

SENATE BILL NO. 116—SENATOR HARDY

PREFILED JANUARY 28, 2019

Referred to Committee on Health and Human Services

SUMMARY—Provides for the selection of a proxy decision-maker to make medical treatment decisions for certain adult patients who lack the capacity to provide consent to or refusal of medical treatment. (BDR 40-524)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; providing for the selection of a proxy decision-maker for an adult patient who lacks the capacity to provide consent to or refusal of medical treatment; establishing standards for carrying out decisions for the medical treatment of an adult patient for whom a proxy decision-maker has been selected; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a person is authorized to provide an advance directive concerning his or her health care in the form of a durable power of attorney for health care decisions, a declaration governing the withholding or withdrawal of life-sustaining treatment, a Provider Order for Life-Sustaining Treatment form or a do-not-resuscitate order. (NRS 162A.700-162A.865, 449A.400-449A.481, 449A.500-449A.581, 450B.420) Existing law also provides for the appointment of a guardian to make health care decisions for a person who lacks the capacity to make such decisions for himself or herself. (Chapter 159 of NRS) This bill provides for the selection of a proxy decision-maker to make decisions concerning medical treatment on behalf of an adult patient who lacks the capacity to provide consent to or refusal of medical treatment and who does not have a guardian or an advance directive concerning that medical treatment decision.

Section 12 of this bill authorizes a provider of health care to rely in good faith on the decisions concerning medical treatment made by a proxy decision-maker selected for an adult patient who lacks the capacity to provide consent to or refusal of medical treatment and who does not have a guardian or an advance directive concerning that medical treatment decision. **Sections 6, 8, 11, 13 and 14** of this bill: (1) require an attending physician, physician assistant or advanced practice registered nurse who determines that an adult patient lacks the capacity to provide



20 consent to or refusal of medical treatment to make reasonable efforts to notify
21 interested persons, such as the spouse, parents, children, siblings or grandchildren
22 of the adult patient, and any other person who has a significant emotional and
23 positive relationship with the adult patient; and (2) provide for the selection of one
24 of those persons as the proxy decision-maker to make decisions concerning the
25 medical treatment of the adult patient. **Section 15** of this bill prohibits the attending
26 physician, physician assistant or advanced practice registered nurse from acting as
27 the proxy decision-maker for an adult patient who lacks the capacity to provide
28 consent to or refusal of medical treatment but authorizes another willing physician,
29 physician assistant or advanced practice registered nurse to act as the proxy
30 decision-maker for the adult patient if an interested person is not selected as the
31 proxy decision-maker and certain other requirements are satisfied. **Section 16** of
32 this bill provides for the termination of the authority of a physician, physician
33 assistant or advanced practice registered nurse to act as the proxy decision-maker
34 for an adult patient. **Section 17** of this bill establishes standards for carrying out
35 decisions for the medical treatment of an adult patient for whom a proxy decision-
36 maker has been selected. **Section 18** of this bill requires the medical facility that is
37 providing care for an adult patient for whom a proxy decision-maker has been
38 selected to provide the assistance of its medical ethics committee to the proxy
39 decision-maker or to refer the proxy decision-maker to the medical ethics
40 committee of another medical facility. **Section 19** of this bill requires the
41 reexamination of an adult patient who has been determined to lack the capacity to
42 provide consent to or refusal of medical treatment if certain persons believe that the
43 adult patient has regained such capacity. **Section 20** of this bill provides immunity
44 from civil or criminal liability or discipline for unprofessional conduct for: (1) a
45 medical facility or provider of health care for certain acts related to locating and
46 communicating with a proxy decision-maker and for certain actions; (2) a provider
47 of health care for acting as a proxy decision-maker except that such a provider of
48 health care remains responsible for his or her negligent acts or omissions to act in
49 accordance with the accepted professional standards of medical practice. **Section**
50 **21** of this bill prohibits certain constructions of this bill, including, without
51 limitation, prohibiting this bill from being construed to condone, authorize or
52 approve mercy killing, euthanasia or assisted suicide or to affect or render invalid
53 an otherwise valid advance directive for health care decisions.
54 **Section 22** of this bill provides that this bill becomes effective upon passage
55 and approval for the purpose of adopting regulations and performing certain
56 administrative tasks, and on January 1, 2020, for all other purposes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 449A of NRS is hereby amended by
2 adding thereto the provisions set forth as sections 2 to 21, inclusive,
3 of this act.

4 **Sec. 2.** *As used in sections 2 to 21, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 11, inclusive, of this act have the meanings*
7 *ascribed to them in those sections.*

8 **Sec. 3.** *“Adult patient” means a patient who is 18 years of*
9 *age or older.*



1 **Sec. 4.** *“Advance directive” means an advance directive for*
2 *health care. The term includes:*

3 1. *A declaration governing the withholding or withdrawal of*
4 *life-sustaining treatment as set forth in NRS 449A.400 to*
5 *449A.481, inclusive;*

6 2. *A durable power of attorney for health care as set forth in*
7 *NRS 162A.700 to 162A.865, inclusive;*

8 3. *An advance directive for psychiatric care as set forth in*
9 *NRS 449A.600 to 449A.645, inclusive;*

10 4. *A do-not-resuscitate order as defined in NRS 450B.420;*
11 *and*

12 5. *A Provider Order for Life-Sustaining Treatment form as*
13 *defined in NRS 449A.542.*

