

HOUSE BILL NO. 5833

June 25, 2024, Introduced by Reps. Breen, Hope, Steckloff, Conlin, Fitzgerald, Xiong, Glanville, Haadsma, Rheingans, Wozniak, Bezotte, Arbit, Paiz, Tsernoglou, Hill, Hood, Mentzer, McFall and MacDonell and referred to the Committee on Families, Children and Seniors.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
(MCL 700.1101 to 700.8206) by adding part 6 to article V; and to
repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Part 6

2 SURROGATE DECISIONMAKERS FOR HEALTH CARE

3 Sec. 5601. As used in this part:

4 (a) "Attending health professional" means that term as defined

5 in section 5672 of the public health code, 1978 PA 368, MCL

1 333.5672.

2 (b) "Health care" means any care, treatment, service, or
3 procedure to maintain, diagnose, or otherwise affect an
4 individual's physical or mental health.

5 (c) "Health care decision" means a decision made by an
6 individual or an individual's surrogate regarding the individual's
7 health care, including, but not limited to, any of the following:

8 (i) Selection and discharge of health care providers and a
9 health facility or agency.

10 (ii) Approval or disapproval of diagnostic tests.

11 (iii) Directions to provide or withhold all forms of health care
12 except those that would have required the patient to have expressed
13 the patient's wishes in a clear and convincing manner under the
14 standard of section 5509 or unless the surrogate is acting as a
15 patient surrogate under part 56A of the public health code, 1978 PA
16 368, MCL 333.5651 to 333.5661.

17 (d) "Health care provider" means a person who is licensed or
18 registered or otherwise authorized under article 15 of the public
19 health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide
20 health care in the ordinary course of business or practice of a
21 health professional.

22 (e) "Health facility or agency" means that term as defined in
23 section 20106 of the public health code, 1978 PA 368, MCL
24 333.20106.

25 (f) "Reasonably available" means readily able to be contacted
26 without undue effort and willing and able to act in a timely manner
27 considering the urgency of the patient's health care needs. An
28 individual is considered reasonably available if available in-
29 person, by phone, by videoconferencing, or by other means that

1 allow for adequate communication.

2 (g) "Surrogate" means an individual, other than a patient
3 advocate or guardian, authorized under this act to make a health
4 care decision for the patient.

5 Sec. 5602. (1) This part does not limit the authority of a
6 patient surrogate acting under part 56A of the public health code,
7 1978 PA 368, MCL 333.5651 to 333.5661.

8 (2) A surrogate may make a health care decision that a patient
9 who is an adult or an emancipated minor is incapable of making for
10 a patient if both of the following conditions are met:

11 (a) The patient is unable to participate in a health care
12 decision as determined under the same standard as provided in
13 section 5508.

14 (b) The patient does not have a patient advocate designation,
15 out-of-state equivalent of a patient advocate designation, or
16 guardian, or the patient advocate or guardian is not reasonably
17 available.

18 (3) A surrogate's authority to make health care decisions is
19 suspended when the patient regains the ability to participate in
20 decisions under the same standard as provided in section 5509(2).

21 (4) An adult or an emancipated minor who is not incapacitated
22 may designate an individual to act as a surrogate by personally
23 informing the attending health professional by any means of
24 communication. Designation of a surrogate under this subsection
25 does not preclude the subsequent designation of a patient advocate
26 under section 5506. The attending health professional must promptly
27 record a designation under this subsection in the patient's medical
28 record. In the absence of a designation, patient advocate
29 designation, or out-of-state equivalent of a patient advocate

1 designation, or if the designee is not reasonably available, any
2 member of the following classes who is reasonably available, in the
3 following order of priority, may act as surrogate:

4 (a) An agent under a validly executed out-of-state designation
5 of patient advocate or equivalent, including, but not limited to,
6 health care powers of attorney, advance directives, and living
7 wills.

8 (b) The spouse, unless any of the following apply:

9 (i) There is a pending action for divorce, separate
10 maintenance, or annulment.

11 (ii) The spouse has been absent from the adult for 1 year or
12 more before making the health care decision.

13 (c) An adult child.

14 (d) A parent.

15 (e) An adult sibling.

