

1 AN ACT in relation to health care surrogates.

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 25 as follows:

6 (755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

7 Sec. 25. Surrogate decision making.

8 (a) When a patient lacks decisional capacity, the health
9 care provider must make a reasonable inquiry as to the
10 availability and authority of a health care agent under the
11 Powers of Attorney for Health Care Law. When no health care
12 agent is authorized and available, the health care provider
13 must make a reasonable inquiry as to the availability of
14 possible surrogates listed in items (1) through (4) of this
15 subsection. For purposes of this Section, a reasonable
16 inquiry includes, but is not limited to, identifying a member
17 of the patient's family or other health care agent by
18 examining the patient's personal effects or medical records.
19 If a family member or other health care agent is identified,
20 an attempt to contact that person by telephone must be made
21 within 24 hours after a determination by the provider that
22 the patient lacks decisional capacity.

23 The surrogate decision makers, as identified by the
24 attending physician, are then authorized to make decisions as
25 follows: (i) for patients who lack decisional capacity and
26 do not have a qualifying condition, medical treatment
27 decisions may be made in accordance with subsection (b-5) of
28 Section 20; and (ii) for patients who lack decisional
29 capacity and have a qualifying condition, medical treatment
30 decisions including whether to forgo life-sustaining
31 treatment on behalf of the patient may be made without court

1 order or judicial involvement in the following order of
2 priority:

- 3 (1) the patient's guardian of the person;
- 4 (2) the patient's spouse;
- 5 (3) any adult son or daughter of the patient;
- 6 (4) either parent of the patient;
- 7 (5) any adult brother or sister of the patient;
- 8 (6) any adult grandchild of the patient;
- 9 (7) a close friend of the patient;
- 10 (8) the patient's guardian of the estate.

11 The health care provider shall have the right to rely on
12 any of the above surrogates if the provider believes after
13 reasonable inquiry that neither a health care agent under the
14 Powers of Attorney for Health Care Law nor a surrogate of
15 higher priority is available.

16 Where there are multiple surrogate decision makers at the
17 same priority level in the hierarchy, it shall be the
18 responsibility of those surrogates to make reasonable efforts
19 to reach a consensus as to their decision on behalf of the
20 patient regarding the forgoing of life-sustaining treatment.
21 If 2 or more surrogates who are in the same category and have
22 equal priority indicate to the attending physician that they
23 disagree about the health care matter at issue, a majority of
24 the available persons in that category (or the parent with
25 custodial rights) shall control, unless the minority (or the
26 parent without custodial rights) initiates guardianship
27 proceedings in accordance with the Probate Act of 1975. No
28 health care provider or other person is required to seek
29 appointment of a guardian.

30 (b) After a surrogate has been identified, the name,
31 address, telephone number, and relationship of that person to
32 the patient shall be recorded in the patient's medical
33 record.

34 (c) Any surrogate who becomes unavailable for any reason

1 may be replaced by applying the provisions of Section 25 in
2 the same manner as for the initial choice of surrogate.

3 (d) In the event an individual of a higher priority to
4 an identified surrogate becomes available and willing to be
5 the surrogate, the individual with higher priority may be
6 identified as the surrogate. In the event an individual in a
7 higher, a lower, or the same priority level or a health care
8 provider seeks to challenge the priority of or the
9 life-sustaining treatment decision of the recognized
10 surrogate decision maker, the challenging party may initiate
11 guardianship proceedings in accordance with the Probate Act
12 of 1975.

13 (e) The surrogate decision maker shall have the same
14 right as the patient to receive medical information and
15 medical records and to consent to disclosure.

16 (Source: P.A. 90-246, eff. 1-1-98.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.