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HOUSE BILL 342

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

J. "ANDY" KISSNER

AN ACT

**RELATING TO HEALTH; CLARIFYING CERTAIN CIRCUMSTANCES OF AN
INDIVIDUAL'S RIGHT TO MAKE HEALTH-CARE DECISIONS.**

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
decision for the individual granting the power;**

C. "capacity" means an individual's ability to

Underscored material = new
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1 understand and appreciate the nature and consequences of
2 proposed health care, including its significant benefits,
3 risks and alternatives to proposed health care and to make and
4 communicate an informed health-care decision. A determination
5 of lack of capacity shall be made only according to the
6 provisions of Section 24-7A-11 NMSA 1978;

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

11 E. "guardian" means a judicially appointed
12 guardian or conservator having authority to make a health-care
13 decision for an individual;

14 F. "health care" means any care, treatment,
15 service or procedure to maintain, diagnose or otherwise affect
16 an individual's physical or mental condition;

17 G. "health-care decision" means a decision made by
18 an individual or the individual's agent, guardian or
19 surrogate, regarding the individual's health care, including:

20 (1) selection and discharge of health-care
21 providers and institutions;

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

25 (3) directions relating to life-sustaining

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1 treatment, including withholding or withdrawing life-
2 sustaining treatment and the termination of life support; and

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

6 H. "health-care institution" means an institution,
7 facility or agency licensed, certified or otherwise authorized
8 or permitted by law to provide health care in the ordinary
9 course of business;

10 I. "health-care provider" means an individual
11 licensed, certified or otherwise authorized or permitted by
12 law to provide health care in the ordinary course of business
13 or practice of a profession;

14 J. "individual instruction" means an individual's
15 direction concerning a health-care decision for the
16 individual, made while the individual has capacity;

17 K. "life-sustaining treatment" means any medical
18 treatment or procedure without which the individual is likely
19 to die within a relatively short time, as determined to a
20 reasonable degree of medical certainty by the primary
21 physician;

22 L. "person" means an individual, corporation,
23 business trust, estate, trust, partnership, association, joint
24 venture, government, governmental subdivision, agency or
25 instrumentality or any other legal or commercial entity;

1 M "physician" means an individual authorized to
2 practice medicine or osteopathy;

3 N. "power of attorney for health care" means the
4 designation of an agent to make health-care decisions for the
5 individual granting the power, made while the individual has
6 capacity;

7 O. "primary physician" means a physician
8 designated by an individual or the individual's agent,
9 guardian or surrogate to have primary responsibility for the
10 individual's health care or, in the absence of a designation
11 or if the designated physician is not reasonably available, a
12 physician who undertakes the responsibility;

13 P. "principal" means an adult or emancipated minor
14 who, while having capacity, has made a power of attorney for
15 health care by which he delegates his right to make health-
16 care decisions for himself to an agent;

17 Q. "qualified health-care professional" means a
18 health-care provider who is a physician, physician assistant,
19 nurse practitioner, nurse, psychologist or social worker;

20 R. "reasonably available" means readily able to be
21 contacted without undue effort and willing and able to act in
22 a timely manner considering the urgency of the patient's
23 health-care needs;

24 S. "state" means a state of the United States, the
25 District of Columbia, the commonwealth of Puerto Rico or a

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1 territory or insular possession subject to the jurisdiction of
2 the United States;

3 T. "supervising health-care provider" means the
4 primary physician or, if there is no primary physician or the
5 primary physician is not reasonably available, the health-care
6 provider who has undertaken primary responsibility for an
7 individual's health care;

8 U. "surrogate" means an individual, other than a
9 patient's agent or guardian, authorized under the Uniform
10 Health-Care Decisions Act to make a health-care decision for
11 the patient; [~~and~~]

12 V. "unemancipated minor" means a person under the
13 age of eighteen; and

14 [~~V.-~~] W. "ward" means an adult or emancipated minor
15 for whom a guardian has been appointed. "

16 Section 2. Section 24-7A-6.1 NMSA 1978 (being Laws 1997,
17 Chapter 168, Section 13) is amended to read:

18 "24-7A-6.1. DECISIONS FOR UNEMANCIPATED MINORS. --

19 A. Except as otherwise provided by law, a parent
20 or guardian of an unemancipated minor may make that minor's
21 health-care decisions.

