

1 **SENATE FLOOR VERSION**

2 April 11, 2017

3 ENGROSSED HOUSE
4 BILL NO. 1894

By: Calvey and Bennett (John)
of the House

5 and

6 Sykes of the Senate

7
8
9 An Act relating to public health and safety; amending
10 Section 2, Chapter 160, O.S.L. 2013 (63 O.S. Supp.
11 2016, Section 3090.2), which relates to the
12 Nondiscrimination in Treatment Act; modifying certain
13 definition; permitting certain classes in certain
14 order of priority to make health care decisions for
15 patient; permitting health care provider or class
16 member to petition court for certain order; requiring
17 court to issue certain order pending its decision and
18 resolution upon appeal; proscribing certain persons
19 from making health care decisions for patient;
20 providing for codification; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY Section 2, Chapter 160, O.S.L.
24 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 1. "Health care provider" means a person who is licensed,
2 certified, or otherwise authorized by the laws of this state to
3 practice a health care or healing arts profession or who administers
4 health care in the ordinary course of business;

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

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

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

18 a. ~~a general guardian of the person appointed pursuant to~~
19 ~~subsection A of Section 3-112 of Title 30 of the~~
20 ~~Oklahoma Statutes, or a limited guardian of the person~~
21 ~~appointed pursuant to subsection B of Section 3-112 of~~
22 ~~Title 30 of the Oklahoma Statutes with authority to~~
23 ~~make personal medical decisions as determined under~~

1 ~~paragraph 5 of subsection B of Section 3-113 of Title~~
2 ~~30 of the Oklahoma Statutes,~~

3 ~~b. a health care proxy (or alternate health care proxy)~~
4 ~~authorized to act pursuant to the Oklahoma Advance~~
5 ~~Directive Act, Sections 3101.1 through 3101.16 of~~
6 ~~Title 63 of the Oklahoma Statutes, as defined in~~
7 ~~paragraph 6 of Section 3101.3 of Title 63 of the~~
8 ~~Oklahoma Statutes,~~

9 ~~e. an attorney in fact authorized to act pursuant to the~~
10 ~~Uniform Durable Power of Attorney Act, Sections 1071~~
11 ~~through 1077 of Title 58 of the Oklahoma Statutes with~~
12 ~~authority to act regarding the patient's health and~~
13 ~~medical care decisions, subject to the limitations~~
14 ~~under paragraph 1 of subsection B of Section 1072.1 of~~
15 ~~Title 58 of the Oklahoma Statutes, or~~

16 ~~d. another person with such authority under common law.~~

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

20 SECTION 2. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3102.4 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 When an adult patient or a person under eighteen (18) years of
24 age who may consent to have services provided by health

1 professionals under Section 2602 of Title 63 of the Oklahoma
2 Statutes is persistently unconscious, incompetent or otherwise
3 mentally or physically incapable of communicating, those reasonably
4 available and willing in the following classes, in the order of
5 priority below, are authorized to make health care decisions for the
6 patient under the same standard as that applicable to making life-
7 sustaining treatment decisions under Section 3101.16 of Title 63 of
8 the Oklahoma Statutes, excluding any person who is disqualified from
9 exercising such authority by Section 3 of this act. If those within
10 a class disagree, a majority within the class may make a health care
11 decision for the patient. However, a provider of health care to the
12 patient or any member or members of any of the following classes may
13 petition a court that would have jurisdiction over a guardianship
14 proceeding concerning the patient under Section 1-115 of Title 30 of
15 the Oklahoma Statutes to seek an order directing a different health
16 care decision on the ground that the health care decision or
17 decisions made violate the standard required by this section,
18 granting another member or other members from among the following
19 classes (notwithstanding the statutory order of priority)
20 supervening authority to make health care decisions for the patient
21 on the ground that clear and convincing evidence demonstrates they
22 are more likely to adhere to that standard, or both. Upon motion by
23 any party, the court shall issue an order requiring that pending its
24 decision on the merits and the resolution of any appeal the patient

1 be provided with health care of which denial, in reasonable medical
2 judgment, would be likely to result in or hasten the death of the
3 patient, unless its provision would require denial of the same
4 health care to another patient. The classes are as follows:

5 1. A general guardian of the person appointed pursuant to
6 subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes
7 or a limited guardian of the person appointed pursuant to subsection
8 B of Section 3-112 of Title 30 of the Oklahoma Statutes with
9 authority to make personal medical decisions as determined under
10 paragraph 5 of subsection B of Section 3-113 of Title 30 of the
11 Oklahoma Statutes;

12 2. A health care proxy, or alternate health care proxy,
13 designated by the patient, as defined in paragraph 6 of Section
14 3101.3 of Title 63 of the Oklahoma Statutes;

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

21 4. The patient's spouse;

22 5. Adult children of the patient;

23 6. Parents of the patient;

24 7. Adult siblings;

- 1 8. Other adult relatives of the patient in order of kinship; or
2 9. Close friends of the patient who have maintained regular
3 contact with the patient sufficient to be familiar with the
4 patient's personal values. Execution of an affidavit stating
5 specific facts and circumstances documenting such contact
6 constitutes prima facie evidence of close friendship.

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

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

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

15 2. Has been found to have committed abuse, verbal abuse or
16 exploitation, as these terms are defined in Section 10-103 of Title
17 43A of the Oklahoma Statutes, by a final State Department of Health
18 investigative finding or by an administrative law judge finding,
19 unless that finding has been overturned through judicial review; or

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

24

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

2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
3 April 11, 2017 - DO PASS
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24