

By: Menendez

H.B. No. 1128

A BILL TO BE ENTITLED

AN ACT

relating to consent to certain medical treatments by a surrogate decision-maker on behalf of certain inmates.

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

SECTION 1. Section 313.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(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

1 patient by the patient before the patient became incapacitated, the  
2 patient's nearest living relative, or a member of the clergy.

3 (e) Notwithstanding any other provision of this chapter, if  
4 the patient is an adult inmate of a county or municipal jail, a  
5 surrogate decision-maker may not also consent to:

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

10 SECTION 2. Section 313.005(a), Health and Safety Code, is  
11 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, or an adult inmate  
14 of a county or municipal jail, is comatose, incapacitated, or  
15 otherwise mentally or physically incapable of communication and,  
16 according to reasonable medical judgment, is in need of medical  
17 treatment, the attending physician shall describe 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 SECTION 3. This Act takes effect September 1, 2011.