanent unconsciousness" means a condition
14 that, to a high degree of medical certainty, (i) will last
15 permanently, without improvement, (ii) in which thought,
16 sensation, purposeful action, social interaction, and
17 awareness of self and environment are absent, and (iii)
18 for which initiating or continuing life-sustaining
19 treatment, in light of the patient's medical condition,
20 provides only minimal medical benefit.

21 (3) "Incurable or irreversible condition" means an
22 illness or injury (i) for which there is no reasonable
23 prospect of cure or recovery, (ii) that ultimately will
24 cause the patient's death even if life-sustaining
25 treatment is initiated or continued, (iii) that imposes
26 severe pain or otherwise imposes an inhumane burden on the

1 patient, and (iv) for which initiating or continuing
2 life-sustaining treatment, in light of the patient's
3 medical condition, provides only minimal medical benefit.

4 The determination that a patient has a qualifying
5 condition creates no presumption regarding the application or
6 non-application of life-sustaining treatment. It is only after
7 a determination by the attending physician that the patient
8 has a qualifying condition that the surrogate decision maker
9 may consider whether or not to forgo life-sustaining
10 treatment. In making this decision, the surrogate shall weigh
11 the burdens on the patient of initiating or continuing
12 life-sustaining treatment against the benefits of that
13 treatment.

14 "Qualified health care practitioner" means an individual
15 who has personally examined the patient and who is an Illinois
16 licensed physician, advanced practice registered nurse,
17 physician assistant, or resident with at least one year of
18 graduate or specialty training in this State who holds an
19 Illinois temporary license to practice medicine and is
20 enrolled in a residency program accredited by the Liaison
21 Committee on Graduate Medical Education or the Bureau of
22 Professional Education of the American Osteopathic
23 Association.

24 "Physician" means a physician licensed to practice
25 medicine in all its branches in this State.

26 ~~"Qualified physician" means a physician licensed to~~

1 ~~practice medicine in all of its branches in Illinois who has~~
2 ~~personally examined the patient.~~

3 "Surrogate decision maker" means an adult individual or
4 individuals who (i) have decisional capacity, (ii) are
5 available upon reasonable inquiry, (iii) are willing to make
6 medical treatment decisions on behalf of a patient who lacks
7 decisional capacity, and (iv) are identified by the attending
8 physician in accordance with the provisions of this Act as the
9 person or persons who are to make those decisions in
10 accordance with the provisions of this Act.

11 (Source: P.A. 95-331, eff. 8-21-07.)

12 (755 ILCS 40/20) (from Ch. 110 1/2, par. 851-20)

13 Sec. 20. Private decision making process.

14 (a) Decisions whether to forgo life-sustaining or any
15 other form of medical treatment involving an adult patient
16 with decisional capacity may be made by that adult patient.

17 (b) Decisions whether to forgo life-sustaining treatment
18 on behalf of a patient without decisional capacity are lawful,
19 without resort to the courts or legal process, if the patient
20 has a qualifying condition and if the decisions are made in
21 accordance with one of the following paragraphs in this
22 subsection and otherwise meet the requirements of this Act:

23 (1) Decisions whether to forgo life-sustaining
24 treatment on behalf of a minor or an adult patient who
25 lacks decisional capacity may be made by a surrogate

1 decision maker or makers in consultation with the
2 attending physician, in the order or priority provided in
3 Section 25. A surrogate decision maker shall make
4 decisions for the adult patient conforming as closely as
5 possible to what the patient would have done or intended
6 under the circumstances, taking into account evidence that
7 includes, but is not limited to, the patient's personal,
8 philosophical, religious and moral beliefs and ethical
9 values relative to the purpose of life, sickness, medical
10 procedures, suffering, and death. Where possible, the
11 surrogate shall determine how the patient would have
12 weighed the burdens and benefits of initiating or
13 continuing life-sustaining treatment against the burdens
14 and benefits of that treatment. In the event an unrevoked
15 advance directive, such as a living will, a declaration
16 for mental health treatment, or a power of attorney for
17 health care, is no longer valid due to a technical
18 deficiency or is not applicable to the patient's
19 condition, that document may be used as evidence of a
20 patient's wishes. The absence of a living will,
21 declaration for mental health treatment, or power of
22 attorney for health care shall not give rise to any
23 presumption as to the patient's preferences regarding the
24 initiation or continuation of life-sustaining procedures.
25 If the adult patient's wishes are unknown and remain
26 unknown after reasonable efforts to discern them or if the

