

HOUSE BILL NO. 825

INTRODUCED BY M. CUNNINGHAM

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HEALTH CARE PROXY DECISIONMAKERS; PROVIDING FOR A PATIENT-DESIGNATED TRUSTED DECISIONMAKER; PROVIDING A HIERARCHY IN SELECTING A DECISIONMAKER; AND AMENDING SECTIONS 50-5-110, 50-5-1301, AND 50-5-1303, MCA."

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

NEW SECTION. Section 1. Patient designation of trusted decisionmaker as proxy -- documentation by attending health care provider -- limitations on other proxies. (1) At any time, AFTER ADMISSION TO A HOSPITAL, before an attending health care provider determines that an adult patient lacks decisional capacity under 50-5-1302, the patient may designate a trusted decisionmaker to make health care decisions on behalf of the patient in the event the patient does not have decisional capacity.

(2) (A) The patient may designate a trusted decisionmaker by communicating to the patient's health care provider, or to a health care professional acting under the direction of the patient's health care provider, orally or otherwise, the identity of the individual whom the patient trusts to make health care decisions on the patient's behalf.

(B) THE HEALTH CARE PROVIDER SHALL ENSURE THAT THE COMMUNICATION BY THE PATIENT DESIGNATING A TRUSTED DECISIONMAKER IS WITNESSED BY A THIRD PARTY, WHO MAY BE ANOTHER HEALTH CARE PROFESSIONAL OR WHO MAY BE A FRIEND OR FAMILY MEMBER OF THE PATIENT.

(3) After the patient designates a trusted decisionmaker, the attending health care provider shall immediately NOTIFY THE PATIENT'S FAMILY OF THE DESIGNATION AND SHALL document the following information related to the designation in the patient's health record:

(a) the identity of the trusted decisionmaker; and

(b) contact information of the trusted decisionmaker, to the extent it is available.

(4) When an individual is designated as a trusted decisionmaker under this section, an attending

1 health care provider may not seek to select a lay proxy decisionmaker under 50-5-1303 or a medical proxy
2 decisionmaker under 50-5-1304 unless the attending health care provider has made reasonable efforts to
3 contact the trusted decisionmaker and the trusted decisionmaker cannot be contacted.

4 (5) A trusted decisionmaker is designated under this section, and the trusted decisionmaker
5 remains in place until the patient completes an advance directive ~~or, COMPLETES A MEDICAL DURABLE POWER OF~~
6 ATTORNEY, designates another trusted decisionmaker, OR IS DISCHARGED FROM THE HOSPITAL.

7
8 NEW SECTION. Section 2. Hierarchy of decisionmaker selection. When a decisionmaker is
9 needed for a patient who lacks decisional capacity as determined under 50-5-1302, the decisionmaker must be
10 selected from the following available individuals in the order listed:

11 (1) a guardian appointed by the patient under 72-5-316 who has medical decisionmaking authority;

12 (2) an agent appointed by the patient in a medical durable power of attorney or an individual
13 designated by the patient in an advanced ADVANCE medical directive;

14 ~~(3) a trusted decisionmaker designated under [section 1];~~

15 ~~(4)(3)~~ a spouse of the patient;

16 ~~(5)(4)~~ an adult child of the patient;

17 ~~(6)(5)~~ a parent of the patient;

18 ~~(7)(6)~~ a sibling of the patient;

19 (7) A TRUSTED DECISIONMAKER DESIGNATED UNDER [SECTION 1];

20 (8) a close friend of the patient who has a deep understanding of the patient's wishes; and

21 (9) any other proxy appointed under Title 50, chapter 5, part 13.

22

23 **Section 3.** Section 50-5-110, MCA, is amended to read:

24 **"50-5-110. Patient bill of rights.** (1) The following rights may be exercised by a patient or, if the
25 patient lacks decisionmaking capacity, is legally incompetent, or is a minor, by a patient's designated surrogate
26 ~~or, lay proxy decisionmaker, as defined in 50-5-1301, or trusted decisionmaker as designated under [section 1]:~~

27 (a) The patient has the right to be treated with dignity and respect.

28 (b) The patient has the right to and is encouraged to obtain from physicians and other direct

1 caregivers relevant, current, and understandable information concerning diagnosis, treatment, and prognosis.

2 (c) Except in emergencies when the patient lacks decisionmaking capacity and the need for
3 treatment is urgent, the patient is entitled to be informed of information related to the specific procedures and
4 treatments that are recommended or planned, the risks involved that may cause harm to the patient, the
5 possible length of recuperation, and the medically reasonable alternatives and their accompanying risks and
6 benefits.

7 (d) The patient has the right to know the identity of physicians, nurses, and others involved in the
8 patient's care, as well as whether those involved are students, residents, or other trainees

9 (e) The patient has the right to know the immediate and long-term financial implications of
10 treatment choices, to the extent the costs are known.

11 (f) (i) The patient has the right to make decisions about the plan of care prior to and during the
12 course of treatment, to refuse a recommended treatment or plan of care, and to be informed of the medical
13 consequences of the decision.

14 (ii) When the patient refuses a recommended treatment or plan of care, the patient is entitled to
15 other appropriate care and services that the hospital provides or to transfer to another hospital or discharge to
16 home with impunity and without penalty or threat.

17 (iii) A hospital shall notify patients of any policy that might affect patient choices within the facility.

18 (g) (i) The patient has the right to have an advance directive, including but not limited to a living
19 will, health care proxy, or health care power of attorney, concerning treatment or designating a surrogate
20 decisionmaker with the expectation that the hospital will honor the intent of the directive. A hospital shall advise
21 a patient of the patient's rights under state law and hospital policy to make informed medical choices, ask if the
22 patient has an advance directive or surrogate decisionmaker, and include that information in the patient's
23 record.

