

By: Senator(s) Turner, Bean

To: Public Health and
Welfare

SENATE BILL NO. 2862
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-41-211, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE AUTHORITY OF THE DIRECTOR OF A STATE MENTAL
3 HOSPITAL TO CONSENT TO MEDICAL CARE AND TREATMENT OF PATIENTS FOR
4 WHOM NO OTHER SURROGATE IS DESIGNATED OR AVAILABLE; TO CODIFY
5 SECTION 41-41-9, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT A COURT
6 MAY CONSENT TO OR ORDER MEDICAL TREATMENT, AND TO ALLOCATE THE
7 EXPENSE OF TREATMENT; AND FOR RELATED PURPOSES. BE IT ENACTED BY
8 THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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10 SECTION 1. Section 41-41-211, Mississippi Code of 1972, is
11 amended as follows:

12 41-41-211. (1) A surrogate may make a health-care decision
13 for a patient who is an adult or emancipated minor if the patient
14 has been determined by the primary physician to lack capacity and
15 no agent or guardian has been appointed or the agent or guardian
16 is not reasonably available.

17 (2) An adult or emancipated minor may designate any
18 individual to act as surrogate by personally informing the
19 supervising health-care provider. In the absence of a
20 designation, or if the designee is not reasonably available, any
21 member of the following classes of the patient's family who is
22 reasonably available, in descending order of priority, may act as
23 surrogate:

- 24 (a) The spouse, unless legally separated;
- 25 (b) An adult child;
- 26 (c) A parent; or
- 27 (d) An adult brother or sister.

28 (3) If none of the individuals eligible to act as surrogate
29 under subsection (2) is reasonably available, an adult who has

30 exhibited special care and concern for the patient, who is
31 familiar with the patient's personal values, and who is reasonably
32 available may act as surrogate.

33 (4) A surrogate shall communicate his or her assumption of
34 authority as promptly as practicable to the members of the
35 patient's family specified in subsection (2) who can be readily
36 contacted.

37 (5) If more than one (1) member of a class assumes authority
38 to act as surrogate, and they do not agree on a health-care
39 decision and the supervising health-care provider is so informed,
40 the supervising health-care provider shall comply with the
41 decision of a majority of the members of that class who have
42 communicated their views to the provider. If the class is evenly
43 divided concerning the health-care decision and the supervising
44 health-care provider is so informed, that class and all
45 individuals having lower priority are disqualified from making the
46 decision.

47 (6) A surrogate shall make a health-care decision in
48 accordance with the patient's individual instructions, if any, and
49 other wishes to the extent known to the surrogate. Otherwise, the
50 surrogate shall make the decision in accordance with the
51 surrogate's determination of the patient's best interest. In
52 determining the patient's best interest, the surrogate shall
53 consider the patient's personal values to the extent known to the
54 surrogate.

55 (7) A health-care decision made by a surrogate for a patient
56 is effective without judicial approval.

57 (8) An individual at any time may disqualify another,
58 including a member of the individual's family, from acting as the
59 individual's surrogate by a signed writing or by personally
60 informing the supervising health-care provider of the
61 disqualification.

62 (9) * * * A surrogate may not be an owner, operator, or
63 employee of a residential long-term health-care institution at
64 which the patient is receiving care unless related to the patient
65 by blood, marriage, or adoption, except in the case of a patient
66 of a state-operated facility who has no person listed in

67 subsection (2) reasonably available to act as a surrogate.

68 (10) A supervising health-care provider may require an
69 individual claiming the right to act as surrogate for a patient to
70 provide a written declaration under penalty of perjury stating
71 facts and circumstances reasonably sufficient to establish the
72 claimed authority.

73 SECTION 2. The following provision shall be codified as
74 Section 41-41-9, Mississippi Code of 1972:

75 41-41-9. In addition to all other remedies available at law
76 or in equity, any court having a clerk or any judge thereof may,
77 in either term time or vacation, upon presentation of the written
78 advice or certificate of one or more duly licensed physicians that
79 there is an immediate or imminent necessity for medical or
80 surgical treatment or procedures for an adult of unsound mind or a
81 minor, summarily consent to or order and direct such surgical or
82 medical treatment or procedures for the adult of unsound mind or
83 minor, provided that:

84 (a) (i) The surrogate for such adult of unsound mind
85 or minor has refused or declined to do so and there is no other
86 person known to be immediately available who is so authorized,
87 empowered, willing or capacitated to so consent; or

88 (ii) There is no person available to be designated
89 as a surrogate; and

90 (b) There has been filed with or there is presented to
91 such court or judge an application for a writ of habeas corpus as
92 to such person, a pleading respecting the custody or care of such
93 person, an application for appointment of a guardian or
94 conservator for such person, a pleading seeking the adjudication
95 of such person as a non compos mentis, drug addict, habitual
96 drunkard or neglected child, or some other instrument or pleading
97 otherwise invoking the aid or jurisdiction of said court or judge
98 or the state, as parens patriae or otherwise, concerning the
99 welfare of such person. Any subsequent dismissal, nonsuit,

100 removal, transfer, overruling or denial of such original
101 application, instrument or pleading, or denial of jurisdiction of
102 the court or judge over the subject matter or necessary parties,
103 shall not retroactively revoke, rescind or invalidate any prior
104 consent.

105 The reasonable expense of an adult of unsound mind or a minor
106 in thus obtaining such surgical or medical treatment or procedures
107 shall be borne by his estate or any person liable at law for his
108 necessities or, if they are unable to pay, by the county of
109 residence or settlement of the person receiving such surgical or
110 medical care.

111 Upon request of the attending physician or other interested
112 person, it shall be the duty of any district attorney or county
113 attorney to give his assistance in the presentation of any such
114 medical advice or certificate and in obtaining the consent or
115 order of a judge or court of proper jurisdiction.

116 SECTION 3. This act shall take effect and be in force from
117 and after its passage.