1 patient is a minor, the decision shall be made on the basis
2 of the patient's best interests as determined by the
3 surrogate decision maker. In determining the patient's
4 best interests, the surrogate shall weigh the burdens on
5 and benefits to the patient of initiating or continuing
6 life-sustaining treatment against the burdens and benefits
7 of that treatment and shall take into account any other
8 information, including the views of family and friends,
9 that the surrogate decision maker believes the patient
10 would have considered if able to act for herself or
11 himself.

12 (2) Decisions whether to forgo life-sustaining
13 treatment on behalf of a minor or an adult patient who
14 lacks decisional capacity, but without any surrogate
15 decision maker or guardian being available determined
16 after reasonable inquiry by the health care provider, may
17 be made by a court appointed guardian. A court appointed
18 guardian shall be treated as a surrogate for the purposes
19 of this Act.

20 (b-5) Decisions concerning medical treatment on behalf of
21 a patient without decisional capacity are lawful, without
22 resort to the courts or legal process, if the patient does not
23 have a qualifying condition and if decisions are made in
24 accordance with one of the following paragraphs in this
25 subsection and otherwise meet the requirements of this Act:

26 (1) Decisions concerning medical treatment on behalf

1 of a minor or adult patient who lacks decisional capacity
2 may be made by a surrogate decision maker or makers in
3 consultation with the attending physician, in the order of
4 priority provided in Section 25 with the exception that
5 decisions to forgo life-sustaining treatment may be made
6 only when a patient has a qualifying condition. A
7 surrogate decision maker shall make decisions for the
8 patient conforming as closely as possible to what the
9 patient would have done or intended under the
10 circumstances, taking into account evidence that includes,
11 but is not limited to, the patient's personal,
12 philosophical, religious, and moral beliefs and ethical
13 values relative to the purpose of life, sickness, medical
14 procedures, suffering, and death. In the event an
15 unrevoked advance directive, such as a living will, a
16 declaration for mental health treatment, or a power of
17 attorney for health care, is no longer valid due to a
18 technical deficiency or is not applicable to the patient's
19 condition, that document may be used as evidence of a
20 patient's wishes. The absence of a living will,
21 declaration for mental health treatment, or power of
22 attorney for health care shall not give rise to any
23 presumption as to the patient's preferences regarding any
24 process. If the adult patient's wishes are unknown and
25 remain unknown after reasonable efforts to discern them or
26 if the patient is a minor, the decision shall be made on

1 the basis of the patient's best interests as determined by
2 the surrogate decision maker. In determining the patient's
3 best interests, the surrogate shall weigh the burdens on
4 and benefits to the patient of the treatment against the
5 burdens and benefits of that treatment and shall take into
6 account any other information, including the views of
7 family and friends, that the surrogate decision maker
8 believes the patient would have considered if able to act
9 for herself or himself.

10 (2) Decisions concerning medical treatment on behalf
11 of a minor or adult patient who lacks decisional capacity,
12 but without any surrogate decision maker or guardian being
13 available as determined after reasonable inquiry by the
14 health care provider, may be made by a court appointed
15 guardian. A court appointed guardian shall be treated as a
16 surrogate for the purposes of this Act.

