

1-1 By: Menendez (Senate Sponsor - Van de Putte) H.B. No. 1128  
1-2 (In the Senate - Received from the House May 12, 2011;  
1-3 May 12, 2011, read first time and referred to Committee on  
1-4 Administration; May 17, 2011, reported favorably by the following  
1-5 vote: Yeas 4, Nays 0; May 17, 2011, sent to printer.)

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

1-8 relating to consent to certain medical treatments by a surrogate  
1-9 decision-maker on behalf of certain inmates.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 313.002(8), Health and Safety Code, is  
1-12 amended to read as follows:

1-13 (8) "Patient" means a person who:

1-14 (A) is admitted to a hospital;

1-15 (B) is residing in a nursing home; ~~or~~

1-16 (C) is receiving services from a home and  
1-17 community support services agency; or

1-18 (D) is an inmate of a county or municipal jail.

1-19 SECTION 2. Section 313.004, Health and Safety Code, is  
1-20 amended by amending Subsection (a) and adding Subsections (e) and  
1-21 (f) 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, or an adult inmate  
1-24 of a county or municipal jail, is comatose, incapacitated, or  
1-25 otherwise mentally or physically incapable of communication, an  
1-26 adult surrogate from the following list, in order of priority, who  
1-27 has decision-making capacity, is available after a reasonably  
1-28 diligent inquiry, and is willing to consent to medical treatment on  
1-29 behalf of the patient may consent to medical treatment on behalf of  
1-30 the patient:

1-31 (1) the patient's spouse;

1-32 (2) an adult child of the patient who has the waiver  
1-33 and consent of all other qualified adult children of the patient to  
1-34 act as the sole decision-maker;

1-35 (3) a majority of the patient's reasonably available  
1-36 adult children;

1-37 (4) the patient's parents; or

1-38 (5) the individual clearly identified to act for the  
1-39 patient by the patient before the patient became incapacitated, the  
1-40 patient's nearest living relative, or a member of the clergy.

1-41 (e) Notwithstanding any other provision of this chapter, if  
1-42 the patient is an adult inmate of a county or municipal jail, a  
1-43 surrogate decision-maker may not also consent to:

1-44 (1) psychotropic medication;

1-45 (2) involuntary inpatient mental health services; or

1-46 (3) psychiatric services calculated to restore  
1-47 competency to stand trial.

1-48 (f) A person who is an available adult surrogate, as  
1-49 described by Subsection (a), may consent to medical treatment on  
1-50 behalf of a patient who is an adult inmate of a county or municipal  
1-51 jail only for a period that expires on the earlier of the 120th day  
1-52 after the date the person agrees to act as an adult surrogate for  
1-53 the patient or the date the inmate is released from jail. At the  
1-54 conclusion of the period, a successor surrogate may not be  
1-55 appointed and only the patient or the patient's appointed guardian  
1-56 of the person, if the patient is a ward under Chapter XIII, Texas  
1-57 Probate Code, may consent to medical treatment.

1-58 SECTION 3. Section 313.005(a), Health and Safety Code, is  
1-59 amended to read as follows:

1-60 (a) If an adult patient of a home and community support  
1-61 services agency or in a hospital or nursing home, or an adult inmate  
1-62 of a county or municipal jail, is comatose, incapacitated, or  
1-63 otherwise mentally or physically incapable of communication and,  
1-64 according to reasonable medical judgment, is in need of medical

2-1 treatment, the attending physician shall describe the:  
2-2 (1) patient's comatose state, incapacity, or other  
2-3 mental or physical inability to communicate in the patient's  
2-4 medical record; and  
2-5 (2) proposed medical treatment in the patient's  
2-6 medical record.  
2-7 SECTION 4. This Act takes effect September 1, 2011.

2-8 \* \* \* \* \*