

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 124

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE UNIFORM
HEALTH-CARE DECISIONS ACT TO REQUIRE A SUPERVISING HEALTH-CARE
PROVIDER TO MAKE CERTAIN DISCLOSURES TO PATIENTS BEFORE
PROVIDING HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-7A-1 NMSA 1978 (being Laws 1995,
Chapter 182, Section 1, as amended) is amended to read:

"24-7A-1. DEFINITIONS.--As used in the Uniform Health-
Care Decisions Act:

A. "advance health-care directive" means an
individual instruction or a power of attorney for health care
made, in either case, while the individual has capacity;

B. "agent" means an individual designated in a
power of attorney for health care to make a health-care

1 decision for the individual granting the power;

2 C. "capacity" means an individual's ability to
3 understand and appreciate the nature and consequences of
4 proposed health care, including its significant benefits, risks
5 and alternatives to proposed health care and to make and
6 communicate an informed health-care decision. A determination
7 of lack of capacity shall be made only according to the
8 provisions of Section 24-7A-11 NMSA 1978;

9 D. "emancipated minor" means an individual between
10 the ages of sixteen and eighteen who has been married, who is
11 on active duty in the armed forces or who has been declared by
12 court order to be emancipated;

13 E. "emergency" means a situation in which there is
14 an imminent threat of a disaster causing immediate peril to
15 life that timely action can avert or minimize;

16 [~~E-~~] F. "guardian" means a judicially appointed
17 guardian or conservator having authority to make a health-care
18 decision for an individual;

19 [~~F-~~] G. "health care" means any care, treatment,
20 service or procedure to maintain, diagnose or otherwise affect
21 an individual's physical or mental condition;

22 [~~G-~~] H. "health-care decision" means a decision
23 made by an individual or the individual's agent, guardian or
24 surrogate, regarding the individual's health care, including:

- 25 (1) selection and discharge of health-care

1 providers and institutions;

2 (2) approval or disapproval of diagnostic
3 tests, surgical procedures, programs of medication and orders
4 not to resuscitate;

5 (3) directions relating to life-sustaining
6 treatment, including withholding or withdrawing life-sustaining
7 treatment and the termination of life support; and

8 (4) directions to provide, withhold or
9 withdraw artificial nutrition and hydration and all other forms
10 of health care;

11 [~~H.~~] I. "health-care institution" means an
12 institution, facility or agency licensed, certified or
13 otherwise authorized or permitted by law to provide health care
14 in the ordinary course of business;

15 [~~F.~~] J. "health-care provider" means an individual
16 licensed, certified or otherwise authorized or permitted by law
17 to provide health care in the ordinary course of business or
18 practice of a profession;

19 [~~J.~~] K. "individual instruction" means an
20 individual's direction concerning a health-care decision for
21 the individual made while the individual has capacity;

22 [~~K.~~] L. "life-sustaining treatment" means any
23 medical treatment or procedure without which the individual is
24 likely to die within a relatively short time, as determined to
25 a reasonable degree of medical certainty by the primary

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1 physician;

2 ~~[L-]~~ M. "person" means an individual, corporation,
3 business trust, estate, trust, partnership, association, joint
4 venture, government, governmental subdivision, agency or
5 instrumentality or any other legal or commercial entity;

6 ~~[M-]~~ N. "physician" means an individual authorized
7 to practice medicine or osteopathy;

8 ~~[N-]~~ O. "power of attorney for health care" means
9 the designation of an agent to make health-care decisions for
10 the individual granting the power, made while the individual
11 has capacity;

12 ~~[O-]~~ P. "primary physician" means a physician
13 designated by an individual or the individual's agent, guardian
14 or surrogate to have primary responsibility for the
15 individual's health care or, in the absence of a designation or
16 if the designated physician is not reasonably available, a
17 physician who undertakes the responsibility;

18 ~~[P-]~~ Q. "principal" means an adult or emancipated
19 minor who, while having capacity, has made a power of attorney
20 for health care by which the adult or emancipated minor
21 delegates the right to make health-care decisions for the adult
22 or emancipated minor to an agent;

23 ~~[Q-]~~ R. "protected person" means an adult or
24 emancipated minor for whom a guardian has been appointed;

25 ~~[R-]~~ S. "qualified health-care professional" means

1 a health-care provider who is a physician, physician assistant,
2 nurse practitioner, nurse, psychologist or social worker;

3 ~~[S.]~~ T. "reasonably available" means readily able
4 to be contacted without undue effort and willing and able to
5 act in a timely manner considering the urgency of the patient's
6 health-care needs;

7 ~~[F.]~~ U. "state" means a state of the United States,
8 the District of Columbia, the commonwealth of Puerto Rico or a
9 territory or insular possession subject to the jurisdiction of
10 the United States;

11 ~~[H.]~~ V. "supervising health-care provider" means
12 the primary physician or, if there is no primary physician or
13 the primary physician is not reasonably available, the health-
14 care provider who has undertaken primary responsibility for an
15 individual's health care; and

16 ~~[V.]~~ W. "surrogate" means an individual, other than
17 a patient's agent or guardian, authorized under the Uniform
18 Health-Care Decisions Act to make a health-care decision for
19 the patient."

