

An Act

ENROLLED HOUSE
BILL NO. 1894

By: Calvey and Bennett (John)
of the House

and

Sykes of the Senate

An Act relating to public health and safety; amending Section 2, Chapter 160, O.S.L. 2013 (63 O.S. Supp. 2016, Section 3090.2), which relates to the Nondiscrimination in Treatment Act; modifying certain definition; permitting certain classes in certain order of priority to make health care decisions for patient; permitting health care provider or class member to petition court for certain order; requiring court to issue certain order pending its decision and resolution upon appeal; proscribing certain persons from making health care decisions for patient; providing for codification; and providing an effective date.

SUBJECT: Nondiscrimination in Treatment Act

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

SECTION 1. AMENDATORY Section 2, Chapter 160, O.S.L. 2013 (63 O.S. Supp. 2016, Section 3090.2), is amended to read as follows:

Section 3090.2 As used in the Nondiscrimination in Treatment Act:

1. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to practice a health care or healing arts profession or who administers health care in the ordinary course of business;

2. "Health care service" means any phase of patient medical care, treatment or procedure, including, but not limited to, therapy, testing, diagnosis or prognosis, prescribing, dispensing or administering any device, drug or medication, surgery~~7~~ or any other care or treatment rendered by health care providers;

3. "Life-preserving health care service" means a health care service, the denial of which, in reasonable medical judgment, will result in or hasten the death of the patient; and

4. "Person legally authorized to make health care decisions" means, in the case of an adult patient, or of a minor patient who may consent to have services provided by health professionals under Section 2602 of ~~Title 63 of the Oklahoma Statutes~~ this title, the person or persons designated to make health care decisions~~÷~~

- ~~a. a general guardian of the person appointed pursuant to subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes, or a limited guardian of the person appointed pursuant to subsection B of Section 3-112 of Title 30 of the Oklahoma Statutes with authority to make personal medical decisions as determined under paragraph 5 of subsection B of Section 3-113 of Title 30 of the Oklahoma Statutes,~~
- ~~b. a health care proxy (or alternate health care proxy) authorized to act pursuant to the Oklahoma Advance Directive Act, Sections 3101.1 through 3101.16 of Title 63 of the Oklahoma Statutes, as defined in paragraph 6 of Section 3101.3 of Title 63 of the Oklahoma Statutes,~~
- ~~c. an attorney-in-fact authorized to act pursuant to the Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of Title 58 of the Oklahoma Statutes with authority to act regarding the patient's health and medical care decisions, subject to the limitations under paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes, or~~
- ~~d. another person with such authority under common law.~~

~~In~~ for the patient pursuant to Section 2 of this act, and in the case of any other minor, it means the minor's custodial parent or guardian.

SECTION 2. 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:

When an adult patient or a person under eighteen (18) years of age who may consent to have services provided by health professionals under Section 2602 of Title 63 of the Oklahoma Statutes is persistently unconscious, incompetent or otherwise mentally or physically incapable of communicating, those reasonably available and willing in the following classes, in the order of priority below, are authorized to make health care decisions for the patient under the same standard as that applicable to making life-sustaining treatment decisions under Section 3101.16 of Title 63 of the Oklahoma Statutes, excluding any person who is disqualified from exercising such authority by Section 3 of this act. If those within a class disagree, a majority within the class may make a health care decision for the patient. However, a provider of health care to the patient or any member or members of any of the following classes may petition a court that would have jurisdiction over a guardianship proceeding concerning the patient under Section 1-115 of Title 30 of the Oklahoma Statutes to seek an order directing a different health care decision on the ground that the health care decision or decisions made violate the standard required by this section, granting another member or other members from among the following classes (notwithstanding the statutory order of priority) supervening authority to make health care decisions for the patient on the ground that clear and convincing evidence demonstrates they are more likely to adhere to that standard, or both. Upon motion by any party, the court shall issue an order requiring that pending its decision on the merits and the resolution of any appeal the patient be provided with health care of which denial, in reasonable medical judgment, would be likely to result in or hasten the death of the patient, unless its provision would require denial of the same health care to another patient. The classes are as follows:

1. A general guardian of the person appointed pursuant to subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes or a limited guardian of the person appointed pursuant to subsection B of Section 3-112 of Title 30 of the Oklahoma Statutes with authority to make personal medical decisions as determined under

paragraph 5 of subsection B of Section 3-113 of Title 30 of the Oklahoma Statutes;

2. A health care proxy, or alternate health care proxy, designated by the patient, as defined in paragraph 6 of Section 3101.3 of Title 63 of the Oklahoma Statutes;

3. An attorney-in-fact authorized to act pursuant to the Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of Title 58 of the Oklahoma Statutes, with authority to act regarding the patient's health and medical care decisions, subject to the limitations under paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes;

4. The patient's spouse;

5. Adult children of the patient;

6. Parents of the patient;

7. Adult siblings;

8. Other adult relatives of the patient in order of kinship; or

9. Close friends of the patient who have maintained regular contact with the patient sufficient to be familiar with the patient's personal values. Execution of an affidavit stating specific facts and circumstances documenting such contact constitutes prima facie evidence of close friendship.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3102.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

No person shall be authorized under Section 2 of this act to make health care decisions for a patient if that person:

1. Has been convicted of, pled guilty to, or pled no contest to any violation of Section 843.1, 843.2, 843.4 or 843.5 of Title 21 of the Oklahoma Statutes;

2. Has been found to have committed abuse, verbal abuse or exploitation, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, by a final State Department of Health

investigative finding or by an administrative law judge finding, unless that finding has been overturned through judicial review; or

3. Has been criminally charged as described in subsection B of Section 10-110.1 of Title 43A of the Oklahoma Statutes, unless the person has been acquitted or those charges have been finally dismissed.

SECTION 4. This act shall become effective November 1, 2017.

Passed the House of Representatives the 21st day of March, 2017.

Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of April, 2017.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____