

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE F. POWERS AND DUTIES OF HOSPITALS

CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT

Sec. 313.001. SHORT TITLE. This chapter may be cited as the Consent to Medical Treatment Act.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

(3-a) "Home and community support services agency" means a facility licensed under Chapter [142](#).

(4) "Hospital" means a facility licensed under Chapter [241](#).

(5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

(7) "Nursing home" means a facility licensed under Chapter [242](#).

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is residing in a nursing home;

(C) is receiving services from a home and

community support services agency; or

(D) is an inmate of a county or municipal jail.

(9) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.

(10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 1, eff. September 1, 2011.

Sec. 313.003. EXCEPTIONS AND APPLICATION. (a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;

(2) a health care decision made under a medical power of attorney under Subchapter D, Chapter 166, or under Subtitle P, Title 2, Estates Code;

(3) consent to medical treatment of minors under Chapter 32, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 450, Sec. 2.01, eff. Sept. 1,

1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.045, eff. September 1, 2017.

Sec. 313.004. CONSENT FOR MEDICAL TREATMENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

- (1) the patient's spouse;
- (2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;
- (3) a majority of the patient's reasonably available adult children;
- (4) the patient's parents; or
- (5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction of proceedings under Title 3, Estates Code.

(c) Any medical treatment consented to under Subsection (a) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

- (1) voluntary inpatient mental health services;
- (2) electro-convulsive treatment; or
- (3) the appointment of another surrogate decision-maker.

(e) Notwithstanding any other provision of this chapter, if

the patient is an adult inmate of a county or municipal jail, a surrogate decision-maker may not also consent to:

- (1) psychotropic medication;
- (2) involuntary inpatient mental health services; or
- (3) psychiatric services calculated to restore competency to stand trial.

(f) A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the patient or the patient's appointed guardian of the person, if the patient is a ward under Title 3, Estates Code, may consent to medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. [3473](#)), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. [1128](#)), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. [1488](#)), Sec. 22.046, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. [2780](#)), Sec. 7, eff. September 1, 2019.

Sec. 313.005. PREREQUISITES FOR CONSENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

- (1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and

(2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the home and community support services agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. [3473](#)), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. [1128](#)), Sec. 3, eff. September 1, 2011.

Sec. 313.006. LIABILITY FOR MEDICAL TREATMENT COSTS. Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment. Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.007. LIMITATION ON LIABILITY. (a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.

(b) An attending physician, home and community support services agency, hospital, or nursing home or a person acting as an agent for or under the control of the physician, home and community support services agency, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and

(2) does not constitute a failure to exercise due care in the provision of the medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. [3473](#)), Sec. 4, eff. September 1, 2007.