

1-1 By: Delisi (Senate Sponsor - Watson) H.B. No. 3473
1-2 (In the Senate - Received from the House May 9, 2007;
1-3 May 10, 2007, read first time and referred to Committee on Health
1-4 and Human Services; May 15, 2007, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; May 15, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to consent for medical treatment.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 313.002, Health and Safety Code, is
1-11 amended by adding Subdivision (3-a) and amending Subdivision (8) to
1-12 read as follows:

1-13 (3-a) "Home and community support services agency"
1-14 means a facility licensed under Chapter 142.

1-15 (8) "Patient" means a person who:

1-16 (A) is admitted to a hospital;

1-17 (B) is ~~or~~ residing in a nursing home; or

1-18 (C) is receiving services from a home and
1-19 community support services agency.

1-20 SECTION 2. Section 313.004(a), Health and Safety Code, is
1-21 amended to read as follows:

1-22 (a) If an adult patient of a home and community support
1-23 services agency or in a hospital or nursing home is comatose,
1-24 incapacitated, or otherwise mentally or physically incapable of
1-25 communication, an adult surrogate from the following list, in order
1-26 of priority, who has decision-making capacity, is available after a
1-27 reasonably diligent inquiry, and is willing to consent to medical
1-28 treatment on behalf of the patient may consent to medical treatment
1-29 on behalf of the patient:

1-30 (1) the patient's spouse;

1-31 (2) an adult child of the patient who has the waiver
1-32 and consent of all other qualified adult children of the patient to
1-33 act as the sole decision-maker;

1-34 (3) a majority of the patient's reasonably available
1-35 adult children;

1-36 (4) the patient's parents; or

1-37 (5) the individual clearly identified to act for the
1-38 patient by the patient before the patient became incapacitated, the
1-39 patient's nearest living relative, or a member of the clergy.

1-40 SECTION 3. Sections 313.005(a) and (d), Health and Safety
1-41 Code, are amended to read as follows:

1-42 (a) If an adult patient of a home and community support
1-43 services agency or in a hospital or nursing home is comatose,
1-44 incapacitated, or otherwise mentally or physically incapable of
1-45 communication and, according to reasonable medical judgment, is in
1-46 need of medical treatment, the attending physician shall describe
1-47 the:

1-48 (1) patient's comatose state, incapacity, or other
1-49 mental or physical inability to communicate in the patient's
1-50 medical record; and

1-51 (2) proposed medical treatment in the patient's
1-52 medical record.

1-53 (d) A surrogate decision-maker's consent to medical
1-54 treatment that is not made in person shall be reduced to writing in
1-55 the patient's medical record, signed by the home and community
1-56 support services agency, hospital, or nursing home staff member
1-57 receiving the consent, and countersigned in the patient's medical
1-58 record or on an informed consent form by the surrogate
1-59 decision-maker as soon as possible.

1-60 SECTION 4. Section 313.007(b), Health and Safety Code, is
1-61 amended to read as follows:

1-62 (b) An attending physician, home and community support
1-63 services agency, hospital, or nursing home or a person acting as an
1-64 agent for or under the control of the physician, home and community

2-1 support services agency, hospital, or nursing home is not subject
2-2 to criminal or civil liability and has not engaged in
2-3 unprofessional conduct if the medical treatment consented to under
2-4 this chapter:

2-5 (1) is done in good faith under the consent to medical
2-6 treatment; and

2-7 (2) does not constitute a failure to exercise due care
2-8 in the provision of the medical treatment.

2-9 SECTION 5. This Act takes effect September 1, 2007.

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