

By: Representative Perry

To: Judiciary A

HOUSE BILL NO. 865
(As Sent to Governor)

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 if there is no advance health-care
72 directive to the contrary and a licensed physician who is not an
73 owner, operator or employee of the residential long-term health
74 care institution at which the patient is a resident has determined
75 that the patient is in need of health care. This power to consent
76 is limited to the terms of this subsection (9) and shall not be
77 construed to repeal or otherwise affect the prohibition of Section
78 41-41-211(9) relating to owners, operators, or employees of
79 long-term health care institutions. The consent given pursuant to
80 this subsection shall be limited to the health care services
81 determined necessary by the licensed physician and shall in no
82 event include the power to consent to or direct withholding or
83 discontinuing any life support, nutrition, hydration or other
84 treatment, care or support. When consent is obtained under this
85 subsection, compliance with these requirements shall be stated in
86 the patient's health-care record.

87 SECTION 2. This act shall take effect and be in force from
88 and after its passage.