

2022 Regular Session

HOUSE BILL NO. 459

BY REPRESENTATIVES CHARLES OWEN, AMEDEE, AND HORTON

HEALTH CARE: Enacts the Life-Sustaining Care Act

1 AN ACT

2 To enact R.S. 22:1054.2 and Subpart A-1 of Part I of Subchapter A of Chapter 5-D of Title  
3 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1152.1  
4 through 1152.6, relative to medical care and treatment; to enact certain requirements  
5 for healthcare providers and institutions relative to life-sustaining procedures; to  
6 provide relative to insurance coverage of such procedures; to provide for  
7 construction; to provide a limitation of liability; to provide for definitions; and to  
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:1054.2 is hereby enacted to read as follows:

11 §1054.2. Requirement for access to coverage for life-sustaining procedures

12 A. No health coverage plan shall deny coverage for the provision or  
13 continuation of a directed life-sustaining procedure or service provided in accordance  
14 with the Life-Sustaining Care Act, R.S. 40:1152.1 et seq.

15 B. For purposes of this Section, "health coverage plan" means any hospital,  
16 health, or medical expense insurance policy, hospital or medical service contract,  
17 employee welfare benefit plan, contract, or other agreement with a health  
18 maintenance organization or a preferred provider organization, health and accident  
19 insurance policy, or any other insurance contract of this type in this state.

1 Section 2. Subpart A-1 of Part I of Subchapter A of Chapter 5-D of Title 40 of the  
2 Louisiana Revised Statutes of 1950, comprised of R.S. 40:1152.1 through 1152.6, is hereby  
3 enacted to read as follows:

4 SUBPART A-1. THE LIFE-SUSTAINING CARE ACT

5 §1152.1. Short title

6 This Subpart shall be known and may be cited as the "Life-Sustaining Care  
7 Act".

8 §1152.2. Legislative findings; purpose

9 The legislature hereby finds and declares that any patient whose desire for  
10 life-sustaining care is refused by a healthcare provider would benefit from laws  
11 providing for the continuance of life-sustaining care pending a transfer to a willing  
12 provider or institution. The purpose of this Subpart is to ensure the continued  
13 provision of healthcare procedures or services when a healthcare provider or  
14 healthcare institution declines to honor a request by a patient, or a person who may  
15 consent to medical treatment on behalf of the patient, for the provision or  
16 continuation of life-sustaining care until a transfer can be effected, and to make  
17 reasonable efforts to assist in the transfer of the patient to a willing provider or  
18 institution.

19 §1152.3. Definitions

20 As used in this Subpart, the following terms have the meaning ascribed in this  
21 Section:

22 (1) "Healthcare institution" means any public or private organization,  
23 corporation, partnership, sole proprietorship, association, agency, network, joint  
24 venture, or other entity that is involved in providing healthcare services, including  
25 but not limited to hospitals, clinics, medical centers, ambulatory surgical centers,  
26 private physician's offices, nursing homes, or other institutions or locations wherein  
27 healthcare services are provided to any person.

28 (2) "Healthcare provider" means any individual who may be asked to  
29 participate in any way in a healthcare service, including, but not limited to a

1 physician, physician assistant, nurse, nurse aide, medical assistant, hospital  
2 employee, clinic employee, nursing home employee, or any other person who  
3 furnishes or assists in the furnishing of healthcare services.

4 (3) "Life-sustaining procedure" means any medical procedure or intervention  
5 which, in reasonable medical judgment, has the possibility of sustaining the life of  
6 the patient.

7 §1152.4. Provision of life-sustaining procedures

8 A. If a patient, an individual who has authority to consent on behalf of a  
9 patient in accordance with R.S. 40:1159.4, or an advance directive of a patient  
10 directs the provision or opposes the withdrawal of a life-sustaining procedure, a  
11 healthcare provider or healthcare institution shall ensure the provision or  
12 continuation of the directed life-sustaining procedure.