22 B. A parent or guardian of an unemancipated minor
23 shall have the authority to withhold or withdraw life-
24 sustaining treatment for the unemancipated minor, subject to
25 the provisions of this section and the standards for surrogate

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1 decision-making for adults provided for in the Uniform Health-
2 Care Decisions Act.

3 C. Subject to the provisions of Subsection B of
4 this section, if an unemancipated minor has the mental and
5 emotional capacity sufficient to understand the nature of
6 [~~that unemancipated minor's~~] his medical condition, the risks
7 and benefits of treatment and the contemplated decision to
8 withhold or withdraw life-sustaining treatment, [~~that~~
9 ~~unemancipated minor~~] he shall have the authority to withhold
10 or withdraw life-sustaining treatment.

11 D. For purposes of Subsection C of this section, a
12 determination of the mental and emotional capacity of an
13 unemancipated minor shall be determined by two qualified
14 health-care professionals, one of whom shall be the
15 unemancipated minor's primary physician and the other of whom
16 shall be a physician [~~that~~] who works with unemancipated
17 minors of the minor's age in the ordinary course of that
18 physician's health-care practice. If the unemancipated minor
19 lacks capacity due to mental illness or developmental
20 disability, one of the qualified health-care professionals
21 shall be a person whose training and expertise aid in the
22 assessment of functional impairment.

23 E. If the unemancipated minor's primary physician
24 has reason to believe that a parent or guardian of an
25 unemancipated minor, including a noncustodial parent, has not

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1 been informed of a decision to withhold or withdraw life-
2 sustaining treatment, the primary physician shall make
3 reasonable efforts to determine if the uninformed parent or
4 guardian has maintained substantial and continuous contact
5 with the unemancipated minor and, if so, shall make reasonable
6 efforts to notify that parent or guardian before implementing
7 a decision.

8 F. If there is disagreement regarding the decision
9 to withhold or withdraw life-sustaining treatment for an
10 unemancipated minor, the provisions of Section [~~24-7A-11~~
11 24-7A-14 NMSA 1978 shall apply.

12 [G. ~~For purposes of this section, "unemancipated~~
13 ~~minor" means a person at or under the age of fifteen.~~]"

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 5, 1998
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8 Mr. Speaker:
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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 342
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Gary K. King, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HCPAC/HB 342

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4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 9 For 0 Against

11 Yes: 9

12 Excused: Trujillo Knauer

13 Absent: None

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1 **FORTY-THIRD LEGISLATURE**
2 **SECOND SESSION, 1998**

3
4 **February 13, 1998**

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7 **Mr. Speaker:**

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9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 342**

11
12 **has had it under consideration and reports same with**
13 **recommendation that it DO PASS.**

14
15 **Respectfully submitted,**

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19 _____
20 **Thomas P. Foy, Chairman**

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HCPAC/HJC/HB 342

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4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

9
10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: Carpenter, Mallory, Sanchez

13 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

HB 342/a

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4 February 18, 1998

5 Mr. President:

6 Your JUDICIARY COMMITTEE, to whom has been referred

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8 HOUSE BILL 342

9 has had it under consideration and reports same with
10 recommendation that it DO PASS, amended as follows:

11
12 1. On page 6, line 9, strike "shall have the authority"
13 and insert in lieu thereof "must consent".

14
15 2. On page 7, line 10, after "minor," strike the remainder
16 of the line and insert in lieu thereof, "the parent, guardian,
17 agent, health care provider, or health care institution may
18 petition for judicial relief provided that a court may not
19 override the decision of a minor with sufficient capacity to
20 continue life sustaining treatment."

21 3. On page 7, line 11, strike the line in its entirety.

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23 Respectfully submitted,

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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Fernando R. Macias, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Payne, Sanchez

Absent: None

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