

HOUSE BILL NO. 4418

May 01, 2025, Introduced by Reps. Thompson, Young, Witwer, Breen, Wilson, Johnsen, Pavlov, Aragona, Wozniak, Linting, Kelly, Steckloff, Meerman, Rigas, BeGole, Woolford, Roth, Green, T. Carter, MacDonell, Mentzer, Whitsett, Schuette, Kunse, VanderWall, Herzberg and Greene and referred to Committee on Judiciary.

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 DECISION MAKERS 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 available
17 after documented attempts to reach the patient advocate or guardian
18 have yielded no response.

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

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

1 attending health professional by a means other than in writing, a
2 witness in addition to an attending health professional must be
3 present and a written indication of the designation must be
4 included in the patient's medical record. Designation of a
5 surrogate under this subsection does not preclude the subsequent
6 designation of a patient advocate under section 5506. In the
7 absence of a designation of a surrogate under this subsection,
8 patient advocate designation, or out-of-state equivalent of a
9 patient advocate designation, or if the designee is not reasonably
10 available, any member of the following classes who is reasonably
11 available, in the following order of priority, may act as
12 surrogate:

13 (a) A person previously appointed, qualified, and serving in
14 good standing as guardian for the legally incapacitated individual
15 in this state or another state.

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

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

22 (a) The legally incapacitated individual's spouse unless any
23 of the following apply:

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

26 (ii) The spouse has been absent from the incapacitated
27 individual for 1 year or more before making the health care
28 decision.

29 (b) A domestic partner with whom the incapacitated individual

1 has resided for more than 12 months before the medical decision.

2 (c) An adult child of the legally incapacitated individual.

3 (d) A parent of the legally incapacitated individual.

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

7 (f) An adult sibling.

8 (g) A person nominated by a person who is caring for the
9 legally incapacitated individual or paying benefits to the legally
10 incapacitated individual.

11 (h) An adult who has exhibited special care and concern for
12 the patient, who is familiar with the patient's personal values,
13 and who is reasonably available and willing.

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

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

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

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

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

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

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

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

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

29 7. A patient admitted to a health facility or agency has the

1 same rights listed under section 20201 of the public health code,
2 1978 PA 368, MCL 333.20201.

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

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

14 (11) After a surrogate accepts acting as a surrogate, the
15 surrogate shall visit the patient. The hospital or facility shall
16 allow the surrogate to have access to the patient.

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

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

24 (b) The date the surrogate began acting.

25 (c) The current location of the patient.

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

1 seek out all members of a class.

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

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

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

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

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

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

29 (20) If an individual of a higher priority to the surrogate

1 becomes available and willing to be the surrogate, the individual
2 with the higher priority is considered the surrogate. Documentation
3 of the change in surrogate must be placed in the patient's medical
4 record.

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

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

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

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

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

1 possible, and to any person authorized to make health care
2 decisions for the patient.

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

6 Sec. 5604. A person specified in a patient advocate
7 designation and a person authorized to make health care decisions
8 for a patient have the same rights as the patient under this
9 section to request, receive, examine, copy, and consent to the
10 disclosure of medical or any other health care information.

11 Enacting section 1. Section 66h of the social welfare act,
12 1939 PA 280, MCL 400.66h, is repealed.

13 Enacting section 2. This amendatory act does not take effect
14 unless Senate Bill No. ____ (request no. S01585'25) or House Bill
15 No. 4419 (request no. H01585'25) of the 103rd Legislature is
16 enacted into law.