13 B.(1) A healthcare provider or healthcare institution that is unwilling to  
14 provide a directed life-sustaining procedure pursuant to Subsection A of this Section  
15 may transfer the patient to another healthcare provider or healthcare institution  
16 capable of and willing to provide the procedure. Upon the identification of a capable  
17 and willing healthcare provider or healthcare institution by the patient or an  
18 individual who has authority to consent on behalf of the patient in accordance with  
19 R.S. 40:1159.4, the unwilling healthcare provider or healthcare institution shall make  
20 a reasonable and good faith attempt to transfer the patient to the willing healthcare  
21 provider or healthcare institution identified by the patient or an individual who has  
22 legal authority to consent on his behalf. However, the unwilling healthcare provider  
23 or healthcare institution shall make a good faith effort to ensure the provision or  
24 continuation of the directed life-sustaining procedure. Any transfer of a patient  
25 pursuant to the provisions of this Subsection shall be conducted promptly upon  
26 agreement by the receiving healthcare provider or healthcare institution to admit the  
27 patient.

28 (2) If the patient, his advance directive, or an individual who has authority  
29 to consent on his behalf in accordance with R.S. 40:1159.4 is in conflict with the

1 healthcare provider or healthcare institution treating the patient regarding whether  
2 life-sustaining care for the patient should be continued, the patient or individual who  
3 has authority to consent on his behalf shall, within thirty days of that person and the  
4 provider or institution mutually acknowledging the conflict, identify a healthcare  
5 provider or healthcare institution that is capable of and willing to provide life-  
6 sustaining care for the patient. If no willing provider or institution is identified and  
7 the conflict remains unresolved after the expiration of the thirty-day period provided  
8 for in this Paragraph, the provider or institution treating the patient shall pursue a  
9 legal remedy in the district court of the judicial district in which it is located.

10 C. In any instance in which the services provided to a patient for the  
11 provision or continuation of a directed life-sustaining procedure are not covered by  
12 any public or private health insurance coverage, payment for the services provided  
13 in accordance with this Subpart shall remain the obligation of the patient.

14 §1152.5. Advance directives and other declarations and orders not affected

15 Nothing in this Subpart shall be construed to supersede a properly signed and  
16 executed living will, advance directive, declaration concerning life-sustaining  
17 procedures, or physician order for scope of treatment form prepared in accordance  
18 with Subpart A, B, or C of this Part or any other applicable provisions of law.

19 §1152.6. Limitation of liability

20 Compliance with this Subpart shall not create, or be construed or interpreted  
21 to create, a new cause of action or to create a standard of care, obligation, or duty  
22 that provides a basis for a cause of action.

23 Section 3. Any provision of this Act held to be invalid or unenforceable by its terms,  
24 or as applied to any person or circumstance, shall be construed so as to give it the maximum  
25 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,  
26 in which event such provision shall be deemed severable in accordance with R.S. 24:175,  
27 and shall not affect the remainder hereof or the application of such provision to other persons  
28 not similarly situated or to other, dissimilar circumstances.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 459 Reengrossed

2022 Regular Session

Charles Owen

**Abstract:** Enacts the Life-Sustaining Care Act which establishes a duty for healthcare providers and institutions to provide life-sustaining care in certain instances.

Proposed law provides that its purpose is to ensure the continued provision of healthcare procedures or services when a healthcare provider or healthcare institution declines to honor a request by a patient, or a person who may consent to medical treatment on behalf of the patient, for the provision or continuation of life-sustaining care until a transfer can be effected, and to make reasonable efforts to assist in the transfer of the patient to a willing provider or institution.

Proposed law defines "life-sustaining care" as any medical procedure or intervention which, in reasonable medical judgment, has the possibility of sustaining the life of the patient.

Proposed law stipulates that if a patient, a person who may consent to medical treatment on behalf of the patient in accordance with present law (R.S. 40:1159.4), or an advance directive of a patient directs the provision or opposes the withdrawal of a life-sustaining procedure, a healthcare provider or institution shall ensure the provision or continuation of the directed life-sustaining care.