16 (5) If none of the individuals eligible to act as surrogate
17 under subsection (4) are reasonably available, an adult who has
18 exhibited special care and concern for the patient, who is familiar
19 with the patient's personal values, and who is reasonably available
20 may act as surrogate.

21 (6) A person who is the subject of a personal protection order
22 or other court order that directs that person to avoid contact with
23 the patient, or who has a pending criminal action for vulnerable
24 adult abuse or exploitation or domestic violence with the patient
25 is not eligible to act as the surrogate.

26 (7) At any time, a patient may disqualify another individual
27 from acting as surrogate. The disqualification may be communicated
28 in a record signed by the individual or by verbal or nonverbal
29 communication to the individual being disqualified, another

1 individual, or a responsible health care provider. Disqualification
2 under this subsection is effective even if made by an individual
3 who has been found to lack capacity.

4 (8) An individual is disqualified from acting as surrogate for
5 the patient if a court finds by a preponderance of the evidence
6 that the potential surrogate poses a danger to the patient.

7 (9) A surrogate must sign an acceptance of authority that must
8 be added to the patient's medical record and include substantially
9 all of the following statements:

10 1. A surrogate shall not exercise powers concerning the
11 patient's care, custody, and medical or mental health treatment
12 that the patient, if the patient were able to participate in the
13 decision, could not have exercised on the patient's own behalf.

14 2. A surrogate does not have authority to make a medical
15 treatment decision to withhold or withdraw treatment that would
16 result in a patient's death.

17 3. A surrogate must not receive compensation for the
18 performance of the surrogate's authority, rights, and
19 responsibilities, but a surrogate may be reimbursed for actual and
20 necessary expenses incurred in the performance of the surrogate's
21 authority, rights, and responsibilities.

22 4. A surrogate shall act in accordance with the standards of
23 care applicable to fiduciaries when acting for the patient and
24 shall act consistent with the patient's best interests. The known
25 desires of the patient expressed or evidenced while the patient is
26 able to participate in medical or mental health treatment decisions
27 are presumed to be in the patient's best interests.

28 5. A surrogate may revoke the surrogate's acceptance of the
29 role of surrogate at any time and in any manner sufficient to

1 communicate an intent to revoke.

2 6. A patient admitted to a health facility or agency has the
3 same rights listed under section 20201 of the public health code,
4 1978 PA 368, MCL 333.20201.

5 (10) A surrogate shall communicate the surrogate's assumption
6 of authority as promptly as practicable to the members of the
7 patient's family as specified in subsection (4) who can be readily
8 contacted.

9 (11) A surrogate shall act in accordance with the standards of
10 care applicable to fiduciaries when acting for the patient and
11 shall act consistent with the patient's best interests. The known
12 treatment preferences of the patient expressed or evidenced while
13 the patient was able to participate in medical or mental health
14 treatment decisions are presumed to be in the patient's best
15 interest.

16 (12) If a surrogate continues to act for more than 7 days
17 after assuming authority, the surrogate must provide written notice
18 to all persons identified in subsection (4) who can be readily
19 contacted. The notice under this subsection must include, at a
20 minimum, all of the following:

21 (a) The name, address, telephone number, and email address, if
22 available, of the surrogate.

23 (b) The date the surrogate began acting.

24 (c) The current location of the patient.

25 (13) If there is more than 1 reasonably available member of a
26 class having priority, members of the class shall select a single
27 surrogate from the class by majority vote. A health care facility
28 or agency or health care provider is not required to affirmatively
29 seek out all members of a class.

1 (14) If there is a dispute regarding the selection of the
2 surrogate, any person interested in the welfare of the individual
3 may file a petition in the court for an order appointing a
4 surrogate. The court shall appoint the individual having the
5 highest priority who is suitable and willing to serve. If selecting
6 between individuals who share the same priority, the court shall
7 consider the individuals' familiarity with the patient's health and
8 values and the individuals' availability.

9 (15) A surrogate acting under this part has the same
10 authority, rights, responsibilities, and limitations applicable to
11 a patient advocate in section 5509(1) other than section 5509(1)(d)
12 and (e).