20 **SECTION 2.** Section 24-7A-7 NMSA 1978 (being Laws 1995,
21 Chapter 182, Section 7, as amended) is amended to read:

22 "24-7A-7. OBLIGATIONS OF HEALTH-CARE PROVIDER.--

23 A. Before implementing a health-care decision made
24 for a patient, a supervising health-care provider shall
25 promptly communicate to the patient the decision made and the

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1 identity of the person making the decision.

2 B. A patient is entitled to know who is supervising
3 that patient's health care. Before a supervising health-care
4 provider examines or performs a treatment or procedure on a
5 patient for the first time in a hospital or urgent-care
6 facility, the supervising health-care provider shall clearly
7 communicate to the patient or the patient's agent, guardian,
8 surrogate or other person with the authority to make health-
9 care decisions on that patient's behalf:

10 (1) the supervising health-care provider's
11 identity; and

12 (2) the title or nature of the supervising
13 health-care provider's professional license, including whether
14 that health-care provider is licensed as a medical doctor, a
15 doctor of osteopathy, a physician assistant or a certified
16 nurse practitioner or is practicing as a resident or a fellow.

17 C. If the supervising health-care provider is
18 acting in a capacity as a locum tenens or on a temporary basis
19 through a staffing agency at the health-care institution at
20 which the patient is receiving health care, the supervising
21 health-care provider shall inform the patient of that fact.

22 D. A supervising health-care provider acting as a
23 locum tenens or on a temporary basis shall have a name tag that
24 clearly identifies that the supervising health-care provider is
25 working on a temporary basis.

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1 E. The provisions of Subsections B, C and D of this
2 section shall not apply to:

3 (1) outpatient settings other than urgent-care
4 facilities and emergency departments;

5 (2) those instances where a patient cannot
6 communicate or the patient's agent, guardian, surrogate or
7 other person with the authority to make health-care decisions
8 on the patient's behalf is not reasonably available. In those
9 instances where the patient's agent, guardian, surrogate or
10 other person with the authority to make health-care decisions
11 on the patient's behalf is not available, the supervising
12 health-care provider shall make reasonable efforts to contact
13 that person; and

14 (3) emergencies.

15 ~~[B.]~~ F. A supervising health-care provider who
16 knows of the existence of an advance health-care directive, a
17 revocation of an advance health-care directive, a challenge to
18 a determination of lack of capacity or a designation or
19 disqualification of a surrogate shall promptly record its
20 existence in the patient's health-care record and, if it is in
21 writing, shall request a copy and, if one is furnished, shall
22 arrange for its maintenance in the health-care record.

23 ~~[G.]~~ G. A supervising health-care provider who
24 makes or is informed of a determination that a patient lacks or
25 has recovered capacity or that another condition exists that

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1 affects an individual instruction or the authority of an agent,
2 guardian or surrogate shall promptly record the determination
3 in the patient's health-care record and communicate the
4 determination to the patient and to any person then authorized
5 to make health-care decisions for the patient.

6 ~~[D-]~~ H. Except as provided in Subsections ~~[E and F]~~
7 I and J of this section, a health-care provider or health-care
8 institution providing care to a patient shall comply:

9 (1) before and after the patient is determined
10 to lack capacity, with an individual instruction of the patient
11 made while the patient had capacity;

12 (2) with a reasonable interpretation of ~~[that]~~
13 the individual instruction made by a person then authorized to
14 make health-care decisions for the patient; and

15 (3) with a health-care decision for the
16 patient that is not contrary to an individual instruction of
17 the patient and is made by a person then authorized to make
18 health-care decisions for the patient, to the same extent as if
19 the decision had been made by the patient while having
20 capacity.

21 ~~[E-]~~ I. A health-care provider may decline to
22 comply with an individual instruction or health-care decision
23 for reasons of conscience. A health-care institution may
24 decline to comply with an individual instruction or health-care
25 decision if the instruction or decision is contrary to a policy

1 of the health-care institution that is expressly based on
2 reasons of conscience and if the policy was timely communicated
3 to the patient or to a person then authorized to make health-
4 care decisions for the patient.

5 ~~[F.]~~ J. A health-care provider or health-care
6 institution may decline to comply with an individual
7 instruction or health-care decision that requires medically
8 ineffective health care or health care contrary to generally
9 accepted health-care standards applicable to the health-care
10 provider or health-care institution. "Medically ineffective
11 health care" means treatment that would not offer the patient
12 any significant benefit, as determined by a physician.

13 ~~[G.]~~ K. A health-care provider or health-care
14 institution that declines to comply with an individual
15 instruction or health-care decision shall:

16 (1) promptly so inform the patient, if
17 possible, and any person then authorized to make health-care
18 decisions for the patient;

19 (2) provide continuing care to the patient
20 until a transfer can be effected; and

21 (3) unless the patient or person then
22 authorized to make health-care decisions for the patient
23 refuses assistance, immediately make all reasonable efforts to
24 assist in the transfer of the patient to another health-care
25 provider or health-care institution that is willing to comply

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1 with the individual instruction or decision.

2 [~~H.~~] L. A health-care provider or health-care
3 institution may not require or prohibit the execution or
4 revocation of an advance health-care directive as a condition
5 for providing health care.

6 [~~F.~~] M. The Uniform Health-Care Decisions Act does
7 not require or permit a health-care institution or health-care
8 provider to provide any type of health care for which the
9 health-care institution or health-care provider is not
10 licensed, certified or otherwise authorized or permitted by law
11 to provide."

underscoring material = new
[bracketed material] = delete