Proposed law authorizes healthcare providers and institutions that are unwilling to provide a directed life-sustaining procedure to transfer the patient to another healthcare provider or healthcare institution capable of and willing to provide the procedure. Provides for the process by which such a transfer may be effected.

Proposed law provides that if the patient, his advance directive, or an individual who has authority to consent on his behalf is in conflict with the healthcare provider or healthcare institution treating the patient regarding whether life-sustaining care for the patient should be continued, the patient or individual who has authority to consent on his behalf shall, within 30 days of that person and the provider or institution mutually acknowledging the conflict, identify a healthcare provider or healthcare institution that is capable of and willing to provide life-sustaining care for the patient.

Proposed law requires that if no willing provider or institution is identified and the conflict over life-sustaining care for the patient remains unresolved after the expiration of the 30-day period afforded in proposed law, the provider or institution treating the patient shall pursue a legal remedy in a court of law.

Proposed law stipulates that nothing therein shall be construed to supersede a properly signed and executed living will, advance directive, declaration concerning life-sustaining procedures, or physician order for scope of treatment form prepared in accordance with applicable provisions of present law.

Proposed law provides that compliance with proposed law shall not create, or be construed or interpreted to create, a new cause of action or to create a standard of care, obligation, or duty that provides a basis for a cause of action.

Proposed law prohibits health coverage plans from denying coverage for the provision or continuation of a directed life-sustaining procedure or service delivered in accordance with proposed law. Provides that for purposes of proposed law, "health coverage plan" means

any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract, or other agreement with a health maintenance organization or a preferred provider organization, health and accident insurance policy, or any other insurance contract of this type in this state.

Proposed law stipulates that when services provided to a patient for the provision or continuation of a directed life-sustaining procedure are not covered by any public or private health insurance coverage, payment for the services provided in accordance with proposed law shall remain the obligation of the patient.

(Adds R.S. 22:1054.2 and R.S. 40:1152.1-1152.6)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Provide within the La. Insurance Code (Title 22 of present law) that no health coverage plan shall deny coverage for the provision or continuation of a directed life-sustaining procedure or service provided in accordance with proposed law.
2. Revise legislative findings and purpose language provided in proposed law.
3. Revise the definitions of "legal representative" and "life-sustaining procedure" provided in proposed law.
4. Revise proposed law pertaining to transfer of patients in instances in which a healthcare provider or healthcare institution is unwilling to provide a directed life-sustaining procedure pursuant to proposed law.
5. Stipulate that when services provided to a patient for the provision or continuation of a directed life-sustaining procedure are not covered by any public or private health insurance coverage, payment for the services provided in accordance with proposed law shall remain the obligation of the patient.
6. Stipulate that nothing in proposed law shall be construed to supersede a properly signed and executed living will, advance directive, declaration concerning life-sustaining procedures, or physician order for scope of treatment form prepared in accordance with applicable provisions of present law.
7. Provide that compliance with proposed law shall not create, or be construed or interpreted to create, a new cause of action or to create a standard of care, obligation, or duty that provides a basis for a cause of action.
8. Make technical changes.

#### The House Floor Amendments to the engrossed bill:

1. Delete the defined term "legal representative" from proposed law and replace instances of the term with references to "an individual who has authority to consent on behalf of a patient" in accordance with present law relative to medical consent (R.S. 40:1159.4).
2. Provide that if the patient, his advance directive, or an individual who has authority to consent on his behalf is in conflict with the healthcare provider or healthcare institution treating the patient regarding whether life-sustaining care for the patient should be continued, the patient or individual who has authority to consent on his behalf shall, within 30 days of that person and the provider or

institution mutually acknowledging the conflict, identify a healthcare provider or healthcare institution that is capable of and willing to provide life-sustaining care for the patient.

3. Require that if no willing provider or institution is identified and the conflict over life-sustaining care for the patient remains unresolved after the expiration of the 30 period, the provider or institution treating the patient shall pursue a legal remedy in a court of law.