

HOUSE BILL 377

By Warner

AN ACT to amend Tennessee Code Annotated, Title 8; Title 29; Title 33; Title 34; Title 56; Title 63; Title 68 and Title 71, relative to health care.

WHEREAS, the American Medical Association (AMA)'s Code of Medical Ethics provides that a physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights; shall uphold the standards of professionalism and be honest in all professional interactions; shall respect the law and also recognize a responsibility to seek changes in those requirements that are contrary to the best interests of the patient; shall respect the rights of patients; and shall regard responsibility to the patient as paramount while caring for a patient; and

WHEREAS, the AMA's Code of Medical Ethics Opinion 1.1.3 provides that physicians can best contribute to a mutually respectful alliance with patients by serving as their patients' advocates and by respecting patients' rights, which include a right to courtesy, respect, dignity, and timely, responsive attention to the patient's needs; the right to receive information from their physicians and to have the opportunity to discuss the benefits, risks, and costs of appropriate treatment alternatives, including the risks, benefits, and costs of forgoing treatment; the right to ask questions about their health status or recommended treatment when they do not fully understand what has been described and to have their questions answered; the right to make decisions about the care the physician recommends and to have those decisions respected; the right to obtain copies or summaries of their medical records; and the right to obtain a second opinion, among other rights; and

WHEREAS, the AMA's Code of Medical Ethics Opinion 2.1.2 provides that when a patient lacks decision-making capacity, the physician has an ethical responsibility to identify an

appropriate surrogate to make decisions on the patient's behalf, who is either the person the patient designated as a surrogate through a durable power of attorney for health care or other mechanism, or a family member or other intimate associate, in keeping with applicable law and policy if the patient has not previously designated a surrogate; to recognize that the patient's surrogate is entitled to the same respect as the patient; to provide advice, guidance, and support to the surrogate; to assist the surrogate to make decisions in keeping with the standard of substituted judgment, basing decisions on the patient's preferences, if any; and to assist the surrogate to make decisions in keeping with the best interest standard when the patient's preferences and values are not known and cannot reasonably be inferred; and

WHEREAS, Tennessee Rule 1200-08-01-.12 provides that each patient has, at a minimum, the right to privacy in treatment and personal care; the right to be free from mental and physical abuse; the right to refuse treatment; the right to refuse experimental treatment and drugs; the right to have access to a phone number to call if there are questions or complaints about care; the right to be involved in the decision-making of all aspects of their care; and the right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment; and

WHEREAS, many Tennesseans who have been in the care of healthcare facilities, or their surviving loved ones, have expressed frustrations with the denial of the specific rights expressed above; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new part:

68-11-2201. Short title.

This part is known and may be cited as the "Patient Rights Act."

68-11-2202. Part definitions.

As used in this part:

(1) "Advocate" means an agent, guardian, surrogate, or other individual with the ability to make healthcare decisions for the patient pursuant to the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter;

(2) "Family member" means a child, mother, father, spouse, sibling, aunt, uncle, cousin, stepparent, stepchild, grandparent, grandchild, or an individual legally recognized to be in a familial relationship with the patient;

(3) "Healthcare facility" or "facility":

(A) Means a hospital or rehabilitation center; and

(B) Does not mean a public or private hospital or facility, or part of a hospital or facility, equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance;

(4) "Healthcare practitioner" means an individual licensed under title 63 or this title;

(5) "Hospital" has the same meaning as defined in § 68-11-201;

(6) "Incapacitated":

(A) Means a patient who is in a physical or mental state such that the patient is incapable of granting or denying informed consent; and

(B) Includes a physical or mental state such that the patient is incapable of granting or denying informed consent that results from drugs or medical treatment;

(7) "Medical condition" includes an indication of whether a patient has received one (1) or more doses of a vaccine;

(8) "Medical record" means the entire record maintained by a healthcare practitioner or facility relating to the medical history, care, diagnosis, surgery, and

treatment of a patient, including new patient intake forms completed by or on behalf of a patient, healthcare practitioner's notes, operative reports, hospital charts, physicians' orders, consultation reports, laboratory test results, EEGs, EKGs, x-ray reports, CT scan reports, MRI scan reports, reports of diagnostic procedures, tests or imaging studies, history and physicals, pathology reports, anesthesia records, admission summaries, discharge summaries, photographs, video recordings, consent forms, prescription records, and medication records;

