

SB2974



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2974

Introduced 1/5/2022, by Sen. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

755 ILCS 40/10

from Ch. 110 1/2, par. 851-10

Amends the Health Care Surrogate Act by reconciling the changes to definitions that were made by Public Acts 102-140 and 102-182. Effective immediately.

LRB102 22492 LNS 31633 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Health Care Surrogate Act is amended by
5 changing Section 10 as follows:

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

7 (Text of Section from P.A. 102-140)

8 Sec. 10. Definitions.

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

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

19 "Available" means that a person is not "unavailable". A
20 person is unavailable if (i) the person's existence is not
21 known, (ii) the person has not been able to be contacted by
22 telephone or mail, or (iii) the person lacks decisional
23 capacity, refuses to accept the office of surrogate, or is

1 unwilling to respond in a manner that indicates a choice among
2 the treatment matters at issue.

3 "Attending physician" means the physician selected by or
4 assigned to the patient who has primary responsibility for
5 treatment and care of the patient and who is a licensed
6 physician in Illinois or a physician licensed in the state
7 where the patient is being treated. If more than one physician
8 shares that responsibility, any of those physicians may act as
9 the attending physician under this Act.

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

20 "Death" means when, according to accepted medical
21 standards, there is (i) an irreversible cessation of
22 circulatory and respiratory functions or (ii) an irreversible
23 cessation of all functions of the entire brain, including the
24 brain stem.

25 "Decisional capacity" means the ability to understand and
26 appreciate the nature and consequences of a decision regarding

1 medical treatment or forgoing life-sustaining treatment and
2 the ability to reach and communicate an informed decision in
3 the matter as determined by the attending physician.

4 "Forgo life-sustaining treatment" means to withhold,
5 withdraw, or terminate all or any portion of life-sustaining
6 treatment with knowledge that the patient's death is likely to
7 result.

8 "Guardian" means a court appointed guardian of the person
9 who serves as a representative of a minor or as a
10 representative of a person under legal disability.

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

18 "Health care provider" means a person that is licensed,
19 certified, or otherwise authorized or permitted by the law of
20 this State or licensed in the state where the patient is being
21 treated to administer health care in the ordinary course of
22 business or practice of a profession, including, but not
23 limited to, physicians, nurses, health care facilities, and
24 any employee, officer, director, agent, or person under
25 contract with such a person.

26 "Imminent" (as in "death is imminent") means a

1 determination made by the attending physician according to
2 accepted medical standards that death will occur in a
3 relatively short period of time, even if life-sustaining
4 treatment is initiated or continued.

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

14 "Minor" means an individual who is not an adult as defined
15 in this Act.

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

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

22 "Person" means an individual, a corporation, a business
23 trust, a trust, a partnership, an association, a government, a
24 governmental subdivision or agency, or any other legal entity.

25 "Qualifying condition" means the existence of one or more
26 of the following conditions in a patient certified in writing

1 in the patient's medical record by the attending physician and
2 by at least one other qualified health care practitioner:

3 (1) "Terminal condition" means an illness or injury
4 for which there is no reasonable prospect of cure or
5 recovery, death is imminent, and the application of
6 life-sustaining treatment would only prolong the dying
7 process.

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

16 (3) "Incurable or irreversible condition" means an
17 illness or injury (i) for which there is no reasonable
18 prospect of cure or recovery, (ii) that ultimately will
19 cause the patient's death even if life-sustaining
20 treatment is initiated or continued, (iii) that imposes
21 severe pain or otherwise imposes an inhumane burden on the
22 patient, and (iv) for which initiating or continuing
23 life-sustaining treatment, in light of the patient's
24 medical condition, provides only minimal medical benefit.

25 The determination that a patient has a qualifying
26 condition creates no presumption regarding the application or

1 non-application of life-sustaining treatment. It is only after
2 a determination by the attending physician that the patient
3 has a qualifying condition that the surrogate decision maker
4 may consider whether or not to forgo life-sustaining
5 treatment. In making this decision, the surrogate shall weigh
6 the burdens on the patient of initiating or continuing
7 life-sustaining treatment against the benefits of that
8 treatment.

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

20 "Physician" means a physician licensed to practice
21 medicine in all its branches in this State or in the state
22 where the patient is being treated.

23 "Surrogate decision maker" means an adult individual or
24 individuals who (i) have decisional capacity, (ii) are
25 available upon reasonable inquiry, (iii) are willing to make
26 medical treatment decisions on behalf of a patient who lacks

1 decisional capacity, and (iv) are identified by the attending
2 physician in accordance with the provisions of this Act as the
3 person or persons who are to make those decisions in
4 accordance with the provisions of this Act.

5 (Source: P.A. 102-140, eff. 1-1-22.)

6 (Text of Section from P.A. 102-182)

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4 where the patient is being treated. If more than one physician
5 shares that responsibility, any of those physicians may act as
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17 this State or licensed in the state where the patient is being
18 treated to administer health care in the ordinary course of
19 business or practice of a profession, including, but not
20 limited to, physicians, nurses, health care facilities, and
21 any employee, officer, director, agent, or person under
22 contract with such a person.

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24 determination made by the attending physician according to
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26 relatively short period of time, even if life-sustaining

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26 ~~physician~~:

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10 who is a physician, advanced practice registered nurse,
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12 graduate or specialty training who holds a temporary license
13 to practice medicine and is enrolled in a residency program
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19 where the patient is being treated.

20 ~~"Qualified physician" means a physician licensed to~~
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22 ~~physician licensed in the state where the patient is being~~
23 ~~treated who has personally examined the patient.~~

24 "Surrogate decision maker" means an adult individual or
25 individuals who (i) have decisional capacity, (ii) are
26 available upon reasonable inquiry, (iii) are willing to make

1 medical treatment decisions on behalf of a patient who lacks
2 decisional capacity, and (iv) are identified by the attending
3 physician in accordance with the provisions of this Act as the
4 person or persons who are to make those decisions in
5 accordance with the provisions of this Act.

6 (Source: P.A. 102-182, eff. 7-30-21.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.