

A SUMMARY OF HOUSE BILL 6088 AS INTRODUCED 9-16-98

The bill would amend the Revised Probate Code (MCL 700.6 et al.) to allow for the appointment of a health care surrogate in certain circumstances. A health care surrogate would be a person other than a patient's guardian, patient advocate, or health care agent, who would have authority to make health care decisions for the patient. Health care decisions would include those decisions regarding the selection of or discharge of a health care provider or institution, and approval or disapproval of diagnostic tests, surgical procedures, or other medical treatment, the administration of medication, and the use of a medical device. A health care decision made by a health care surrogate would be effective without judicial approval.

A health care surrogate could make a health care decision for a patient, provided the patient was at least 18 years old and unable to participate in his or her health care decisions due to an inability to understand the possible risks and benefits of alternative health care choices or an inability to communicate a health care decision. If a dispute arose over an individual's ability to participate in his or her health care treatment decisions, a court determination would have to be made in the same manner and within the same time period as such determinations are made with regard to patient advocates. [A hearing within seven days of the petition and a decision within seven days of the hearing.]

In addition to the requirements concerning the patient's age and inability to make treatment decisions, the following conditions would have to be met:

- The individual could not have a guardian, patient advocate, or health care agent with authority to act regarding his or her health care decisions.
- The individual's primary physician and one other physician or psychologist must have determined that the individual was unable to participate in his or her health care decisions. Such a determination would have to be entered into the individual's medical record.
- The primary physician attempted to communicate to the patient that another person would be making the patient's health care decisions and the patient had not objected. If the patient objected and the primary physician was aware of the objection, the surrogate could not make a health care decision for that patient without a probate court order.

Generally, the people with the following relationships to the patient would be eligible to act as a patient's health care treatment surrogate (listed in order of preference): The patient's spouse, if not estranged; an adult child; a parent; or an adult sibling. If none of these people were available and willing to act as a surrogate, another adult who had exhibited special concern for the patient, who was familiar with the patient's personal values, and who was willing and available could act as the patient's health care surrogate. Upon assuming authority, a health care treatment surrogate would be required to make reasonable efforts to immediately communicate his or her assumption of authority to other people who might have been eligible to act as a health care surrogate for the patient.

A member of a lower preference group could not overturn the health care decisions made by a member of a higher preference group who had assumed responsibility as a patient's health care surrogate. However, if a member of any class believed that a health care surrogate was not complying with the provisions set forth in the bill, he or she could notify the primary physician and petition the appropriate probate court (the probate court for the county where the patient is located or resides) for a determination of the issue and an appropriate order.

Further, if more than one member of the same priority group had assumed authority to act as health care surrogate and all of those members did not agree on a decision, the appropriate probate court could be petitioned to make a determination of the fact and issue an appropriate order.

A patient could disqualify a health care surrogate, including a member of the patient's family, through a signed writing or by personally informing his or her primary physician.

Duties and responsibilities. A patient's primary physician could require a health care surrogate to provide a written declaration signed under penalty of perjury that stated facts and circumstances that were reasonably sufficient to establish the person's claimed authority. The primary physician would be required to record the health care decisions and the name of the person making those decisions in the patient's medical record. The physician could also require the person making the decision to sign an acknowledgment and an acceptance of his or her role as health care surrogate under the bill's provisions.

A health care surrogate would be required to make health care decisions in accordance with the patient's instructions, if any, and other wishes known to the health care surrogate. Without such information, the surrogate would be required to make his or her decisions in accordance with the patient's best interests. To the extent known, the surrogate would be required to consider the patient's personal values when determining the patient's best interests. The patient's primary physician would be required to fully inform the health care surrogate of the patient's medical condition, treatment options, and prospects for recovery, and the health care surrogate would have the authority to review the patient's medical records.

The primary physician would be required to attempt to communicate the health care decision to the patient. If the patient objected to the health care decision or the physician knew that decision was contrary to the patient's previously expressed wishes, the physician could not perform or implement the decision.

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