13 (16) Surrogates and health care providers acting under this
14 part are bound by the same restrictions applicable to a patient
15 advocate in section 5512(2) to (6).

16 (17) A health care decision made by a surrogate for a patient
17 is effective without judicial approval.

18 (18) Unless related to the patient by blood, marriage, or
19 adoption, a surrogate may not be an owner, operator, or employee of
20 a health care facility at which the patient is receiving care or be
21 the patient's attending health professional, unless no other
22 potential surrogate is readily available.

23 (19) An attending health professional may require an
24 individual claiming the right to act as surrogate for a patient to
25 provide a written declaration under penalty of perjury stating
26 facts and circumstances reasonably sufficient to establish the
27 claimed authority.

28 (20) If an individual of a higher priority to the surrogate
29 becomes available and willing to be the surrogate, the individual

1 with the higher priority is considered the surrogate.

2 (21) A surrogate does not have authority to bind the patient
3 to an arbitration agreement without specific authorization from the
4 patient or a court order.

5 (22) A surrogate shall not move a patient out of state without
6 a court order, unless the patient is a resident of the state to
7 which the patient will be moved.

8 Sec. 5603. (1) Before implementing a health care decision made
9 for a patient by a surrogate, an attending health professional, if
10 possible, must promptly communicate to the patient the decision
11 made and the identity of the person making the decision.

12 (2) An attending health professional who knows of the
13 existence of a patient advocate designation, a revocation of a
14 patient advocate designation, or a designation or disqualification
15 of a surrogate, shall promptly record its existence in the
16 patient's health care record. If the patient advocate designation,
17 revocation of a patient advocate designation, or designation or
18 disqualification of a surrogate is in writing, an attending health
19 professional shall request a copy and, if one is furnished, shall
20 arrange for its maintenance in the health care record.

21 (3) A physician who makes or is informed of a determination
22 that a patient lacks or has recovered capacity, or that another
23 condition exists that affects an individual instruction or the
24 authority of a patient advocate, guardian, or surrogate, shall
25 promptly record the determination in the patient's health care
26 record and communicate the determination to the patient, if
27 possible, and to any person authorized to make health care
28 decisions for the patient.

29 (4) A health care provider or facility or agency providing

1 care to a patient under this part shall comply with the applicable
2 provisions under section 5511(2) to (4).

3 Sec. 5604. Unless otherwise specified in a patient advocate
4 designation, a person then authorized to make health care decisions
5 for a patient has the same rights as the patient to request,
6 receive, examine, copy, and consent to the disclosure of medical or
7 any other health care information.

8 Sec. 5605. (1) A health care provider or facility or agency
9 acting in good faith and in accordance with generally accepted
10 health care standards applicable to the health care provider or
11 facility or agency is not subject to civil or criminal liability or
12 to discipline for unprofessional conduct for any of the following:

13 (a) Complying with a health care decision of a person
14 apparently having authority to make a health care decision for a
15 patient.

16 (b) Declining to comply with a health care decision of a
17 person based on a belief that the person lacked authority.

18 (c) Complying with a designation of patient advocate and
19 assuming the designation of patient advocate was valid when made
20 and has not been revoked or terminated.

21 (2) An individual acting as patient advocate, guardian, or
22 surrogate under this act is not subject to civil or criminal
23 liability or to discipline for unprofessional conduct for health
24 care decisions made in good faith.

25 Sec. 5606. (1) A health care provider or facility or agency
26 that intentionally violates this part is subject to liability to
27 the aggrieved individual for damages of \$1,000.00 or actual damages
28 resulting from this violation, whichever is greater, plus
29 reasonable attorney fees.

1 (2) A person that intentionally falsifies, forges, conceals,
2 defaces, or obliterates an individual's designation of patient
3 advocate or a revocation of a designation of patient advocate
4 without the individual's consent, or who fraudulently induces an
5 individual to give, revoke, or not give an advance health care
6 directive, is subject to liability to that individual for damages
7 of \$2,500.00 or actual damages resulting from the action, whichever
8 is greater, plus reasonable attorney fees.

9 Enacting section 1. Section 66h of the social welfare act,
10 1939 PA 280, MCL 400.66h, is repealed.