

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1112

Short Title: Surrogate Consent/Health Care.

(Public)

Sponsors: Representative Nesbitt.

Referred to: Human Resources, if favorable, Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SURROGATE CONSENT FOR HEALTH CARE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 33.

"SURROGATE CONSENT FOR HEALTH CARE.

"§ 90-512. Purpose.

(a) The purpose of this Article is to provide a procedure for determining which person or persons may make health care decisions for adult individuals who lack sufficient understanding or capacity to make or communicate health care decisions, and for whom there is no authorized health care agent, guardian of the person, or attorney-in-fact as described herein or that person is not reasonably available.

(b) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes, provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control.

(c) This Article is intended and shall be construed to be consistent with the provisions of Article 16 of Chapter 130A of the General Statutes, provided that in the

1 event of a conflict between the provisions of this Article and Article 16 of Chapter 130A,
2 the provisions of Article 16 of Chapter 130A control.

3 (d) This Article does not authorize an individual's voluntary admission to a 24-
4 hour facility licensed or deemed licensed under Article 2 of Chapter 122C of the General
5 Statutes, nor does it affect the law governing involuntary commitment for mental illness
6 or substance abuse as provided in Article 5 of Chapter 122C of the General Statutes.

7 (e) For purposes of this Article, a person shall not be presumed to be incapacitated
8 merely by reason of advanced age or disability. With respect to a person who has a
9 diagnosis of mental illness or mental retardation, such diagnosis shall not operate as a
10 presumption that the person lacks capacity to make or communicate health care
11 decisions.

12 (f) Nothing in this Article shall be construed to preclude any interested person
13 from initiating a guardianship proceeding pursuant to Article 5 of Chapter 35A of the
14 General Statutes or from petitioning the superior court of the county where the patient
15 resides or is located for appropriate relief.

16 **"§ 90-513. Definitions.**

17 As used in this Article unless the context otherwise requires:

18 (1) 'Capacity' means a patient's ability to understand the significant benefits,
19 risks, and alternatives to proposed health care and to make and
20 communicate a health care decision.

21 (2) 'Reasonably available' means readily able to be contacted without undue
22 effort and willing and able to act in a timely manner considering the
23 urgency of the patient's health care needs.

24 (3) 'Surrogate' means an individual, other than a patient's health care agent,
25 guardian of the person or attorney-in-fact, who is authorized under this
26 Article to make a health care decision for the patient.

27 **"§ 90-514. Decisions by surrogate.**

28 (a) If an adult individual, in the opinion of the individual's attending physician,
29 lacks sufficient understanding or capacity to make or communicate health care decisions,
30 the following persons, in descending order of priority are authorized to make health care
31 decisions for the adult individual:

32 (1) A guardian of the person appointed by a court of competent jurisdiction
33 pursuant to Article 5 of Chapter 35A of the General Statutes, to the
34 extent that such powers are consistent with those conferred upon the
35 guardian by the court;

36 (2) A health care agent appointed pursuant to a health care power of
37 attorney executed pursuant to Article 3 of Chapter 32A of the General
38 Statutes, to the extent that the health care agent's powers are consistent
39 with the powers granted by the principal;

40 (3) An attorney-in-fact appointed pursuant to a durable power of attorney
41 which specifically includes the powers described in Section 32A-2(9) of
42 the General Statutes;

1 (4) The patient's spouse, unless a decree of divorce or legal separation from
2 the patient has been entered;

3 (5) An adult child of the patient or, if there is more than one adult child, a
4 majority of the adult children who are reasonably available for
5 consultation;

6 (6) A parent of the patient; or

7 (7) An adult sibling of the patient or, if there is more than one adult sibling,
8 a majority of the adult siblings who are reasonably available for
9 consultation.

10 (b) If more than one member of a class has authority to act as surrogate, and they
11 do not agree on a health care decision, and the attending physician is so informed, the
12 attending physician and other health care providers caring for the patient shall comply
13 with the decision of a majority of the members of those who have communicated their
14 views to the attending physician. If the adult children or adult siblings are evenly divided
15 concerning the health care decision and the attending physician is so informed, they and
16 all individuals having lower priority are disqualified from making the health care
17 decision.

18 (c) A surrogate shall make a health care decision in accordance with the patient's
19 wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the
20 decision in accordance with the surrogate's determination of the patient's best interest. In
21 determining the patient's best interest, the surrogate shall consider the patient's personal
22 values to the extent known to the surrogate.

23 (d) A surrogate has the same rights as the patient to request, receive, examine,
24 copy, and consent to the disclosure to medical or other health care information.

25 (e) Unless related to the patient by blood, marriage, or adoption, a surrogate may
26 not be a physician attending the patient, nor an employee of an attending physician, nor
27 an employee of a health service facility in which the person was a patient, or any group-
28 care home in which the person resided.

29 **"§ 90-515. Conscience objections; obligations of health care providers.**

30 (a) An attending physician may decline to comply with a health care decision for
31 reasons of conscience. A health service facility may decline to comply with a health care
32 decision if the decision is contrary to a policy of the health service facility which is
33 expressly based on reasons of conscience.

34 (b) An attending physician or health care health service facility that declines to
35 comply with a health care decision shall promptly so inform the surrogate, provide care
36 to the patient until a transfer can be effected, and, unless the surrogate refuses assistance,
37 immediately make all reasonable efforts to assist in the transfer of the patient to another
38 attending physician or health service facility that is willing to comply with the decision.

39 (c) The determination that the patient lacks capacity shall be documented by the
40 attending physician in the patient's medical record.

41 **"§ 90-516. Reliance on surrogate.**

- 1 (a) An attending physician, other health care provider or health service facility
2 acting in good faith and in accordance with generally accepted standards of practice is not
3 subject to civil or criminal liability or to discipline for unprofessional conduct for:
4 (1) Complying with a health care decision of a person apparently having
5 authority to make a health care decision for a patient, including a
6 decision to withhold or withdraw health care;
7 (2) Declining to comply with a health care decision of a person based on a
8 belief that the person then lacked authority.
9 (b) An individual acting as surrogate under this Article is not subject to discipline
10 for unprofessional conduct for health care decisions made in good faith."
11 Section 2. This act becomes effective October 1, 1997.