

**SUBSTITUTE FOR
HOUSE BILL NO. 4418**

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:

Part 6

SURROGATE DECISION MAKERS FOR HEALTH CARE

Sec. 5601. As used in this part:

(a) "Attending health professional" means that term as defined
in section 5672 of the public health code, 1978 PA 368, MCL
333.5672.

(b) "Health care" means any care, treatment, service, or
procedure to maintain, diagnose, or otherwise affect an

1 individual's physical or mental health.

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

5 (i) Selection and discharge of health care providers and a
6 health facility or agency.

7 (ii) Approval or disapproval of diagnostic tests.

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

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

19 (e) "Health facility or agency" means that term as defined in
20 section 20106 of the public health code, 1978 PA 368, MCL
21 333.20106.

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

28 (g) "Surrogate" means an individual, other than a patient
29 advocate or guardian, authorized under this act to make a health

1 care decision for the patient.

2 Sec. 5602. (1) This part does not limit the authority of a
3 patient surrogate acting under part 56A of the public health code,
4 1978 PA 368, MCL 333.5651 to 333.5661.

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

8 (a) The patient is unable to participate in a health care
9 decision as determined under the same standard as provided in
10 section 5508.

11 (b) The patient does not have a patient advocate designation,
12 out-of-state equivalent of a patient advocate designation, or
13 guardian, or the patient advocate is not reasonably available after
14 documented attempts to reach the patient advocate have yielded no
15 response.

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

19 (4) An adult or an emancipated minor who is not incapacitated
20 and is admitted to a health care facility may designate an
21 individual to act as a surrogate in writing. A written document
22 designating the patient's identified surrogate decision maker must
23 be placed in the patient's medical record. If the patient is unable
24 to designate a surrogate decision maker in writing, the patient
25 may, by any means of communication, inform an attending health
26 professional of the designation. If the patient communicates to an
27 attending health professional by a means other than in writing, a
28 witness in addition to an attending health professional must be
29 present and a written indication of the designation must be

1 included in the patient's medical record. Designation of a
2 surrogate under this subsection does not preclude the subsequent
3 designation of a patient advocate under section 5506. In the
4 absence of a designation of a surrogate under this subsection,
5 patient advocate designation, or out-of-state equivalent of a
6 patient advocate designation, or if the designee is not reasonably
7 available, any member of the following classes who is reasonably
8 available, in the following order of priority, may act as
9 surrogate:

10 (a) A person previously appointed, qualified, and serving in
11 good standing as guardian for the incapacitated individual in this
12 state or another state.

13 (b) A person named by the individual as attorney in fact in a
14 durable power of attorney.

15 (5) If there is no person appointed, qualified, and serving,
16 or named under subsection (4) (a) or (b) or if none of the persons
17 listed are reasonably available, suitable, and willing to serve,
18 the following in order of priority, may act as surrogate:

19 (a) The incapacitated individual's spouse unless any of the
20 following apply:

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

23 (ii) The spouse has been absent from the incapacitated
24 individual for 1 year or more before making the health care
25 decision.

26 (b) An adult child of the incapacitated individual.

27 (c) A domestic partner with whom the incapacitated individual
28 has resided for more than 12 months before the medical decision.

29 (d) A parent of the incapacitated individual.

1 (e) An adult sibling.

2 (f) An individual with whom the incapacitated individual has
3 resided for more than 12 months before the medical decision and who
4 is not a domestic partner.

5 (g) An adult who has exhibited special care and concern for
6 the patient, who is familiar with the patient's personal values,
7 and who is reasonably available and willing.

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

13 (7) At any time, a patient may disqualify another individual
14 from acting as surrogate. The disqualification may be communicated
15 in a record signed by the patient or by verbal or nonverbal
16 communication to the individual being disqualified, another
17 individual, or an attending health care provider. Disqualification
18 under this subsection is effective even if made by a patient who
19 has been found to lack capacity. If a disqualification was not made
20 in writing by the patient and signed, the disqualification must
21 have a witness to the disqualification. If the patient disqualifies
22 an individual from serving as a surrogate, a notice must be placed
23 in the patient's medical record.

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

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

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

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

8 3. A surrogate must not receive compensation for the
9 performance of the surrogate's authority, rights, and
10 responsibilities, but a surrogate may be reimbursed for actual and
11 necessary expenses incurred in the performance of the surrogate's
12 authority, rights, and responsibilities.

13 4. A surrogate shall act in accordance with the standards of
14 care applicable to fiduciaries when acting for the patient and
15 shall act consistent with the patient's best interests. The known
16 desires of the patient expressed or evidenced while the patient is
17 able to participate in medical or mental health treatment decisions
18 are presumed to be in the patient's best interests.

19 5. A surrogate may revoke in writing the surrogate's
20 acceptance of the role of surrogate at any time. The revocation
21 must be placed in the patient's medical record.

22 6. If a previously appointed surrogate revokes acceptance as
23 serving as a surrogate, another surrogate may be appointed in
24 accordance with section 5602(4) of the estates and protected
25 individuals code, 1998 PA 386, MCL 700.5602.

26 7. A patient admitted to a health facility or agency has the
27 same rights listed under section 20201 of the public health code,
28 1978 PA 368, MCL 333.20201.

29 (10) A surrogate shall communicate the surrogate's assumption

1 of authority as promptly as practicable to the members of the
2 patient's family as specified in subsection (4) who can be readily
3 contacted.

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

11 (12) If a surrogate continues to act for more than 7 days
12 after assuming authority, the surrogate must provide written notice
13 to all persons identified in subsections (4) and (5) who can be
14 readily contacted. The notice under this subsection must include,
15 at a minimum, all of the following:

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

18 (b) The date the surrogate began acting.

19 (c) The current location of the patient.

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

25 (14) If there is a dispute regarding the selection of the
26 surrogate, any person interested in the welfare of the individual
27 may petition the court for an order appointing a temporary
28 guardian. The court shall appoint the individual having the highest
29 priority who is suitable and willing to serve. If selecting between

1 individuals who share the same priority, the court shall consider
2 the individuals' familiarity with the patient's health and values
3 and the individuals' availability.

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

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

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

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

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

23 (20) If an individual of a higher priority to the surrogate
24 becomes available and willing to be the surrogate, the individual
25 with the higher priority is considered the surrogate. Documentation
26 of the change in surrogate must be placed in the patient's medical
27 record.

28 (21) A surrogate does not have authority to bind the patient
29 to an arbitration agreement without specific authorization from the

1 patient or a court order.

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

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

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

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

26 (4) A health care provider or facility or agency providing
27 care to a patient under this part shall comply with the applicable
28 provisions under section 5511(2) to (4).

29 Sec. 5604. A person specified in a patient advocate

1 designation and a person authorized to make health care decisions
2 for a patient have the same rights as the patient under this
3 section to request, receive, examine, copy, and consent to the
4 disclosure of medical or any other health care information.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. ____ (request no. S01585'25) or House Bill
7 No. 4419 of the 103rd Legislature is enacted into law.