24 (ii) The patient has the right to timely information about hospital policy that may limit the hospital's
25 ability to implement fully a legally valid advance directive or surrogate decisionmaker.

26 (h) The patient has the right to have an advocate or support person of the patient's choosing
27 present in clinically appropriate settings.

28 (i) The patient has the right to visitation privileges that are no more restrictive for nonfamily

1 members than they are for immediate family members and, in an end-of-life situation, has the right to visitation
2 regardless of the patient's diagnosis. If the diagnosis or condition of a person at the end of life requires specific
3 protocols, the hospital shall make accommodations to facilitate visitation in accordance with the protocols and
4 may not eliminate the opportunity for visitation unless allowing visitation would violate federal requirements and
5 result in loss of payment.

6 (j) The patient has the right to every consideration of privacy.

7 (k) The patient has the right to review records pertaining to the patient's medical care and to have
8 the information explained or interpreted as necessary.

9 (l) (i) The patient has the right to expect that, within its capacity and policies, a hospital will make
10 reasonable response to the patient's request for appropriate and medically indicated care and services. The
11 hospital shall provide evaluation, service, or referral as indicated by the urgency of the case.

12 (ii) When medically appropriate and legally permissible or on request of the patient, the patient
13 may be transferred to another facility that has accepted the patient for transfer. The patient must have the
14 benefit of complete information and explanation concerning the need for, risks and benefits of, and alternatives
15 to the transfer.

16 (m) The patient has the right to be informed of the existence of business relationships among the
17 hospital, educational institutions, other health care providers, or payers that may influence the patient's care
18 and treatment.

19 (n) The patient has the right to consent or decline to participate in proposed research studies or
20 human experimentation affecting care and treatment or requiring direct patient involvement and to have the
21 studies fully explained prior to consent. A patient who declines to participate in research or experimentation is
22 entitled to the most effective care that the hospital can otherwise provide.

23 (o) The patient has the right to expect continuity of care and care coordination between the
24 patient's regular care provider and hospital care and to be informed by physicians and other caregivers of
25 available and realistic patient care options when hospital care is no longer appropriate.

26 (p) The patient has the right to be informed of available resources for resolving disputes,
27 grievances, and conflicts, including but not limited to ethics committees, patient representatives, and other
28 available avenues.

1 (2) Health care facilities shall provide annual training to staff on the patient rights provided under
2 this section."

3

4 **Section 4.** Section 50-5-1301, MCA, is amended to read:

5 **"50-5-1301. Definitions.** As used in this part, the following definitions apply:

6 (1) "Adult" means any person 18 years of age or older.

7 (2) "Advanced practice registered nurse" means an individual who is licensed under Title 37,
8 chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of
9 nursing pursuant to 37-8-202 and 37-8-409.

10 (3) "Attending health care provider" means the physician, advanced practice registered nurse, or
11 physician assistant, whether selected by or assigned to a patient, who has primary responsibility for the
12 treatment and care of the patient.

13 (4) "Decisional capacity" means the ability to provide informed consent to or refuse medical
14 treatment or the ability to make an informed health care decision as determined by a health care provider
15 experienced in this type of assessment.

16 (5) "Health care facility" means a hospital, critical access hospital, rural emergency hospital, or
17 facility providing skilled nursing care as those terms are defined in 50-5-101.

18 (6) "Health care provider" means any individual licensed or certified by the state to provide health
19 care.

20 (7) "Interested person" means a patient's:

21 (a) spouse;

22 (b) parent;

23 (c) adult child, sibling, or grandchild; or

24 (d) close friend.

25 (8) "Medical proxy decisionmaker" means a physician or advanced practice registered nurse
26 designated by the attending health care provider.

27 (9) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

28 (10) "Physician assistant" means an individual licensed pursuant to Title 37, chapter 20.

1 (11) (a) "Lay proxy decisionmaker" means an interested person selected pursuant to this part
2 authorized to make medical decisions and discharge and transfer dispositions for a patient who lacks decisional
3 capacity.

4 (b) The term does not include the patient's attending health care provider.

5 (12) "Trusted decisionmaker" means an individual designated by a patient under [section 1] to make
6 health care decisions on the patient's behalf."

7

8 **Section 5.** Section 50-5-1303, MCA, is amended to read:

9 **"50-5-1303. Notification to interested persons -- selection of proxy decisionmaker.** (1) Upon a
10 determination that an adult patient lacks decisional capacity, an attending health care provider or the provider's
11 designee shall make reasonable efforts to notify the patient of:

12 (a) the determination that the patient lacks decisional capacity; and

13 (b) the identity of a lay or medical proxy decisionmaker selected or appointed pursuant to this part.

14 (2) An attending health care provider or the provider's designee shall make reasonable efforts to
15 locate and notify as many interested persons as practicable to inform them of the patient's lack of decisional
16 capacity and ask that a lay proxy decisionmaker be selected for the patient.

17 (3) The attending health care provider may rely on interested persons contacted by the provider or
18 the provider's designee to notify other family members or interested persons.

19 (4) Interested persons who are informed of the patient's lack of decisional capacity shall make
20 reasonable efforts to reach a consensus as to who among them will make medical treatment decisions on
21 behalf of the patient. In selecting a lay proxy decisionmaker, the interested persons should consider which
22 proposed decisionmaker:

23 (a) has a close relationship with the patient; and

24 (b) is most likely to have current knowledge of the patient's wishes regarding medical treatment.

25 (5) Nothing in this section precludes an interested person from initiating a guardianship proceeding
26 for any reason at any time.

27 (6) The provisions of this section do not apply when an individual who is willing and able to serve
28 as a trusted decisionmaker is designated under [section 1]."

