
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Mills (SB 302)

Present law provides for the designation of certain persons who may consent to surgical or medical treatment.

Proposed law adds as one of the persons who may consent to surgical or medical treatment when any adult is unable to consent for himself, and in the absence of the availability of any other person designated to consent under present law, an adult friend. Further defines an adult friend and how such adult friend shall be recognized as authorized to consent for the patient.

Proposed law provides that if none of those persons designated under present law are reasonably available, then the patient's attending physician shall have the discretion to provide or perform any surgical or medical treatment or procedures, including but not limited to an autopsy, and may also make decisions regarding continued services needed by the patient, including but not limited to approving the placement or transfer of the patient to another facility, without the consent of the patient or other person authorized to consent for the patient.

Proposed law further provides that prior to taking such action, the attending physician shall document in the patient's chart the facts that establish what medical decisions need to be made and why those decisions are needed without undue delay, as well as the steps taken to obtain consent from the patient or another person authorized by law to give consent and then obtain confirmation from another physician, preferably the patient's primary care physician if he is not the attending physician, of the patient's condition and the medical necessity for such action as is appropriate and consistent with the patient's condition and which cannot be omitted without adversely affecting the patient's condition or the quality of medical care rendered. Proposed law further provides that the confirming physician shall personally examine the patient and document his assessment, findings and recommendations in the patient's chart prior to the proposed surgical or medical treatment or procedures being performed.

Proposed law provides that proposed law shall not apply to an emergency governed by present law.

Proposed law further provides that when no contact people are included in the patient's records, in order to justify a finding that none of the authorized persons listed under proposed law are reasonably available, the patient's attending physician shall document the following in the patient's record:

- (1)(a) That he or a representative of the attending physician or facility has inquired of, or has made a documented good faith effort to inquire of the following entities regarding the existence of any advance directive made by the patient and the availability of information

that would enable the physician to contact any person listed under proposed law:

- (i) The Louisiana Secretary of State's Living Will Registry.
 - (ii) The patient's primary care physician or any known provider of medical treatment or services received by the patient in the previous 180 days.
 - (iii) Any known facility in which the patient has resided in the last 180 days.
- (b) That no advance directive or other information that would enable the physician to contact an authorized individual to consent is available.
- (2) When names of potentially authorized persons are listed in the individual's records or are obtained through efforts under proposed law, in order to justify a finding that none of the authorized persons listed under proposed law are reasonably available the patient's attending physician shall document in the patient's record the name of each potentially authorized person that he or a representative of the physician or facility attempted to contact, the manner and date of the attempted contact, and the result of the attempted contact.

Proposed law provides that no hospital or other health care facility, physician, health care provider, or other person or entity shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as to the issue of consent only, based upon the reliance in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under present law even if death or injury to the patient ensues, except for liability for medical malpractice as to the provision or performance of the surgical or medical treatment, not with regard to the question of consent under R.S. 1299.39, et seq. or R.S. 40:1299.41, et seq.

Proposed law further provides that each hospital or other health care facility, physician, health care provider, or other person or entity, who acts in good faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

Proposed law provides that any physician attending or confirming, who, in accordance with proposed law above, provides or performs any surgical or medical treatment or procedure, including but not limited to an autopsy, or who makes decisions regarding continued services, including but not limited to approving the transfer or placement of the patient, without the consent of the patient or other person authorized to consent for the patient, shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the decision to perform, or the actual performance of, such treatment or procedure, or with regard to any decisions pertaining to continued services, including but not limited to decisions regarding the transfer or placement of the patient as to the issue of consent only, even if death or injury to the patient ensues, except for liability for medical malpractice as to the provision or performance of the surgical or medical treatment, not with regard to the question of consent under R.S. 1299.38, et seq. or R.S. 40:1299.41, et seq.

Proposed law further provides that no hospital or other health care facility, health care provider or other person or entity acting under the direction of a physician shall be subject to criminal prosecution or civil liability, or be deemed to have engaged in unprofessional conduct as a result of any treatment, procedures, continued services, transfer, or placements that were performed in accordance with proposed law above, as to the issue of consent only, even if death or injury to the patient ensues, except for liability for medical malpractice as to the provision or performance of the surgical or medical treatment, not with regard to the question of consent under R.S. 1299.39, et seq., or R.S. 40:1299.41, et seq.

Effective August 1, 2014.

(Amends R.S. 40:1299.53)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds as one of the authorized persons to consent when a person is unable to consent to surgical or medical treatment the addition of an "adult friend" of the patient. Defines an adult friend of the patient and how such an adult friend shall be recognized as authorized to consent for the patient.
2. Changes the procedure and documentation requirements by which an attending physician may consult another physician. Provides that preferably the second physician should be the patient's primary care physician.
3. Adds certain requirements for documentation by the patient's attending physician when no contact people are included in the patient's records, in order to justify a finding that no authorized persons are available.
4. Limits certain immunities to the issue of consent only, not to include liability for medical malpractice as to the provision or performance of the surgical or medical treatment.