(9) "Patient" means an individual under the care of a healthcare facility;

(10) "Treatment" means a medical treatment or episode of care whether approved by the federal food and drug administration or not, or approved for the diagnosis or not; and

(11) "Willful misconduct" means an act or omission that is taken:

(A) Intentionally to achieve a wrongful purpose;

(B) Knowingly without legal or factual justification; and

(C) In disregard of a known or obvious risk that is so great as to

make it highly probable that the harm will outweigh the benefit.

68-11-2203. Right to administration of treatments.

(a) Subject to a patient's right to refuse treatment as provided in statute or rule, a healthcare practitioner has the right to exercise good medical judgment in administering a treatment to a patient for illness recovery or injury based on the practitioner's independent medical opinion.

(b) If a healthcare practitioner treats a patient pursuant to subsection (a) and the treatment does not constitute willful misconduct, then the healthcare practitioner is not subject to:

(1) A cause of action by the patient, the advocate, or the patient's estate for administration of the treatment;

(2) Adverse action by the healthcare practitioner's employer for administration of the treatment; or

(3) Adverse action by the entity responsible for licensing the healthcare practitioner for administration of the treatment.

(c) A healthcare practitioner shall not deny a request for a second opinion by another healthcare practitioner, within twenty-four (24) hours of a request being made, if the request is made by:

(1) The patient, if the patient is able to make medical decisions, in the format solely determined by the patient; or

(2) The advocate, if the patient is incapacitated, in the format solely determined by the advocate.

(d) Administering a treatment that is not approved by the federal food and drug administration, or not approved for the diagnosis, does not constitute willful misconduct.

68-11-2204. Right to alternative treatment available under emergency use authorization.

A healthcare facility shall provide a patient, or an advocate if the patient is incapacitated, with the risks and benefits of all alternative treatment plans available under emergency use authorizations before providing treatment to the patient.

68-11-2205. Right to transfer or release from care.

(a) A healthcare practitioner or facility shall not prevent the transfer or release from care of a patient within twelve (12) hours of a written request being made if the request is made by:

(1) The patient, if the patient is not incapacitated; or

(2) The advocate, if the patient is incapacitated.

(b) If a healthcare practitioner or facility complies with subsection (a), then the healthcare practitioner or facility is not subject to:

(1) A cause of action by the patient, the advocate, or the patient's estate for the transfer or release from care; or

(2) An adverse action by the entity responsible for licensing the healthcare practitioner or facility for the transfer or release from care.

(c) If a healthcare practitioner refuses to comply with subsection (a), then:

(1) The patient, the advocate, or the patient's estate has a cause of action against the healthcare practitioner;

(2) The healthcare practitioner's employer shall remove the healthcare practitioner from the care of the patient and report the violation of this section to the entity responsible for licensing the healthcare practitioner;

(3) The entity responsible for licensing the healthcare practitioner shall suspend the license of the healthcare practitioner for unprofessional or unethical conduct in accordance with applicable law; and

(4) The denial of transfer or release from care constitutes knowingly confining another unlawfully so as to interfere substantially with the patient's liberty, and the healthcare practitioner is subject to prosecution under § 39-13-302.

(d) If the healthcare facility employing or contracting with a healthcare practitioner requires the practitioner to not comply with subsection (a), then:

(1) The patient, the advocate, or the patient's estate and the healthcare practitioner each have a cause of action against the healthcare facility; and

(2) The healthcare facility is deemed a facility detrimental to the health, safety, and welfare of the patient, and the entity responsible for licensing the facility shall suspend the admission of new patients pursuant to § 68-11-252.

68-11-2206. Right to access an advocate.

(a) A patient has a right to designate an advocate, and for the advocate to exercise all powers, as provided in the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter.

(b) A healthcare facility shall not restrict a patient from having at least one (1) advocate with twenty-four-hour physical access to the patient at any place in the healthcare facility where the patient is placed during the patient's stay at the healthcare facility. This subsection (b) does not apply when the patient is located in an operating room for a surgical procedure.

