Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 281

HOUSE BILL 2823

AN ACT

AMENDING SECTIONS 36-3203, 36-3206 AND 36-3231, ARIZONA REVISED STATUTES; RELATING TO LIVING WILLS AND HEALTH CARE DIRECTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-3203, Arizona Revised Statutes, is amended to read:

36-3203. Surrogate; authority; responsibilities; immunity

A. A person authorized as a surrogate to make health care decisions under this chapter is not responsible for paying the patient's health care costs unless the person is otherwise required to do so.

B. This chapter does not authorize a surrogate to consent to any act or omission to which the patient could not lawfully consent.

C. The surrogate shall make health care decisions for the patient in accordance with the patient's wishes as expressed in the health care directive. If the health care directive does not provide sufficient information to know what the patient would want in a particular circumstance, the surrogate shall base these decisions on the surrogate's knowledge of the patient's values if those are known or can be determined to the surrogate's satisfaction. If neither the health care directive nor the surrogate's knowledge of the patient's values provides a sufficient basis for making a health care decision, the surrogate shall decide based on the surrogate's good faith belief as to what is in the patient's best interest.

D. A surrogate who makes good faith health care decisions for a patient is not subject to civil or criminal liability for those decisions. Acts and refusals to act made in reliance on the provisions of a health care directive are presumed to be made in good faith. A court shall base a finding of an absence of good faith on information known to the surrogate and shall enter its finding only after it has made a determination of bad faith in written findings of fact based on clear and convincing evidence of improper motive. For the purposes of this subsection, "good faith" includes all health care decisions, acts and refusals to act based on a surrogate's reasonable belief of a patient's desires or a patient's best interest if these decisions, acts or refusals to act are not contrary to the patient's express written directions in a valid health care directive.

E. A SURROGATE WHO IS NOT THE PATIENT'S AGENT OR GUARDIAN SHALL NOT MAKE DECISIONS TO WITHDRAW THE ARTIFICIAL ADMINISTRATION OF FOOD OR FLUID.

Sec. 2. Section 36-3206, Arizona Revised Statutes, is amended to read:

36-3206. Enforcement or challenge of a directive or decision; judicial proceedings

A. An interested person may file a verified petition with the superior court to determine the validity or effect of a health care directive or the decision of a surrogate.

B. The petition shall include the following information:

1. The name and current location of the patient and any surrogate authorized to make decisions for the patient.

2. The name and address of any health care provider known by the petitioner to be providing health care to the principal.

3. A description or a copy of the health care directive.

4. The judicial relief sought by the petitioner.

C. ON THE FILING OF THE PETITION THE COURT SHALL ENTER A TEMPORARY ORDER DIRECTING COMPLIANCE WITH SECTION 36-3203, SUBSECTION E. NOTICE OF THIS ORDER SHALL BE PROVIDED BY PERSONAL SERVICE ON THE SURROGATE, THE PATIENT, THE HEALTH CARE PROVIDERS IMMEDIATELY RESPONSIBLE FOR THE PATIENT'S CARE AND OTHER PERSONS THE COURT REQUIRES TO BE NOTIFIED.

~~C.~~ D. The court shall review the petition, any other pleadings on file and any evidence offered by the petitioner to determine if it should order temporary orders without a further hearing. The court may enter a temporary order directing the provision or the withholding of specific medical treatment pending a further hearing if the court determines that there is reasonable cause to believe that health care decisions are being made by a surrogate or a health care provider that derogate the patient's wishes or, if the patient's wishes are not known, the patient's best interests.

~~D.~~ E. The court shall schedule and conduct a hearing within five working days of the filing of a petition. Notice shall be provided by personal service on the surrogate, the patient, the health care providers immediately responsible for the patient's care, and other persons the court requires to be notified.

~~E.~~ F. On the filing of the petition the court may:

1. Appoint an attorney for the patient if it appears that this is in the patient's best interests.

2. Appoint an investigator as provided under section 14-5308 or a physician, or both, to evaluate the patient and submit a written report to the court before the hearing.

3. Enter other temporary orders that the court determines are necessary and appropriate to protect the wishes or the best interests of the patient, including an order exercising the power of a guardian or appointing a temporary guardian as provided under section 14-5310.

