

Regular Session, 2012

SENATE BILL NO. 114

BY SENATOR MILLS

HEALTH CARE. Amends the advance directive statute to conform it with the general consent statute regarding the authorized persons order of priority. (8/1/12)

AN ACT

To amend and reenact R.S. 40:1299.58.5(A)(2)(a) and (b) and (3), relative to declarations concerning medical procedures; to provide with respect to the order of priority for the procedure for making a declaration for a qualified patient who has not previously made a declaration; to provide for voting number when the class involves multiple persons; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.58.5(A)(2)(a) and (b) and (3) are hereby amended and reenacted to read as follows:

§1299.58.5. Procedure for making a declaration for a qualified patient who has not previously made a declaration

A.(1) * * *

(2) When a comatose or incompetent person or a person who is physically or mentally incapable of communication has been certified as a qualified patient and has not previously made a declaration, any of the following individuals in the following order of priority, if there is no individual in a prior class who is reasonably available, willing, and competent to act, may make a declaration on the qualified

patient's behalf:

(a) ~~Any person or persons previously designated by the patient, while an adult, by written instrument signed by the patient in the presence of at least two witnesses, to have the authority to make a declaration for the patient in the event of the patient's inability to do so. If the instrument so authorizes more than one person, it may include the order in which the persons designated shall have authority to make the declaration.~~ **The judicially appointed tutor or curator of the patient if one has been appointed. This Subparagraph shall not be construed to require such appointment in order that a declaration can be made under this Section.**

(b) ~~The judicially appointed tutor or curator of the patient if one has been appointed. This Subparagraph shall not be construed to require such appointment in order that a declaration can be made under this Section.~~ **Any person or persons previously designated by the patient, while an adult, by written instrument signed by the patient in the presence of at least two witnesses, to have the authority to make a declaration for the patient in the event of the patient's inability to do so. If the instrument so authorizes more than one person, it may include the order in which the persons designated shall have authority to make the declaration.**

* * *

(3) If there is more than one person within the above named class in Subparagraphs (d) through (g), then the declaration shall be made by ~~at~~ **a majority** of that class available for consultation upon good faith efforts to secure participation of all of that class.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Christopher D. Adams.

DIGEST

Present law provides the procedure for making a declaration concerning medical procedures for a qualified patient who has not previously made a declaration.

Proposed law swaps the order of priority and moves a judicially appointed tutor or curator

to the first position on the order of priority and moves any person previously designated by patient to second on the order of priority.

Proposed law changes the requirement that all available members of a class make the declaration to the requirement that a majority of the available members of the class make the declaration.

Effective August 1, 2012.

(Amends R.S. 40:1299.58.5(A)(2)(a) and (b) and (3))