(c) In order to have physical access pursuant to this section, the advocate must not be exhibiting symptoms of a virus or communicable disease. An advocate is only subject to non-invasive onsite healthcare facility protocols before entry to prove the absence of symptoms of a virus or communicable disease.

68-11-2207. Right to freedom from unreasonable restraint or sedation.

(a) Except as provided in subdivision (b)(2), a healthcare facility shall not subject a patient to restraint or sedation for more than four (4) hours.

(b) If a healthcare facility seeks to restrain or sedate a patient for more than four (4) hours, then:

(1) If the patient is not incapacitated, the healthcare facility must receive permission from the patient to continue restraint or sedation. If the patient declines the request, then the patient must be released from care; or

(2) If the patient is incapacitated, the healthcare facility must receive permission in writing from the advocate to continue restraint or sedation.

68-11-2208. Right to being roomed with family members.

A healthcare facility shall permit two (2) patients who are family members to share a room, if a shareable room is available, unless medically contraindicated and documented by their healthcare practitioners in the medical records.

68-11-2209. Right to a transplant.

(a) As used in this section:

(1) "Ambulatory surgical treatment center" has the same meaning as defined in § 68-11-201;

(2) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;

(3) "Covered entity" means:

(A) A healthcare practitioner;

(B) A hospital;

(C) An ambulatory surgical treatment center;

(D) A home care organization; or

(E) Another entity responsible for matching anatomical gifts or organ donors to potential recipients;

(4) "Home care organization" has the same meaning as defined in § 68-11-201;

(5) "Qualified recipient" means a recipient who meets the eligibility requirements for receipt of transplantation or anatomical gift, excluding vaccination requirements;

(6) "Transplantation" means the transplantation or transfusion of a human body part into the body of another individual for the purpose of treating or curing a medical condition; and

(7) "Vaccination status" means an indication of whether a person has received one (1) or more doses of a vaccine.

(b) A covered entity shall not do the following solely on the basis of the vaccination status of a qualified donor or recipient:

(1) Consider a qualified donor or recipient ineligible for transplantation or receipt of an anatomical gift;

(2) Deny medical or other services related to transplantation, including:

(A) Evaluation;

(B) Surgery; and

(C) Counseling and treatment following transplantation;

(3) Refuse to refer a qualified donor or recipient to a transplant center or specialist;

(4) Refuse to place a qualified donor or recipient on an organ or tissue waiting list; or

(5) Place a qualified donor or recipient at a position on an organ or tissue waiting list that is lower than the position at which the qualified donor or recipient would have been placed if not for the qualified donor or recipient's vaccination status.

(c) An individual who reasonably believes that a covered entity has violated this section may bring a civil action for injunctive or other equitable relief against the covered entity for the purpose of enforcing compliance with this section.

68-11-2210. Right to avoid discrimination in admission or treatment.

A healthcare facility shall not discriminate against a patient in admission or treatment based on sex, economic status, educational background, race, religion, ancestry, disability, medical condition, language, or marital status.

68-11-2211. Right to privacy with regard to medical records.

(a) A healthcare facility, healthcare practitioner, or governmental entity shall not make the medical records of a patient available to the public.

(b) A patient, or a patient's estate, has a cause of action against a healthcare facility, healthcare practitioner, or entity that violates this section.

68-11-2212. Right to be given notice of rights under this part.

(a) A healthcare facility shall post notice of a patient's rights, as applicable, pursuant to this part in a prominent location at eye level in each waiting room and patient room.

(b) A healthcare facility shall provide written notice of a patient's rights, as applicable, pursuant to this part at the time of admission:

- (1) To the patient, if the patient is not incapacitated; or
- (2) To the advocate, if the patient is incapacitated.

68-11-2213. Enforcement.

In addition to other remedies provided in this part and otherwise in law, if a healthcare practitioner or healthcare facility violates this part, then the entity responsible for licensing the practitioner or facility must assess against that practitioner or facility a fine of five hundred dollars (\$500) per day of the violation until the practitioner or facility complies with this part or otherwise remedies the violation to the satisfaction of the licensing entity.

68-11-2214. States of emergency.

