

HOUSE BILL No. 5553

February 25, 1992, Introduced by Reps. Perry Bullard, Hollister, Byrum, Gubow, Joe Young, Jr., Varga, Gilmer, Baade, Dobronski, Yokich, Murphy, Gire, Jondahl, Trim, Leland, Profit, DeBeaussaert, Webb, Brown, Pitoniak and Oxender and referred to the Committee on Judiciary.

A bill to authorize the making of a medical treatment decision for another under certain circumstances; to prohibit the authorization of certain types of medical treatment; and to provide for certain limited immunity from liability.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan medical treatment decisions act".

3 Sec. 2. As used in this act:

4 (a) "Attending physician" means the physician who has
5 responsibility for the treatment and care of a patient.

6 (b) "Close friend" means an individual 18 years old or older
7 who has exhibited special concern for the patient, who is famil-
8 iar with the patient's activities, health, and beliefs, and who
9 demonstrates this concern and familiarity to the satisfaction of
10 the attending physician.

1 (c) "Health care facility" means a hospital, nursing home,
2 county medical care facility, hospice, health maintenance organi-
3 zation, freestanding surgical outpatient facility, clinical labo-
4 ratory, community health center, migrant health center, ambulance
5 operation, advanced mobile emergency care service, or limited
6 advanced mobile emergency care service licensed or otherwise reg-
7 ulated under article 17 of the public health code, Act No. 368 of
8 the Public Acts of 1978, being sections 333.20101 to 333.22260 of
9 the Michigan Compiled Laws.

10 (d) "Health care provider" means a health care facility or a
11 person who is licensed or otherwise authorized under article 15
12 of Act No. 368 of the Public Acts of 1978, being
13 sections 333.16101 to 333.18838 of the Michigan Compiled Laws, to
14 provide health care to individuals.

15 (e) "Medical treatment" means any medicine, procedure, or
16 device to maintain, diagnose, or treat an individual's physical
17 or mental condition. Medical treatment does not include assist-
18 ance with the activities of daily living.

19 (f) "Patient" means an individual 18 years of age or older
20 being treated by or under the care of a health care provider.

21 (g) "Physician" means a health care provider licensed in
22 this state to engage in the practice of medicine or osteopathic
23 medicine and surgery.

24 (h) "Unable to participate in medical treatment decisions"
25 means an inability to understand the possible benefits and risks
26 of alternative courses of medical treatment, including

1 nontreatment, or an inability to communicate a treatment
2 decision.

3 Sec. 3. A patient has the right to contemporaneously autho-
4 rize or refuse medical treatment for himself or herself, unless
5 he or she is unable to participate in medical treatment
6 decisions.

7 Sec. 4. If a patient is unable to participate in medical
8 treatment decisions, and if the patient does not have available a
9 patient advocate or guardian with power to make medical treatment
10 decisions, a medical treatment decision can be made for the
11 patient by another person in accordance with this act.

12 Sec. 5. Another person, in the following order of priority,
13 may make a medical treatment decision for a patient under this
14 act if the person is not prohibited under section 6, is reason-
15 ably available, is able to participate in medical treatment deci-
16 sions, and chooses to act:

- 17 (a) The patient's spouse.
- 18 (b) An adult child of the patient.
- 19 (c) A parent of the patient.
- 20 (d) An adult sibling of the patient.
- 21 (e) An adult grandchild of the patient.
- 22 (f) A grandparent of the patient.
- 23 (g) A close friend of the patient.

24 Sec. 6. If a patient has indicated orally or in writing
25 that a particular person or persons do not have authority to make
26 medical treatment decisions for the patient, that person or

1 persons shall not make medical treatment decisions on behalf of
2 the patient.

3 Sec. 7. Before another person makes a medical treatment
4 decision for a patient under this act, all of the following shall
5 occur:

6 (a) The attending physician and 1 other physician or a
7 health care provider who is a licensed psychologist shall deter-
8 mine that the patient is unable to participate in medical treat-
9 ment decisions. The determination shall be entered into the
10 patient's medical record.

11 (b) The attending physician shall make a reasonable effort
12 to determine whether the patient has a patient advocate or a
13 guardian with power to make medical treatment decisions.

14 (c) The attending physician shall attempt to communicate to
15 the patient that another person will be making medical treatment
16 decisions for the patient. If the patient objects, another
17 person shall not make a medical treatment decision for that
18 patient without an order by the probate court.

19 (d) The attending physician shall attempt to communicate to
20 the patient the name of the other person who will be making medi-
21 cal treatment decisions for the patient. If the patient objects
22 to that person, that person shall not make medical treatment
23 decisions for the patient.

24 (e) Before a medical treatment decision by another person
25 for a patient is implemented, the attending physician shall
26 attempt to communicate the decision to the patient. The
27 attending physician shall not implement the decision if the

1 patient objects, or if the attending physician knows the decision
2 to be contrary to previously expressed wishes of the patient.

3 Sec. 8. In making a medical treatment decision for a
4 patient under section 5, a person shall, considering any evidence
5 available, attempt to make the decision the patient would have
6 made were the patient able to participate in medical treatment
7 decisions. If there is no evidence as to what the patient's
8 wishes might be, the person shall act in the patient's best
9 interests.

10 Sec. 9. Upon the determination that a patient is unable to
11 participate in medical treatment decisions, a person authorized
12 to make medical treatment decisions for the patient under this
13 act has the right to review the patient's medical records, and
14 the right to be fully informed by the attending physician of the
15 patient's medical condition, treatment options, and prospects for
16 recovery.

17 Sec. 10. Upon implementation of a medical treatment deci-
18 sion made by a person for a patient under this act, the attending
19 physician shall record the decision and the name of the person
20 making the decision in the patient's medical record.

21 Sec. 11. Under this act, a person cannot make a medical
22 treatment decision authorizing 1 or more of the following types
23 of medical treatment for a patient:

24 (a) Psychosurgery.

25 (b) Experimental surgery.

26 (c) Electro-convulsive therapy.

(d) Admission to a psychiatric facility.

(e) Administration of experimental medications.

(f) Nontherapeutic sterilization.

(g) Any medical treatment prohibited by the laws of this state.

Sec. 12. If an interested person believes that a person is in any way not complying with this act, the interested person may petition the probate court for the county in which the patient is located or resides for a determination of that fact and an appropriate order.

Sec. 13. (1) A person who in good faith makes a medical treatment decision for a patient under this act is not criminally or civilly liable for that decision.

(2) A person not otherwise liable for the cost of medical treatment of a patient does not become liable for that cost by making a medical treatment decision under this act.

(3) A physician or other health care provider who in good faith implements a medical treatment decision made by a person whom the health care provider believes in good faith to have authority under this act, is not criminally or civilly liable for implementing the decision.

(4) A health care facility, acting in good faith, in which a medical treatment decision made by a person under section 5 is implemented, is not criminally or civilly liable for the decision being implemented.

Sec. 14. This act does not affect the validity of documents in which an individual has indicated in advance the type of

1 medical treatment he or she wishes to receive in particular
2 circumstances, and which can be honored without reliance on
3 another person to authorize or refuse the medical treatment.

4 Sec. 15. This act does not require an authorization of med-
5 ical treatment by another person for a patient if all of the fol-
6 lowing occur simultaneously:

7 (a) The patient needs emergency care.

8 (b) The patient is apparently unable to participate in medi-
9 cal treatment decisions.

10 (c) No person with authority to make medical treatment deci-
11 sions for the patient is immediately available.

12 (d) The medical treatment is not contrary to any of the
13 patient's wishes known to the health care provider.