

AN ACT  
RELATING TO HEALTH CARE; AMENDING CERTAIN SECTIONS OF THE  
UNIFORM HEALTH-CARE DECISIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-7A-2 NMSA 1978 (being Laws 1995, Chapter 182, Section 2) is amended to read:

"24-7A-2. ADVANCE HEALTH-CARE DIRECTIVES. --

A. An adult or emancipated minor, while having capacity, has the right to make his or her own health-care decisions and may give an individual instruction. The individual instruction may be oral or written; if oral, it shall be made by personally informing a health-care provider. The individual instruction may be limited to take effect only if a specified condition arises. If an adult or emancipated minor who chooses to give an individual instruction is served in a community-based program for persons with mental illness or developmental disabilities, then the instruction, subject to the individual's consent, shall be included in the individual's service plan and may be provided to the individual's health-care provider by the community-based program.

B. An adult or emancipated minor, while having capacity, may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having

capacity. The power shall be in writing and signed by the principal. The power remains in effect notwithstanding the principal's later incapacity under the Uniform Health-Care Decisions Act or Article 5 of the Uniform Probate Code. The power may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a health-care institution at which the principal is receiving care.

C. Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity.

D. Unless otherwise specified in a written advance health-care directive, a determination that a person lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent shall be made according to the provisions of Section 24-7A-11 NMSA 1978.

E. An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the

extent known to the agent.

F. A health-care decision made by an agent for a principal is effective without judicial approval.

G. A written advance health-care directive may include the person's nomination of a guardian of the person. "

Section 2. Section 24-7A-5 NMSA 1978 (being Laws 1995, Chapter 182, Section 5, as amended) is amended to read:

"24-7A-5. DECISIONS BY SURROGATE. --

A. A surrogate may make a health-care decision for a patient who is an adult or emancipated minor if the patient has been determined according to the provisions of Section 24-7A-11 NMSA 1978 to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

B. An adult or emancipated minor, while having capacity, may designate any individual to act as surrogate by personally informing the supervising health-care provider. In the absence of a designation or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(1) the spouse, unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or legal separation;

(2) an individual in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an actual commitment to the patient similar to the commitment of a spouse and in which the individual and the patient consider themselves to be responsible for each other's well-being;

(3) an adult child;

(4) a parent;

(5) an adult brother or sister; or

(6) a grandparent.

C. If none of the individuals eligible to act as surrogate under Subsection B of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate. A nonprofit organization that provides state-funded guardianship services, or protection and advocacy services pursuant to federal law, to persons with mental illness or developmental disabilities may serve as a surrogate for a patient with such a disability if the organization is familiar with the patient's wishes, interests and values and agrees to serve as the surrogate.

D. A surrogate shall communicate his assumption of authority as promptly as practicable to the patient, to members of the patient's family specified in Subsection B of this section who can be readily contacted and to the

supervising health-care provider.

E. If more than one member of a class assume authority to act as surrogate and they do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

F. A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent made known to the surrogate by the patient. If the wishes of a patient who has been determined to lack capacity are unknown or unclear to the surrogate, the surrogate shall:

(1) make reasonable, thorough attempts to communicate with the patient, using methods appropriate to the patient's circumstances, in order to determine the patient's wishes, interests and values;

(2) make a reasonable attempt to communicate with the patient's primary caretaker, if any, and other readily available family members or other individuals familiar with the patient, to determine the

patient's wishes, interests and values when a patient's life reasonably appears to be at risk but the patient is not in need of or receiving emergency treatment;

(3) make the health-care decision in accordance with the surrogate's determination of the patient's best interest, taking into consideration the wishes, interests and values of the patient whether expressed directly by the patient, or as reported by such other knowledgeable sources; and

(4) upon request of the health-care provider, describe the steps taken to obtain information pursuant to the provisions of this subsection.

G. A health-care decision made by a surrogate for a patient shall not be made solely on the basis of the patient's preexisting physical or medical condition or preexisting or projected disability.

H. A health-care decision made by a surrogate for a patient is effective without judicial approval.

I. A patient, at any time, may disqualify any person, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing a health-care provider of the disqualification. A health-care provider who is informed by the patient of a disqualification shall promptly communicate the fact of disqualification to the supervising health-care provider and to any health-care institution at which the

patient is receiving care.

J. Unless related to the patient by blood, marriage or adoption, a surrogate may not be an owner, operator or employee of a health-care institution at which the patient is receiving care.

K. A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority."

Section 3. Section 24-7A-6.1 NMSA 1978 (being Laws 1997, Chapter 168, Section 13) is amended to read:

"24-7A-6.1. DECISIONS FOR UNEMANCIPATED MINORS. --

A. Except as otherwise provided by law, a parent or guardian of an unemancipated minor may make that minor's health-care decisions.

