

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1313

By: Walke

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; defining  
8 certain terms; requiring health care provider to  
9 identify and document surrogate of patient under  
10 certain circumstances; providing list of individuals  
11 to be considered for service as surrogate; providing  
12 criteria in determination of best qualified  
13 surrogate; permitting designated physician to make  
14 decisions for patient under certain circumstances;  
15 providing surrogate not designated by patient make  
16 health care decisions for patient; providing certain  
17 exception; prohibiting health care provider or  
18 employee from being designated as surrogate;  
19 providing certain exception; permitting provider to  
20 require surrogate to provide certain declaration;  
21 providing for codification; and providing an  
22 effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 3102.4 of Title 63, unless there  
is created a duplication in numbering, reads as follows:

A. As used in this section only:

1. "Agent" means an individual designated in an advance  
directive for health care to make a health care decision for the  
individual granting the power;

1        2. "Surrogate" means an individual, other than a patient's  
2 guardian, authorized under this part to make a health care decision  
3 for the patient;

4        3. "Supervising health care provider" means the designated  
5 physician or, if there is no designated physician or the designated  
6 physician is not reasonably available, the health care provider who  
7 has undertaken primary responsibility for an individual's health  
8 care; and

9        4. "Designated physician" means a physician designated by an  
10 individual or the individual's guardian, or surrogate, to have  
11 primary responsibility for the individual's health care or, in the  
12 absence of a designation or if the designated physician is not  
13 reasonably available, a physician who undertakes such  
14 responsibility.

15        B. In the case of a patient who lacks capacity, as determined  
16 by the patient's supervising health care provider, has not appointed  
17 an agent, has not designated a surrogate and does not have a  
18 guardian, or whose agent, surrogate or guardian is not reasonably  
19 available, the patient's surrogate shall be identified by the  
20 supervising health care provider and documented in the current  
21 clinical record of the institution or institutions at which the  
22 patient is then receiving health care.

23        C. The patient's surrogate shall be an adult who has exhibited  
24 special care and concern for the patient, who is familiar with the

1 patient's personal values, who is reasonably available, and who is  
2 willing to serve. No person who is the subject of a protective  
3 order or other court order that directs that person to avoid contact  
4 with the patient shall be eligible to serve as the patient's  
5 surrogate.

6 D. Consideration may be given, in order of descending  
7 preference for service as a surrogate, to:

- 8 1. The patient's spouse, unless legally separated;
- 9 2. The patient's adult child;
- 10 3. The patient's parent;
- 11 4. The patient's adult sibling;
- 12 5. Any other adult relative of the patient; or
- 13 6. Any other adult who satisfies the requirements of subsection  
14 C of this section.

15 E. The following criteria shall be considered in the  
16 determination of the person best qualified to serve as the  
17 surrogate:

- 18 1. Whether the proposed surrogate reasonably appears to be  
19 better able to make decisions, either in accordance with the known  
20 wishes of the patient, or in accordance with the patient's best  
21 interests;
- 22 2. The proposed surrogate's regular contact with the patient  
23 prior to and during the incapacitating illness;
- 24 3. The proposed surrogate's demonstrated care and concern;

1 4. The proposed surrogate's availability to visit the patient  
2 during the patient's illness; and

3 5. The proposed surrogate's availability to engage in face-to-  
4 face contact with health care providers for the purpose of fully  
5 participating in the decision-making process.

6 F. If none of the individuals eligible to act as a surrogate  
7 under this section are reasonably available, the designated  
8 physician may make health care decisions for the patient after the  
9 designated physician either:

10 1. Consults with and obtains the recommendations of an  
11 institution's ethics mechanism; or

12 2. Obtains concurrence from a second physician who is not  
13 directly involved in the patient's health care, does not serve in a  
14 capacity of decision-making, influence, or responsibility over the  
15 designated physician, and is not under the designated physician's  
16 decision-making, influence or responsibility.

17 G. In the event of a challenge, there shall be a rebuttable  
18 presumption that the selection of the surrogate was valid. Any  
19 person who challenges the selection shall have the burden of proving  
20 the invalidity of that selection.

21 H. A surrogate shall make a health care decision in accordance  
22 with the patient's individual instructions, if any, and other wishes  
23 to the extent known to the surrogate. Otherwise, the surrogate  
24 shall make the decision in accordance with the surrogate's

1 determination of the patient's best interest. In determining the  
2 patient's best interest, the surrogate shall consider the patient's  
3 personal values to the extent known to the surrogate.

4 I. A surrogate who has not been designated by the patient may  
5 make all health care decisions for the patient that the patient  
6 could make on the patient's own behalf, except that artificial  
7 nutrition and hydration may be withheld or withdrawn for a patient  
8 upon a decision of the surrogate only when the designated physician  
9 and a second independent physician certify in the patient's current  
10 clinical records that the provision or continuation of artificial  
11 nutrition or hydration is merely prolonging the act of dying and the  
12 patient is highly unlikely to regain capacity to make medical  
13 decisions.

14 J. A health care decision made by a surrogate for a patient is  
15 effective without judicial approval.

16 K. 1. Except as provided in paragraph 2 of this subsection,  
17 neither the supervising health care provider, an employee of the  
18 supervising health care provider, an operator of a health care  
19 institution nor an employee of an operator of a health care  
20 institution may be designated as a surrogate;

21 2. An employee of the supervising health care provider or an  
22 employee of an operator of a health care institution may be  
23 designated as a surrogate, if:

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- 1           a.    the employee so designated is a relative of the  
2                    principal by blood, marriage or adoption, and  
3           b.    the other requirements of this section are satisfied.

4           L.    A health care provider may require an individual claiming  
5 the right to act as surrogate for a patient to provide a written  
6 declaration under penalty of perjury, stating facts and  
7 circumstances reasonably sufficient to establish the claimed  
8 authority.

9           SECTION 2.   This act shall become effective November 1, 2017.

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