

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 490

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Cynthia L. Nava

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-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**

1 personally informing the supervising health-care provider. In
2 the absence of a designation or if the designee is not
3 reasonably available, any member of the following classes of
4 the patient's family who is reasonably available, in
5 descending order of priority, may act as surrogate:

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

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

15 (3) an adult child;

16 (4) a parent;

17 (5) an adult brother or sister; or

18 (6) a grandparent.

19 C. If none of the individuals eligible to act as
20 surrogate under Subsection B of this section is reasonably
21 available, an adult who has exhibited special care and concern
22 for the patient, who is familiar with the patient's personal
23 values and who is reasonably available may act as surrogate.

24 D. A surrogate shall communicate his assumption of
25 authority as promptly as practicable to the patient, to

underscored material = new
[bracketed material] = delete

1 members of the patient's family specified in Subsection B of
2 this section who can be readily contacted and to the
3 supervising health-care provider.

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

14 F. A surrogate shall make a health-care decision
15 in accordance with the patient's individual instructions, if
16 any, and other wishes to the extent made known to the
17 surrogate [~~otherwise, the surrogate shall make the decision in~~
18 ~~accordance with the surrogate's determination of the patient's~~
19 ~~best interest. In determining the patient's best interest,~~
20 ~~the surrogate shall consider the patient's personal values to~~
21 ~~the extent known to the surrogate] by the patient. If the
22 wishes of a patient who has been determined to lack capacity
23 are unknown or unclear to the surrogate, the surrogate shall:~~

24 (1) make reasonable, thorough attempts to
25 communicate with the patient, using methods appropriate to the

underscored material = new
[bracketed material] = delete

1 patient's circumstances, in order to determine the patient's
2 wishes, interests and values;

3 (2) when a patient's life reasonably appears
4 to be at risk, make a reasonable attempt to communicate with
5 other available individuals who are familiar with the patient,
6 such as the patient's family members, the patient's primary
7 physician and the patient's current or recent caretaker, if
8 any, to determine the patient's wishes, interests and values;

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

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

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

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

24 I. A patient, at any time, may disqualify any
25 [person] individual, including a member of the patient's

underscored material = new
[bracketed material] = delete

1 family, from acting as the patient's surrogate by a signed
2 writing or by personally informing a health-care provider of
3 the disqualification. A health-care provider who is informed
4 by the patient of a disqualification shall promptly
5 communicate the fact of disqualification to the supervising
6 health-care provider and to any health-care institution at
7 which the patient is receiving care.

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

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

17 Section 2. Section 24-7A-6.1 NMSA 1978 (being Laws 1997,
18 Chapter 168, Section 13) is amended to read:

19 "24-7A-6.1. DECISIONS FOR UNEMANCIPATED MINORS. --

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

23 B. A parent or guardian of an unemancipated minor
24 shall have the authority to withhold or withdraw life-
25 sustaining treatment for the unemancipated minor, subject to

. 135832. 1

underscored material = new
[bracketed material] = delete

1 the provisions of this section and the standards for surrogate
2 decision making for adults provided for in the Uniform Health-
3 Care Decisions Act.

4 C. Subject to the provisions of Subsection B of
5 this section, if an unemancipated minor has capacity
6 sufficient to understand the nature of that unemancipated
7 minor's medical condition, the risks and benefits of treatment
8 and the contemplated decision to withhold or withdraw life-
9 sustaining treatment, that unemancipated minor shall have the
10 authority to withhold or withdraw life-sustaining treatment.

11 D. For purposes of Subsection C of this section, a
12 determination of the mental and emotional capacity of an
13 unemancipated minor shall be determined by two qualified
14 health-care professionals, one of whom shall be the
15 unemancipated minor's primary physician or, at the request of
16 the minor or the minor's parent or guardian, another qualified
17 health-care professional with personal knowledge of and
18 experience with the minor, if reasonably available, and the
19 other of whom shall be a physician that works with
20 unemancipated minors of the minor's age in the ordinary course
21 of that physician's health-care practice. If the
22 unemancipated minor lacks capacity due to mental illness or
23 developmental disability, one of the qualified health-care
24 professionals shall be a person [whose] with training and
25 expertise [~~aid in the assessment of functional impairment~~] in

. 135832. 1

underscored material = new
[bracketed material] = delete

1 mental illness or developmental disability, as applicable.

2 E. If the unemancipated minor's primary physician
3 has reason to believe that a parent or guardian of an
4 unemancipated minor, including a non-custodial parent, has not
5 been informed of a decision to withhold or withdraw life-
6 sustaining treatment, the primary physician shall make
7 reasonable efforts to determine if the uninformed parent or
8 guardian has maintained substantial and continuous contact
9 with the unemancipated minor and, if so, shall make reasonable
10 efforts to notify that parent or guardian before implementing
11 a decision.

12 F. If there is disagreement regarding the decision
13 to withhold or withdraw life-sustaining treatment for an
14 unemancipated minor, the provisions of Section 24-7A-11 NMSA
15 1978 shall apply.

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

18 Section 3. Section 24-7A-11 NMSA 1978 (being Laws 1995,
19 Chapter 182, Section 11, as amended) is amended to read:

20 "24-7A-11. CAPACITY. --

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

24 B. An individual is presumed to have capacity to
25 make a health-care decision, to give or revoke an advance

underscored material = new
[bracketed material] = delete

1 health-care directive and to designate a surrogate.

2 C. Unless otherwise specified in a written advance
3 health-care directive, a determination that an individual
4 lacks or has recovered capacity or that another condition
5 exists that affects an individual instruction or the authority
6 of an agent shall be made by two qualified health-care
7 professionals, one of whom shall be the individual's primary
8 physician or, at the request of the individual or the
9 individual's guardian, another qualified health-care
10 professional with personal knowledge of and experience with
11 the individual, if reasonably available. At least one of the
12 two qualified health-care professionals shall be a physician.
13 If the lack of capacity is determined to exist because of
14 mental illness or developmental disability, one of the
15 qualified health-care professionals shall be a person ~~[whose]~~
16 with training and expertise [aid in the assessment of
17 functional impairment] in mental illness or developmental
18 disability, as applicable.

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

22 E. An individual, at any time, may challenge a
23 determination that the individual lacks capacity by a signed
24 writing or by personally informing a health-care provider of
25 the challenge. A health-care provider who is informed by the

underscored material = new
[bracketed material] = delete

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

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

11 Section 4. Section 24-7A-14 NMSA 1978 (being Laws 1995,
12 Chapter 182, Section 14, as amended) is amended to read:

13 "24-7A-14. JUDICIAL RELIEF. --

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

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

24 (1) meet with and interview the patient prior
25 to the hearing;

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(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."