

1 HOUSE BILL 124

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Al Park

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10 AN ACT

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

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "24-7A-1. DEFINITIONS.--As used in the Uniform Health-
20 Care Decisions Act:

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

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

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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

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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 ~~[I.]~~ 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 M. "locum tenens" means an individual who
3 substitutes for another member of the individual's profession;

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

8 [~~M-~~] O. "physician" means an individual authorized
9 to practice medicine or osteopathy;

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

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

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

25 [~~Q-~~] S. "protected person" means an adult or

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1 emancipated minor for whom a guardian has been appointed;

2 [R-] T. "qualified health-care professional" means
3 a health-care provider who is a physician, physician assistant,
4 nurse practitioner, nurse, psychologist or social worker;

5 [S-] U. "reasonably available" means readily able
6 to be contacted without undue effort and willing and able to
7 act in a timely manner considering the urgency of the patient's
8 health-care needs;

9 [F-] V. "state" means a state of the United States,
10 the District of Columbia, the commonwealth of Puerto Rico or a
11 territory or insular possession subject to the jurisdiction of
12 the United States;

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

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

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

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

25 A. Before implementing a health-care decision made

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1 for a patient, a supervising health-care provider shall
2 promptly communicate to the patient the decision made and the
3 identity of the person making the decision.

4 B. Except as required in an emergency, before a
5 supervising health-care provider provides health care to a
6 patient, the health-care provider shall clearly communicate to
7 the patient or to the patient's agent, guardian or surrogate or
8 any other person with the right to make health-care decisions
9 on the patient's behalf:

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

11 (2) whether the health-care provider is
12 licensed as a medical doctor, a doctor of osteopathy, a
13 physician assistant, a certified nurse practitioner or a nurse
14 or is practicing as a resident or a fellow; and

15 (3) whether the health-care provider is
16 administering health care as a locum tenens or on a temporary
17 basis through a staffing agency at the health-care institution
18 at which the patient is receiving or will receive health care.

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

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1 arrange for its maintenance in the health-care record.

2 [~~G-~~] D. A supervising health-care provider who
3 makes or is informed of a determination that a patient lacks or
4 has recovered capacity or that another condition exists that
5 affects an individual instruction or the authority of an agent,
6 guardian or surrogate shall promptly record the determination
7 in the patient's health-care record and communicate the
8 determination to the patient and to any person then authorized
9 to make health-care decisions for the patient.

10 [~~D-~~] E. Except as provided in Subsections [~~E-and~~] F
11 and G of this section, a health-care provider or health-care
12 institution providing care to a patient shall comply:

13 (1) before and after the patient is determined
14 to lack capacity, with an individual instruction of the patient
15 made while the patient had capacity;

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

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

25 [~~E-~~] F. A health-care provider may decline to

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1 comply with an individual instruction or health-care decision
2 for reasons of conscience. A health-care institution may
3 decline to comply with an individual instruction or health-care
4 decision if the instruction or decision is contrary to a policy
5 of the health-care institution that is expressly based on
6 reasons of conscience and if the policy was timely communicated
7 to the patient or to a person then authorized to make health-
8 care decisions for the patient.

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

17 ~~[G-]~~ H. A health-care provider or health-care
18 institution that declines to comply with an individual
19 instruction or health-care decision shall:

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

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

25 (3) unless the patient or person then

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1 authorized to make health-care decisions for the patient
2 refuses assistance, immediately make all reasonable efforts to
3 assist in the transfer of the patient to another health-care
4 provider or health-care institution that is willing to comply
5 with the individual instruction or decision.

6 ~~[H.]~~ I. A health-care provider or health-care
7 institution may not require or prohibit the execution or
8 revocation of an advance health-care directive as a condition
9 for providing health care.

10 ~~[I.]~~ J. The Uniform Health-Care Decisions Act does
11 not require or permit a health-care institution or health-care
12 provider to provide any type of health care for which the
13 health-care institution or health-care provider is not
14 licensed, certified or otherwise authorized or permitted by law
15 to provide."