17 (c) For the purposes of this Act, a patient or surrogate
18 decision maker is presumed to have decisional capacity in the
19 absence of actual notice to the contrary without regard to
20 advanced age. With respect to a patient, a diagnosis of mental
21 illness or an intellectual disability, of itself, is not a bar
22 to a determination of decisional capacity. A determination
23 that an adult patient lacks decisional capacity shall be made
24 by the attending physician to a reasonable degree of medical
25 certainty. The determination shall be in writing in the
26 patient's medical record and shall set forth the attending

1 physician's opinion regarding the cause, nature, and duration
2 of the patient's lack of decisional capacity. Before
3 implementation of a decision by a surrogate decision maker to
4 forgo life-sustaining treatment, at least one other qualified
5 health care practitioner ~~physician~~ must concur in the
6 determination that an adult patient lacks decisional capacity.
7 The concurring determination shall be made in writing in the
8 patient's medical record after personal examination of the
9 patient. The attending physician shall inform the patient that
10 it has been determined that the patient lacks decisional
11 capacity and that a surrogate decision maker will be making
12 life-sustaining treatment decisions on behalf of the patient.
13 Moreover, the patient shall be informed of the identity of the
14 surrogate decision maker and any decisions made by that
15 surrogate. If the person identified as the surrogate decision
16 maker is not a court appointed guardian and the patient
17 objects to the statutory surrogate decision maker or any
18 decision made by that surrogate decision maker, then the
19 provisions of this Act shall not apply.

20 (d) A surrogate decision maker acting on behalf of the
21 patient shall express decisions to forgo life-sustaining
22 treatment to the attending physician and one adult witness who
23 is at least 18 years of age. This decision and the substance of
24 any known discussion before making the decision shall be
25 documented by the attending physician in the patient's medical
26 record and signed by the witness.

1 (e) The existence of a qualifying condition shall be
2 documented in writing in the patient's medical record by the
3 attending physician and shall include its cause and nature, if
4 known. The written concurrence of another qualified health
5 care practitioner ~~physician~~ is also required.

6 (f) Once the provisions of this Act are complied with, the
7 attending physician shall thereafter promptly implement the
8 decision to forgo life-sustaining treatment on behalf of the
9 patient unless he or she believes that the surrogate decision
10 maker is not acting in accordance with his or her
11 responsibilities under this Act, or is unable to do so for
12 reasons of conscience or other personal views or beliefs.

13 (g) In the event of a patient's death as determined by a
14 physician, all life-sustaining treatment and other medical
15 care is to be terminated, unless the patient is an organ donor,
16 in which case appropriate organ donation treatment may be
17 applied or continued temporarily.

18 (h) A surrogate decision maker may execute a POLST
19 portable medical orders form to forgo life sustaining
20 treatment consistent with this Section.

21 (Source: P.A. 97-227, eff. 1-1-12.)

22 (755 ILCS 40/65)

23 Sec. 65. Department of Public Health Uniform POLST form.

24 (a) An individual of sound mind and having reached the age
25 of majority or having obtained the status of an emancipated

1 person pursuant to the Emancipation of Minors Act may execute
2 a document (consistent with the Department of Public Health
3 Uniform POLST form described in Section 2310-600 of the
4 Department of Public Health Powers and Duties Law of the Civil
5 Administrative Code of Illinois) directing that resuscitating
6 efforts shall not be implemented. This individual may also
7 revoke the document at will. Such a document may also be
8 executed by a qualified ~~an attending~~ health care practitioner.
9 If more than one practitioner shares ~~that~~ responsibility for
10 the treatment and care of an individual, any of the qualified
11 ~~attending~~ health care practitioners may act under this
12 Section. Notwithstanding the existence of a do-not-resuscitate
13 (DNR) order or Department of Public Health Uniform POLST form,
14 appropriate organ donation treatment may be applied or
15 continued temporarily in the event of the patient's death, in
16 accordance with subsection (g) of Section 20 of this Act, if
17 the patient is an organ donor.

18 (a-5) Execution of a Department of Public Health Uniform
19 POLST form is voluntary; no person can be required to execute
20 the either form. Execution of a POLST form shall not be a
21 requirement for admission to any facility or a precondition to
22 the provision of services by any provider of health care
23 services. A person who has executed a Department of Public
24 Health Uniform POLST form should review the form annually and
25 when the person's condition changes.

