

By: Menendez

H.B. No. 383

A BILL TO BE ENTITLED

AN ACT

1
2 relating to allowing a surrogate decision-maker to consent to
3 certain medical treatments on behalf of an inmate of a correctional
4 facility.

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

6 SECTION 1. Subchapter B, Chapter 501, Government Code, is
7 amended by adding Section 501.067 to read as follows:

8 Sec. 501.067. CONSENT TO MEDICAL TREATMENT BY SURROGATE
9 DECISION-MAKER. (a) In this section:

10 (1) "Correctional facility" has the meaning assigned
11 by Section 1.07, Penal Code.

12 (2) "Inmate" means a person confined in a correctional
13 facility.

14 (b) If an adult inmate is comatose, incapacitated, or
15 otherwise mentally or physically incapable of communication, an
16 adult surrogate from the following list, in order of priority, who
17 has decision-making capacity, is available after a reasonably
18 diligent inquiry, and is willing to consent to medical treatment on
19 behalf of the inmate may consent to medical treatment on behalf of
20 the inmate:

21 (1) a person authorized to make health care decisions
22 on the inmate's behalf by a medical power of attorney;

23 (2) the inmate's spouse;

24 (3) an adult child of the inmate who has the waiver and

1 consent of all other qualified adult children of the inmate to act
2 as the sole decision-maker;

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

5 (5) a parent of the inmate; or

6 (6) an individual clearly identified to act for the
7 inmate by the inmate before the inmate became incapacitated.

8 (c) A dispute as to the right of a party to act as a
9 surrogate decision-maker may be resolved only by a court having
10 jurisdiction under the Texas Probate Code.

11 (d) Any consent to medical treatment under Subsection (b)
12 must be based on knowledge of what the inmate would desire, if
13 known.

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

16 (1) administration of psychoactive medication;

17 (2) inpatient mental health services;

18 (3) electroconvulsive therapy;

19 (4) any medical treatment intended solely to restore
20 competency under Chapter 46B, Code of Criminal Procedure; or

21 (5) the appointment of another surrogate
22 decision-maker.

23 (f) If an inmate is comatose, incapacitated, or otherwise
24 mentally or physically incapable of communication and, according to
25 reasonable medical judgment, is in need of medical treatment, the
26 attending physician shall describe in the inmate's medical record:

27 (1) the inmate's comatose state, incapacity, or other

1 mental or physical inability to communicate; and

2 (2) the proposed medical treatment.

3 (g) The attending physician shall make a reasonably
4 diligent effort to contact or cause to be contacted the persons
5 eligible to serve as surrogate decision-makers as provided by
6 Subsection (b), and shall record that effort in the inmate's
7 medical record.

8 (h) If a surrogate decision-maker consents to medical
9 treatment on behalf of the inmate, the attending physician shall
10 record the date and time of the consent and sign the inmate's
11 medical record. The surrogate decision-maker shall sign the
12 inmate's medical record or execute an informed consent form.

13 (i) A surrogate decision-maker's consent to medical
14 treatment that is not made in person shall be reduced to writing in
15 the inmate's medical record and must be signed by the official of
16 the correctional facility who witnessed the surrogate
17 decision-maker giving the consent. The inmate's medical record or
18 an informed consent form must be signed by the surrogate
19 decision-maker as soon as practicable.

20 SECTION 2. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2011.