

By: Representative Perry

To: Judiciary A

## HOUSE BILL NO. 865

1 AN ACT TO AMEND SECTION 41-41-215, MISSISSIPPI CODE OF 1972,  
2 TO REVISE CONSENT PROVISIONS FOR CERTAIN PERSONS UNDER THE UNIFORM  
3 HEALTH-CARE DECISIONS ACT; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. Section 41-41-215, Mississippi Code of 1972, is  
6 amended as follows:

7 41-41-215. (1) Before implementing a health-care decision  
8 made for a patient, a supervising health-care provider, if  
9 possible, shall promptly communicate to the patient the decision  
10 made and the identity of the person making the decision.

11 (2) A supervising health-care provider who knows of the  
12 existence of an advance health-care directive, a revocation of an  
13 advance health-care directive, or a designation or  
14 disqualification of a surrogate, shall promptly record its  
15 existence in the patient's health-care record and, if it is in  
16 writing, shall request a copy and if one is furnished shall  
17 arrange for its maintenance in the health-care record.

18 (3) A primary physician who makes or is informed of a  
19 determination that a patient lacks or has recovered capacity, or  
20 that another condition exists which affects an individual  
21 instruction or the authority of an agent, guardian, or surrogate,  
22 shall promptly record the determination in the patient's  
23 health-care record and communicate the determination to the  
24 patient, if possible, and to any person then authorized to make  
25 health-care decisions for the patient.

26 (4) Except as provided in subsections (5) and (6), a  
27 health-care provider or institution providing care to a patient

28 shall:

29           (a) Comply with an individual instruction of the  
30 patient and with a reasonable interpretation of that instruction  
31 made by a person then authorized to make health-care decisions for  
32 the patient; and

33           (b) Comply with a health-care decision for the patient  
34 made by a person then authorized to make health-care decisions for  
35 the patient to the same extent as if the decision had been made by  
36 the patient while having capacity.

37           (5) A health-care provider may decline to comply with an  
38 individual instruction or health-care decision for reasons of  
39 conscience. A health-care institution may decline to comply with  
40 an individual instruction or health-care decision if the  
41 instruction or decision is contrary to a policy of the institution  
42 which is expressly based on reasons of conscience and if the  
43 policy was timely communicated to the patient or to a person then  
44 authorized to make health-care decisions for the patient.

45           (6) A health-care provider or institution may decline to  
46 comply with an individual instruction or health-care decision that  
47 requires medically ineffective health care or health care contrary  
48 to generally accepted health-care standards applicable to the  
49 health-care provider or institution.

50           (7) A health-care provider or institution that declines to  
51 comply with an individual instruction or health-care decision  
52 shall:

53           (a) Promptly so inform the patient, if possible, and  
54 any person then authorized to make health-care decisions for the  
55 patient;

56           (b) Provide continuing care to the patient until a  
57 transfer can be effected; and

58           (c) Unless the patient or person then authorized to  
59 make health-care decisions for the patient refuses assistance,  
60 immediately make all reasonable efforts to assist in the transfer  
61 of the patient to another health-care provider or institution that

62 is willing to comply with the instruction or decision.

63 (8) A health-care provider or institution may not require or  
64 prohibit the execution or revocation of an advance health-care  
65 directive as a condition for providing health care.

66 (9) If the patient who is an adult or emancipated minor has  
67 been determined by the primary physician to lack capacity to make  
68 a health-care decision and an agent, guardian or surrogate is not  
69 reasonably available, consent may be given by an owner, operator  
70 or employee of a residential long-term health care institution at  
71 which the patient is a resident under the following rules:

72 (a) The patient has not executed an advance health-care  
73 directive;

74 (b) No person defined in this chapter as a surrogate is  
75 available to give consent;

76 (c) A licensed physician has determined that the  
77 patient is in need of health care.

78 When consent is given under this subsection, compliance with  
79 these requirements shall be stated in the patient's records.

80 SECTION 2. This act shall take effect and be in force from  
81 and after July 1, 1999.