26 (b) Consent to a Department of Public Health Uniform POLST

1 form may be obtained from the individual, or from another
2 person at the individual's direction, or from the individual's
3 legal guardian, agent under a power of attorney for health
4 care, or surrogate decision maker, ~~and witnessed by one~~
5 ~~individual 18 years of age or older, who attests that the~~
6 ~~individual, other person, guardian, agent, or surrogate (1)~~
7 ~~has had an opportunity to read the form, and (2) has signed the~~
8 ~~form or acknowledged his or her signature or mark on the form~~
9 ~~in the witness's presence.~~

10 (b-5) As used in this Section: 7

11 ~~"attending health care practitioner" means an individual~~
12 ~~who (1) is an Illinois licensed physician, advanced practice~~
13 ~~registered nurse, physician assistant, or licensed resident~~
14 ~~after completion of one year in a program; (2) is selected by~~
15 ~~or assigned to the patient; and (3) has primary responsibility~~
16 ~~for treatment and care of the patient.~~

17 "POLST" means practitioner orders for life-sustaining
18 treatments.

19 "POLST portable medical orders form" means a medical
20 orders form, including, but not limited to, a Medical Orders
21 for Scope of Treatment (MOST), Medical Orders for Life
22 Sustaining Treatment (MOLST), Physician Orders for Scope of
23 Treatment (POST), or Physician Orders for Life Sustaining
24 Treatment (POLST) form, that is formally authorized by a state
25 or territory within the United States.

26 (c) Nothing in this Section shall be construed to affect

1 the ability of an individual to include instructions in an
2 advance directive, such as a power of attorney for health
3 care. The uniform form may, but need not, be in the form
4 adopted by the Department of Public Health pursuant to Section
5 2310-600 of the Department of Public Health Powers and Duties
6 Law (20 ILCS 2310/2310-600). Except as otherwise provided by
7 law, emergency medical service personnel, a health care
8 provider, or a health care facility shall comply with a
9 Department of Public Health Uniform POLST form, National POLST
10 form, another state's POLST portable medical orders form, or
11 an out-of-hospital Do Not Resuscitate (DNR) order sanctioned
12 by a state in the United States that: (i) has been executed by
13 an adult; and (ii) is apparent and immediately available.

14 (d) A health care professional or health care provider may
15 presume, in the absence of knowledge to the contrary, that a
16 completed Department of Public Health Uniform POLST form,
17 National POLST form, another state's POLST portable medical
18 orders form, or an out-of-hospital Do Not Resuscitate (DNR)
19 order sanctioned by a state in the United States executed by an
20 adult, or a copy of that form or a previous version of the
21 uniform form, is valid. A health care professional or health
22 care provider, or an employee of a health care professional or
23 health care provider, who in good faith complies with a
24 cardiopulmonary resuscitation (CPR) or life-sustaining
25 treatment order, Department of Public Health Uniform POLST
26 form, or a previous version of the uniform form made in

1 accordance with this Act is not, as a result of that
2 compliance, subject to any criminal or civil liability, except
3 for willful and wanton misconduct, and may not be found to have
4 committed an act of unprofessional conduct.

5 (d-5) Before voiding or revoking a Department of Public
6 Health Uniform POLST form, National POLST form, or another
7 state's POLST portable medical orders form executed by the
8 individual, that individual's legally authorized surrogate
9 decision maker shall first: (1) engage in consultation with a
10 qualified health care practitioner; (2) consult the patient's
11 advance directive, if available; and (3) make a good faith
12 effort to act consistently, at all times, with the patient's
13 known wishes, using substituted judgment as the standard. If
14 the patient's wishes are unknown and remain unknown after
15 reasonable efforts to discern them, the decision shall be made
16 on the basis of the patient's best interests as determined by
17 the surrogate decision maker. A qualified health care
18 practitioner shall document the reasons for this action in the
19 patient's medical record. This process does not apply to an
20 individual wanting to revoke his or her own POLST form.

21 (e) Nothing in this Section or this amendatory Act of the
22 94th General Assembly or this amendatory Act of the 98th
23 General Assembly shall be construed to affect the ability of a
24 physician or other practitioner to make a do-not-resuscitate
25 order.

26 (Source: P.A. 99-319, eff. 1-1-16; 100-513, eff. 1-1-18.)".