

By: Delisi

H.B. No. 3473

A BILL TO BE ENTITLED

AN ACT

relating to consent for medical treatment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 313.002, Health and Safety Code, is amended by adding Subdivision (3-a) and amending Subdivision (8) to read as follows:

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

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is [or] residing in a nursing home; or

(C) is receiving services from a home and community support services agency.

SECTION 2. Section 313.004(a), Health and Safety Code, is amended to read as follows:

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home 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;

1 (2) an adult child of the patient who has the waiver
2 and consent of all other qualified adult children of the patient to
3 act as the sole decision-maker;

4 (3) a majority of the patient's reasonably available
5 adult children;

6 (4) the patient's parents; or

7 (5) the individual clearly identified to act for the
8 patient by the patient before the patient became incapacitated, the
9 patient's nearest living relative, or a member of the clergy.

10 SECTION 3. Sections 313.005(a) and (d), Health and Safety
11 Code, are amended to read as follows:

12 (a) If an adult patient of a home and community support
13 services agency or in a hospital or nursing home is comatose,
14 incapacitated, or otherwise mentally or physically incapable of
15 communication and, according to reasonable medical judgment, is in
16 need of medical treatment, the attending physician shall describe
17 the:

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

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

23 (d) A surrogate decision-maker's consent to medical
24 treatment that is not made in person shall be reduced to writing in
25 the patient's medical record, signed by the home and community
26 support services agency, hospital, or nursing home staff member
27 receiving the consent, and countersigned in the patient's medical

1 record or on an informed consent form by the surrogate
2 decision-maker as soon as possible.

3 SECTION 4. Section 313.007(b), Health and Safety Code, is
4 amended to read as follows:

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

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

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

16 SECTION 5. This Act takes effect September 1, 2007.