

CHAPTER 28
FORMERLY
HOUSE BILL NO. 42
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO HEALTH-CARE DECISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2507, Title 16 of the Delaware Code by making insertions as shown by underlining as follows:

§ 2507. Surrogates.

(a) A surrogate may make a health care decision to treat, withdraw or withhold treatment for an adult patient if the patient has been determined by the attending physician to lack capacity and there is no agent or guardian, or if the directive does not address the specific issue. This determination shall be confirmed in writing in the patient's medical record by the attending physician. Without this determination and confirmation, the patient is presumed to have capacity and may give or revoke an advance health care directive or disqualify a surrogate.

(b)(1) A mentally competent patient may designate any individual to act as a surrogate by personally informing the supervising health-care provider in the presence of a witness. The designated surrogate may not act as a witness. The designation of the surrogate shall be confirmed in writing in the patient's medical record by the supervising health-care provider and signed by the witness.

(2) In the absence of a designation or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act, when permitted by this section, as a surrogate and shall be recognized as such by the supervising health-care provider:

- a. The spouse, unless a petition for divorce has been filed;
- b. An adult child;
- c. A parent;
- d. An adult sibling;
- e. An adult grandchild;
- f. An adult niece or nephew;
- g. An adult aunt or uncle.

Individuals specified in this subsection are disqualified from acting as a surrogate if the patient has filed a petition for a Protection From Abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the patient.

(3) If an adult patient is in an acute care setting or is a client of the Department of Health and Social Services and none of the individuals eligible to act as a surrogate under subsection (b) of this section is reasonably available, an adult, other than a paid caregiver, who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may make health care decisions to treat, withdraw or withhold treatment on behalf of the patient ~~if appointed as a guardian for that purpose by the Court of Chancery.~~ Such person shall provide an affidavit to the health care facility or to the attending or treating physician stating which includes statements that he or she is (i) a close friend of the patient, (ii) is willing

and able to become involved in the patient's health care, and (iii) has maintained such regular contact with the patient as to be familiar with the patient's activities, health, personal values and morals. The affidavit must also recite facts and circumstances that demonstrate such person's familiarity with the patient. End of life decisions involving the withdrawal or withholding of treatment must meet the requirements of Title 16, Chapter 25.

(4) Nothing in this section shall be interpreted as limiting the Court of Chancery's authority to appoint a guardian of a person to act as a surrogate under the Court's rules and procedures.

Section 2. The Department of Health and Social Services shall by regulation promulgate a form affidavit for use by individuals who propose to act as a patient's surrogate when no family member is reasonably available.

Approved May 28, 2013