B. A parent or guardian of an unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment for the unemancipated minor, subject to the provisions of this section and the standards for surrogate decision making for adults provided for in the Uniform Health-Care Decisions Act.

C. Subject to the provisions of Subsection B of this section, if an unemancipated minor has capacity sufficient to understand the nature of that unemancipated minor's medical condition, the risks and benefits of

treatment and the contemplated decision to withhold or withdraw life-sustaining treatment, that unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment.

D. For purposes of Subsection C of this section, a determination of the mental and emotional capacity of an unemancipated minor shall be determined by two qualified health-care professionals, one of whom shall be the unemancipated minor's primary physician or, at the request of the minor or the minor's parent or guardian, another qualified health-care professional with personal knowledge of and experience with the minor, if reasonably available, and the other of whom shall be a physician that works with unemancipated minors of the minor's age in the ordinary course of that physician's health-care practice. If the unemancipated minor lacks capacity due to mental illness or developmental disability, one of the qualified health-care professionals shall be a person with training and expertise in mental illness or developmental disability, as applicable. Nothing in this subsection shall be construed to require a health-care institution to permit a health-care professional to provide health-care services for or within the institution if the health-care professional is not otherwise credentialed or authorized to do so.

E. If the unemancipated minor's primary physician has reason to believe that a parent or guardian of an



unemancipated minor, including a non-custodial parent, has not been informed of a decision to withhold or withdraw life-sustaining treatment, the primary physician shall make reasonable efforts to determine if the uninformed parent or guardian has maintained substantial and continuous contact with the unemancipated minor and, if so, shall make reasonable efforts to notify that parent or guardian before implementing a decision.

F. If there is disagreement regarding the decision to withhold or withdraw life-sustaining treatment for an unemancipated minor, the provisions of Section 24-7A-11 NMSA 1978 shall apply.

G. For purposes of this section, "unemancipated minor" means a person at or under the age of fifteen."

Section 4. Section 24-7A-11 NMSA 1978 (being Laws 1995, Chapter 182, Section 11, as amended) is amended to read:

"24-7A-11. CAPACITY. --

A. The Uniform Health-Care Decisions Act does not affect the right of an individual to make health-care decisions while having capacity to do so.

B. An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive and to designate a surrogate.

C. Unless otherwise specified in a written advance health-care directive, a determination that an

individual lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent shall be made by two qualified health-care professionals, one of whom shall be the individual's primary physician or, at the request of the individual or the individual's guardian, another qualified health-care professional with personal knowledge of and experience with the individual, if reasonably available. At least one of the two qualified health-care professionals shall be a physician. If the lack of capacity is determined to exist because of mental illness or developmental disability, one of the qualified health-care professionals shall be a person with training and expertise in mental illness or developmental disability, as applicable. Nothing in this subsection shall be construed to require a health-care institution to permit a health-care professional to provide health-care services for or within the institution if the health-care professional is not otherwise credentialed or authorized to do so.

D. An individual shall not be determined to lack capacity solely on the basis that the individual chooses not to accept the treatment recommended by a health-care provider.

E. An individual, at any time, may challenge a determination that the individual lacks capacity by a signed writing or by personally informing a health-care provider of

the challenge. A health-care provider who is informed by the individual of a challenge shall promptly communicate the fact of the challenge to the supervising health-care provider and to any health-care institution at which the individual is receiving care. Such a challenge shall prevail unless otherwise ordered by the court in a proceeding brought pursuant to the provisions of Section 24-7A-14 NMSA 1978.

F. A determination of lack of capacity under the Uniform Health-Care Decisions Act shall not be evidence of incapacity under the provisions of Article 5 of the Uniform Probate Code. "

Section 5. Section 24-7A-14 NMSA 1978 (being Laws 1995, Chapter 182, Section 14, as amended) is amended to read:

"24-7A-14. JUDICIAL RELIEF. --

A. On petition of a patient, the patient's agent, guardian or surrogate, a health-care provider or health-care institution involved with the patient's care or an individual described in Subsection B or C of Section 24-7A-5 NMSA 1978, the district court may enjoin or direct a health-care decision or order other equitable relief. A proceeding under this section is governed by the Rules of Civil Procedure for the District Courts.

B. If a guardian ad litem is appointed for a patient by the court, the guardian ad litem shall:

- (1) meet with and interview the patient prior to the hearing;
- (2) communicate with individuals involved with or knowledgeable about the patient, such as health-care professionals, relatives, caretakers or others;
- (3) examine whether procedures called for under the Uniform Health-Care Decisions Act have been followed;
- (4) represent the patient's wishes, if known; and
- (5) if the patient's wishes are unclear or unknown, represent the patient's best interest. "\_\_\_\_\_