

# FINAL BILL REPORT

## EHB 1175

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C 209 L 19  
Synopsis as Enacted

**Brief Description:** Concerning authorization of health care decisions by an individual or designated person.

**Sponsors:** Representatives Kilduff, Irwin, Jinkins, Klippert, Valdez and Ortiz-Self.

**House Committee on Civil Rights & Judiciary**  
**Senate Committee on Law & Justice**

### **Background:**

#### Informed Consent.

Under the principle of "informed consent," a patient must be provided all the information necessary to make a knowledgeable decision regarding his or her health care. If a patient is determined to be incapacitated or incompetent to make health care decisions on their own behalf, a surrogate party may speak for him or her, unless the patient indicates otherwise. The following persons, in order of priority, may consent to health care decisions on behalf of a patient who is incapacitated or incompetent:

- an appointed guardian;
- a person with durable power of attorney to make health care decisions;
- a spouse or state registered domestic partner;
- adult children;
- parents; and
- adult siblings.

A health care provider seeking informed consent for a patient who is incapacitated or incompetent is required to make reasonable efforts to secure consent from a surrogate party in descending order. No person may make health care decisions for the incompetent patient if a person in a higher priority can be located. A health care provider's failure to obtain the appropriate consent may give rise to an action for negligence.

A person designated to give informed consent must first determine in good faith that the patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that it is in the patient's best interests.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Health Care Advance Directives.

An advance directive is a document that expresses an individual's preferences regarding the withholding or withdrawal of life-sustaining treatment if he or she is in a terminal condition or permanent unconscious state. An advance directive must be signed and dated in the presence of two witnesses by an individual who is at least 18 years old and not incapacitated. A witness may not be a close family member, a member of the individual's health care team, or a person who may have a claim to the individual's estate.

A suggested form for the Health Care Directive is provided in statute, but a Health Care Directive may include other specific directions beyond those provided in the form.

*Notary Public.* A notary public is a person authorized to perform notarial acts. Notarial acts include taking an acknowledgment, which is a statement by an individual confirming that they have executed a record of the individual's free and voluntary act for the uses and purposes stated therein.

In taking an acknowledgment, a notary public must determine and certify, either from personal knowledge or from satisfactory evidence, that the individual appearing before the notary public and making the acknowledgment is the individual whose true signature is on the document. A notary public has satisfactory evidence that an individual is the person described in a document if that individual: (a) is personally known to the notary public; (b) is identified upon the oath or affirmation of a credible witness personally known to the notary public; or (c) is identified on the basis of identification documents.

### Perjury.

A person is guilty of perjury if he or she makes a materially false statement that he or she knows to be false under an oath required or authorized by law. First degree perjury is a class B felony and second degree perjury is a class C felony.

### **Summary:**

#### Informed Consent.

The list of persons who may provide informed consent for health care decisions for an adult who is incapacitated or incompetent is expanded to include, in order of priority:

- adult grandchildren;
- adult nieces and nephews;
- adult aunts and uncles; and
- an unrelated adult who: has exhibited care and concern for the patient; is familiar with the wishes and values of the patient; is reasonably available to make health care decisions; is not a member of the patient's medical or care team; does not receive compensation to provide care to the patient; attests that he or she does not have knowledge of a willing and available person in a higher priority class; and provides a declaration signed under penalty of perjury stating as such. A declaration is effective for up to six months.

The health care provider may, but is not required to, rely on a declaration provided by an unrelated adult. A health care provider who relies upon the declaration is immune from liability in any suit based upon the reliance.

Health Care Advance Directives.

A Health Care Directive may be signed and acknowledged before a notary public or other individual authorized by law to take acknowledgments as an alternative to signing in the presence of witnesses. The directive may include a notarial certificate for an acknowledgement in an individual capacity in short form.

Perjury.

A person who knowingly provides a false declaration for the purpose of providing informed consent for health care decisions for an incapacitated or incompetent adult or minor is subject to criminal penalties under the perjury statutes.

**Votes on Final Passage:**

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| House  | 71 | 25 |
| Senate | 36 | 10 |

**Effective:** July 28, 2019