~~F.~~ G. A person filing a petition under this section is not required to post a bond unless the court determines that a bond is necessary to protect the interests of any party.

~~G.~~ H. On notice and a hearing, the court may enter appropriate orders to safeguard the wishes of the patient. If the court is unable to determine those wishes, the court may enter appropriate orders to safeguard the patient's best interest. These orders may include:

1. Appointing a surrogate if the procedural requirements of title 14, chapter 5, article 3 have been met.

2. Removing an agent or any other surrogate and appointing a successor.

3. Directing compliance with the terms of the patient's health care directive including the provisional removal or withholding of treatment if the court finds that this conforms with the patient's wishes or, if the patient's wishes are not known, is in the patient's best interest.

4. Directing the transfer of the patient to a suitable facility or to the care of a health care provider who is willing to comply with the patient's wishes.

5. Assessing court costs and attorney fees against a party found to have proceeded in bad faith.

~~H.~~ I. Notwithstanding a person's incapacity, the court may deny a petition to appoint a guardian for that person based on the existence of a valid and unrevoked health care directive.

~~I.~~ J. A guardian appointed pursuant to this section is immune from civil and criminal liability to the same extent as any other surrogate pursuant to section 36-3203, subsection D.

Sec. 3. Section 36-3231, Arizona Revised Statutes, is amended to read:

36-3231. Surrogate decision makers; priorities; limitations

A. If an adult patient is unable to make or communicate health care treatment decisions, a health care provider shall make a reasonable effort to locate and shall follow a health care directive. A health care provider shall also make a reasonable effort to consult with a surrogate. If the patient has a health care power of attorney that meets the requirements of section 36-3221, the patient's designated agent shall act as the patient's surrogate. However, if the court appoints a guardian for the express purpose of making health care treatment decisions, that guardian shall act as the patient's surrogate. If neither of these situations applies, the health care provider shall make reasonable efforts to contact the following individual or individuals in the indicated order of priority, who are available and willing to serve as the surrogate, who then have the authority to make health care decisions for the patient and who shall follow the patient's wishes if they are known:

1. The patient's spouse, unless the patient and spouse are legally separated.

2. An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation.

3. A parent of the patient.

4. If the patient is unmarried, the patient's domestic partner ~~if no other person has assumed any financial responsibility for the patient~~.

5. A brother or sister of the patient.

6. A close friend of the patient. For the purposes of this paragraph, "close friend" means an adult who has exhibited special care and concern for the patient, who is familiar with the patient's health care views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.

B. If the health care provider cannot locate any of the people listed in subsection A of this section, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee.

If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision. For the purposes of this subsection, "institutional ethics committee" means a standing committee of a licensed health care institution appointed or elected to render advice concerning ethical issues involving medical treatment.

C. A person who makes a good faith medical decision pursuant to this section is immune from liability to the same extent and under the same conditions as prescribed in section 36-3205.

~~D. A surrogate who is not the patient's agent or guardian shall not make decisions to withdraw the artificial administration of food or fluid.~~

~~E.~~ D. A surrogate may make decisions about mental health care treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to a level one behavioral health facility licensed by the department of health services, except as provided in subsection ~~F~~ E of this section or section 14-5312.01, 14-5312.02 or 36-3281.

~~F.~~ E. If the admitting officer for a mental health care provider has reasonable cause to believe after examination that the patient is incapable as defined in section 36-3281, subsection D and is likely to suffer serious physical harm or serious illness or to inflict serious physical harm on another person without immediate hospitalization, the patient may be admitted for inpatient treatment in a level one behavioral health facility based on informed consent given by any surrogate identified in subsection A of this section. The patient shall be discharged if a petition for court ordered evaluation or for temporary guardianship requesting authority for the guardian to consent to admission to a level one behavioral health facility has not been filed within forty-eight hours of admission or on the following court day if the forty-eight hours expires on a weekend or holiday. The discharge requirement prescribed in this section does not apply if the patient has given informed consent to voluntary treatment or if a mental health care provider is prohibited from discharging the patient under federal law.

APPROVED BY THE GOVERNOR JUNE 24, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 24, 2008.