

SENATE BILL NO. 302

BY SENATOR MILLS

1 AN ACT

2 To amend and reenact R.S. 40:1299.53, relative to persons who may consent to surgical or
3 medical treatment; to provide relative to an adult friend of certain patients; to provide
4 relative to circumstances where no person is reasonably available to consent for the
5 patient; to provide relative to physician discretion; to provide for certain terms,
6 conditions, and procedures; to provide for certain immunity; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1299.53 is hereby amended and reenacted to read as follows:

10 §1299.53. Persons who may consent to surgical or medical treatment

11 A. In addition to such other persons as may be authorized and empowered,
12 any one of the following persons in the following order of priority, if there is no
13 person in a prior class who is reasonably available, willing, and competent to act, is
14 authorized and empowered to consent, either orally or otherwise, to any surgical or
15 medical treatment or procedures including autopsy not prohibited by law which may
16 be suggested, recommended, prescribed, or directed by a duly licensed physician:

17 (1) Any adult, for himself.

18 (2) The judicially appointed tutor or curator of the patient, if one has been
19 appointed.

20 (3) An agent acting pursuant to a valid mandate, specifically authorizing the
21 agent to make health care decisions.

22 (4) The patient's spouse not judicially separated.

23 (5) An adult child of the patient.

24 (6) Any parent, whether adult or minor, for his child.

1 (7) The patient's sibling.

2 (8) The patient's other ascendants or descendants.

3 **(9) Upon the inability of any adult to consent for himself and in the**
 4 **absence of any person listed in Paragraphs (2) through (8) of this Subsection,**
 5 **an adult friend of the patient. For purposes of this Subsection to consent, "adult**
 6 **friend" means an adult who has exhibited special care and concern for the**
 7 **patient, who is generally familiar with the patient's health care views and**
 8 **desires, and who is willing and able to become involved in the patient's health**
 9 **care decisions and to act in the patient's best interest. The adult friend shall sign**
 10 **and date an acknowledgment form provided by the hospital or other health care**
 11 **facility in which the patient is located for placement in the patient's records**
 12 **certifying that he or she meets such criteria.**

13 ~~(9)~~**(10)** Any person temporarily standing in loco parentis, whether formally
 14 serving or not, for the minor under his care and any guardian for his ward.

15 ~~(10)~~**(11)** A person chosen by the interdisciplinary team, as defined in R.S.
 16 28:451.2, to make recommendations on behalf of an individual with a developmental
 17 disability, as defined in R.S. 28:451.2. The interdisciplinary team shall exercise
 18 discretion in choosing, by majority vote, the family member, friend, or other person
 19 most familiar with the individual or most capable of making the decision at issue.

20 ~~(11)~~**(12)** A person chosen by an ad hoc team assembled by any interested
 21 person for the purpose of addressing the medical decision at issue for an individual
 22 with a developmental disability.

23 (a) This team shall consist of at least three persons familiar with the
 24 circumstances and needs of the individual, and shall contain representatives from at
 25 least two different services, educational or advocacy agencies serving individuals
 26 with developmental disabilities.

27 (b) The team shall make decisions by majority vote, and no one agency shall
 28 provide a majority of the members.

29 (c) The team shall exercise discretion in choosing the family member, friend,
 30 or other person most familiar with the individual or most capable of making the

1 decision at issue.

2 B. If there is more than one person within the above named class in
3 Paragraphs (A)(1) through (9), the consent for surgical or medical treatment shall be
4 given by a majority of those members of the class available for consultation.

5 C. If none of the persons listed under Paragraphs (A)(1) through (10) of
6 this Section are reasonably available, then the patient's attending physician
7 shall have the discretion to provide or perform any surgical or medical
8 treatment or procedures, including but not limited to an autopsy, and may also
9 make decisions regarding continued services needed by the patient, including
10 but not limited to approving the placement or transfer of the patient to another
11 facility, without the consent of the patient or other person authorized to consent
12 for the patient. Prior to taking such action, the attending physician shall
13 document in the patient's chart the facts that establish what medical decisions
14 need to be made and why those decisions are needed without undue delay, as
15 well as the steps taken to obtain consent from the patient or another person
16 authorized by law to give consent and then obtain confirmation from another
17 physician, preferably the patient's primary care physician if he is not the
18 attending physician, of the patient's condition and the medical necessity for such
19 action as is appropriate and consistent with the patient's condition and which
20 cannot be omitted without adversely affecting the patient's condition or the
21 quality of medical care rendered. The confirming physician shall personally
22 examine the patient and document his assessment, findings and
23 recommendations in the patient's chart prior to the proposed surgical or
24 medical treatment or procedures being performed. This Subsection shall not
25 apply to an emergency governed by the provisions of R.S. 40:1299.54.

