

1-1 By: Van de Putte, Deuell S.B. No. 856
1-2 (In the Senate - Filed February 22, 2011; March 1, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; May 6, 2011, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 6, 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 313.004, Health and Safety Code, is
1-12 amended by amending Subsection (a) and adding Subsection (e) to
1-13 read as follows:

1-14 (a) If an adult patient of a home and community support
1-15 services agency or in a hospital or nursing home, or an adult inmate
1-16 of a county or municipal jail, is comatose, incapacitated, or
1-17 otherwise mentally or physically incapable of communication, an
1-18 adult surrogate from the following list, in order of priority, who
1-19 has decision-making capacity, is available after a reasonably
1-20 diligent inquiry, and is willing to consent to medical treatment on
1-21 behalf of the patient may consent to medical treatment on behalf of
1-22 the patient:

1-23 (1) the patient's spouse;
1-24 (2) an adult child of the patient who has the waiver
1-25 and consent of all other qualified adult children of the patient to
1-26 act as the sole decision-maker;

1-27 (3) a majority of the patient's reasonably available
1-28 adult children;

1-29 (4) the patient's parents; or

1-30 (5) the individual clearly identified to act for the
1-31 patient by the patient before the patient became incapacitated, the
1-32 patient's nearest living relative, or a member of the clergy.

1-33 (e) Notwithstanding any other provision of this chapter, if
1-34 the patient is an adult inmate of a county or municipal jail, a
1-35 surrogate decision-maker may not also consent to:

1-36 (1) psychotropic medication;

1-37 (2) involuntary inpatient mental health services; or

1-38 (3) psychiatric services calculated to restore
1-39 competency to stand trial.

1-40 SECTION 2. Subsection (a), Section 313.005, Health and
1-41 Safety Code, is 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, or an adult inmate
1-44 of a county or municipal jail, is comatose, incapacitated, or
1-45 otherwise mentally or physically incapable of communication and,
1-46 according to reasonable medical judgment, is in need of medical
1-47 treatment, the attending physician shall describe 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 SECTION 3. This Act takes effect September 1, 2011.

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