Notwithstanding title 58, chapter 2 or another law to the contrary, the rights conferred in this part continue to apply during a state of emergency declared by an official in state or federal government.

68-11-2215. Rights described in part not exclusive.

This part does not prescribe all rights of patients.

68-11-2216. Compliance with federal laws.

Each provision of this part takes effect only to the extent that the provision is consistent with federal laws and regulations.

68-11-2217. Conflicts.

If a conflict exists between this part and another law, then this part controls.

SECTION 2. Tennessee Code Annotated, Section 68-11-1802(a), is amended by adding the following as a new subdivision:

() "Medical record" means the entire record maintained by an individual health care provider or health care institution relating to the medical history, care, diagnosis, surgery, and treatment of a patient, including new patient intake forms completed by or on behalf of a patient, health care provider's notes, operative reports, hospital charts, physicians' orders, consultation reports, laboratory test results, EEGs, EKGs, x-ray reports, CT scan reports, MRI scan reports, reports of diagnostic procedures, tests or imaging studies, history and physicals, pathology reports, anesthesia records, admission summaries, discharge summaries, photographs, video recordings, consent forms, prescription records, and medication records;

SECTION 3. Tennessee Code Annotated, Section 68-11-1803(b), is amended by adding the following immediately after the third sentence:

A health care provider or health care institution shall provide the patient with two (2) witnesses if needed.

SECTION 4. Tennessee Code Annotated, Section 68-11-1803(j), is amended by deleting the last sentence and substituting:

An advance directive that does not evidence an intent to be given effect under those acts, but that complies with this part must be treated as an advance directive under this part.

SECTION 5. Tennessee Code Annotated, Section 68-11-1805, is amended by adding the following as a new subsection:

(c) A health care institution shall provide a patient, or the patient's agent, guardian, or surrogate, as applicable, with the form described in this section upon admission to the institution.

SECTION 6. Tennessee Code Annotated, Section 68-11-1808, is amended by deleting the section and substituting:

(a) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's current medical record and communicate the determination to the patient, if possible, and to a person then authorized to make health care decisions for the patient.

(b) Except as provided in subsection (c), a health care provider or health care institution providing care to a patient shall:

(1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(2) Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(c)

(1) Except as provided in subdivision (c)(2), a health care provider or health care institution may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or health care institution.

(2) Subdivision (c)(1):

(A) Does not apply when a health care provider, in the provider's sole medical judgment, decides to administer a treatment to a patient that is not approved by the federal food and drug administration, or not approved for the diagnosis, but is deemed appropriate by the health care provider; and

(B) Does not authorize a health care provider or health care institution to infringe upon a patient's right to refuse or discontinue treatment. If a patient, or a patient's agent, guardian, or surrogate, refuses treatment or requests to discontinue treatment, then the health care provider or health care institution must comply.

(d) A health care provider or health care institution that declines to comply with an individual instruction or health care decision pursuant to subsection (c) shall:

(1) Promptly so inform the patient, if possible, and a person then authorized to make health care decisions for the patient;

(2) Provide continuing care to the patient until a transfer can be effected;
and

(3) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or health care institution that is willing to comply with the instruction or decision.

SECTION 7. Tennessee Code Annotated, Section 68-11-1809, is amended by deleting the section and substituting:

Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of the medical record or other health care information. A health care provider or health care institution shall make available the full medical record of the patient to the requesting person within two (2) business operating hours of the request.

SECTION 8. Tennessee Code Annotated, Section 68-11-1811(a), is amended by deleting the subsection and substituting:

(a)

(1) A health care provider or health care institution that intentionally violates this part is subject to liability to the aggrieved individual, or the individual's estate, for damages of two thousand five hundred dollars (\$2,500), or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees and costs.

(2) A health care institution that intentionally violates this part is also deemed a facility detrimental to the health, safety, and welfare of the patient, and

the entity responsible for licensing the institution shall suspend the admission of new patients pursuant to § 68-11-252.

SECTION 9. The department of health and all health licensing boards affected by this act are authorized to promulgate rules, including emergency rules, to effectuate this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 10. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 11. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee code commission is requested to include the headings in any compilation or publication containing this act.

SECTION 12. This act takes effect upon becoming a law, the public welfare requiring it.