26 D.(1) When no contact persons are included in the individual's records,
27 in order to justify a finding that none of the authorized persons listed under
28 Paragraphs (A)(1) through (9) of this Section are reasonably available, the
29 patient's attending physician shall document the following in the patient's
30 record:

1 (a) That he or a representative of the attending physician or facility has
 2 inquired of, or has made a documented good-faith effort to inquire of, the
 3 following entities regarding the existence of any advance directive made by the
 4 patient and the availability of information that would enable the physician to
 5 contact any person listed under Paragraphs (A)(2) through (9) of this Section:

6 (i) The Louisiana Secretary of State's Living Will Registry.

7 (ii) The patient's primary care physician or any known provider of
 8 medical treatment or services received by the patient in the previous one
 9 hundred and eighty days.

10 (iii) Any known facility in which the patient has resided in the last one
 11 hundred and eighty days.

12 (b) That no advance directive or other information that would enable
 13 the physician to contact an authorized individual to consent is available.

14 (2) When names of potentially authorized persons are listed in the
 15 individual's records or are obtained through efforts under this Subsection, in
 16 order to justify a finding that none of the authorized persons listed under
 17 Paragraphs (A)(1) through (9) of this Section are reasonably available, the
 18 patient's attending physician shall document in the patient's record the name
 19 of each potentially authorized person that he or a representative of the
 20 physician or facility attempted to contact, the manner and date of the attempted
 21 contact, and the result of the attempted contact.

22 E. For an individual with a developmental disability, competency to act for
 23 the purpose of this Section shall be determined in accordance with principles set
 24 forth in R.S. 28:454.3, including capacity to consent and legally adequate consent.

25 ~~D.F.~~ Consent to surgical or medical treatment for an individual with a
 26 developmental disability will be implied where an emergency, as defined in R.S.
 27 40:1299.54, exists.

28 G. No hospital or other health care facility, physician, health care
 29 provider, or other person or entity shall be subject to criminal prosecution or
 30 civil liability or be deemed to have engaged in unprofessional conduct as to the

1 issue of consent only, based upon the reliance in good faith on any direction or
2 decision by any person reasonably believed to be authorized and empowered to
3 consent under Paragraphs (A)(1) through (9) of this Section, even if death or
4 injury to the patient ensues except for liability for medical malpractice as to the
5 provision or performance of the surgical or medical treatment, not with regard
6 to the question of consent under R.S. 40:1299.39 et seq., or R.S. 40:1299.41 et.
7 seq. Each hospital or other health care facility, physician, health care provider,
8 or other person or entity, who acts in good-faith reliance on any such direction
9 or decision shall be protected and released to the same extent as though such
10 person had interacted directly with the patient as a fully competent person.

11 H. Any physician attending or confirming, who, in accordance with
12 Subsection C of this Section, provides or performs any surgical or medical
13 treatment or procedure, including but not limited to an autopsy, or who makes
14 decisions regarding continued services, including but not limited to approving
15 the transfer or placement of the patient, without the consent of the patient or
16 other person authorized to consent for the patient, shall not be subject to
17 criminal prosecution or civil liability or be deemed to have engaged in
18 unprofessional conduct as a result of the decision to perform, or the actual
19 performance of, such treatment or procedure, or with regard to any decisions
20 pertaining to continued services, including but not limited to decisions
21 regarding the transfer or placement of the patient as to the issue of consent
22 only, even if death or injury to the patient ensues, except for liability for medical
23 malpractice as to the provision or performance of the surgical or medical
24 treatment, not with regard to the question of consent under R.S. 40:1299.39 et
25 seq., or R.S. 40:1299.41 et. seq. Furthermore, no hospital or other health care
26 facility, health care provider or other person or entity acting under the
27 direction of a physician shall be subject to criminal prosecution or civil liability,
28 or be deemed to have engaged in unprofessional conduct as a result of any
29 treatment, procedures, continued services, transfer, or placements that were
30 performed in accordance with Subsection C of this Section, as to the issue of

1 consent only, even if death or injury to the patient ensues, except for liability for
2 medical malpractice as to the provision or performance of the surgical or
3 medical treatment, not with regard to the question of consent under R.S.
4 40:1299.39 et seq., or R.S. 40:1299.41 et. seq.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____