14 **Sec. 5.** *“Advanced practice registered nurse” means a*
15 *registered nurse who holds a valid license as an advanced practice*
16 *registered nurse issued by the State Board of Nursing pursuant to*
17 *NRS 632.237.*

18 **Sec. 6.** *“Attending provider of health care” means the*
19 *physician who has primary responsibility for the treatment and*
20 *care of an adult patient or a physician assistant or advanced*
21 *practice registered nurse who has primary responsibility for the*
22 *treatment and care of an adult patient.*

23 **Sec. 7.** *“Decisional capacity” means the capacity to provide*
24 *informed consent or refusal of medical treatment.*

25 **Sec. 8.** *“Interested person” means a spouse of an adult*
26 *patient, either parent of an adult patient, any child, sibling or*
27 *grandchild of the adult patient who is 18 years of age or older or*
28 *any other person who has a significant emotional and positive*
29 *relationship with the adult patient.*

30 **Sec. 9.** *“Medical treatment” means the provision,*
31 *withholding or withdrawal of any health care, medical procedure*
32 *or service to maintain, diagnose, treat or provide for the physical*
33 *or mental health or personal care of an adult patient, including,*
34 *without limitation, providing artificial nourishment and hydration*
35 *or performing surgery or cardiopulmonary resuscitation.*

36 **Sec. 10.** *“Physician assistant” means a person who holds a*
37 *license as a physician assistant pursuant to chapter 630 or 633 of*
38 *NRS.*

39 **Sec. 11.** *“Proxy decision-maker” means a person selected*
40 *pursuant to sections 2 to 21, inclusive, of this act to make*
41 *decisions concerning the medical treatment of an adult patient*
42 *who, pursuant to section 13 of this act, is determined to lack*
43 *decisional capacity.*

44 **Sec. 12.** *A provider of health care or a medical facility may*
45 *rely, in good faith, upon a decision concerning the medical*



1 *treatment of an adult patient which is made by a proxy decision-*
2 *maker for the adult patient if:*

3 1. *The adult patient lacks decisional capacity;*

4 2. *No person, including, without limitation, a guardian or an*
5 *agent under a power of attorney for health care, has the legal*
6 *authority to provide consent to or refusal of medical treatment on*
7 *behalf of the adult patient; and*

8 3. *There is no valid declaration, direction or order*
9 *concerning the medical treatment in an advance directive which*
10 *conflicts with the decision.*

11 **Sec. 13.** 1. *If a court or the attending provider of health*
12 *care of an adult patient determines that the adult patient lacks*
13 *decisional capacity, the attending provider of health care, or the*
14 *designee of the attending provider of health care, must make*
15 *reasonable efforts to notify the adult patient and as many*
16 *interested persons as practicable of the lack of decisional capacity*
17 *of the adult patient. Upon notifying an interested person of the*
18 *lack of decisional capacity of the adult patient, the attending*
19 *provider of health care must inform the interested person that a*
20 *proxy decision-maker should be selected for the adult patient.*

21 2. *An attending provider of health care who determines that*
22 *an adult patient lacks decisional capacity shall make specific*
23 *findings regarding the cause, nature and projected duration of the*
24 *lack of decisional capacity of the adult patient.*

25 3. *The determination that an adult patient lacks decisional*
26 *capacity and the specific findings of an attending provider of*
27 *health care pursuant to subsection 2 must be documented in the*
28 *medical record of the adult patient.*

29 **Sec. 14.** 1. *Each interested person who is notified of an*
30 *adult patient's lack of decisional capacity shall make a reasonable*
31 *effort to reach an agreement as to which interested person will*
32 *serve as the proxy decision-maker for the adult patient.*

33 2. *In selecting a proxy decision-maker for the adult patient,*
34 *each interested person must consider whether a proposed proxy*
35 *decision-maker has a close relationship with the adult patient and*
36 *whether a proposed proxy decision-maker is likely to be currently*
37 *informed of the wishes of the adult patient regarding medical*
38 *treatment.*

39 3. *If any interested person disagrees with the selection of the*
40 *proxy decision-maker or the decision of the proxy decision-maker*
41 *or if, after reasonable efforts, the interested persons are unable to*
42 *reach a consensus as to who should act as the proxy decision-*
43 *maker, any interested person may seek guardianship for the adult*
44 *patient by initiating guardianship proceedings pursuant to chapter*
45 *159 of NRS.*



1 **Sec. 15. 1.** *An attending provider of health care may not be*
2 *designated as a proxy decision-maker for an adult patient.*

3 **2.** *An attending provider of health care may designate*
4 *another willing physician, physician assistant or advanced*
5 *practice registered nurse to make health care treatment decisions*
6 *as a proxy decision-maker for the adult patient if:*

7 **(a)** *The attending provider of health care or his or her*
8 *designee cannot locate any interested person after making*
9 *reasonable efforts, or no interested person is willing and able to*
10 *serve as a proxy decision-maker;*

11 **(b)** *The attending provider of health care has obtained an*
12 *independent determination of the adult patient's lack of decisional*
13 *capacity by:*

14 **(1)** *Another physician;*

15 **(2)** *Another physician assistant or advanced practice*
16 *registered nurse who has collaborated about the adult patient with*
17 *a physician either in person, by telephone or electronically; or*

18 **(3)** *Court order;*

19 **(c)** *The attending provider of health care or his or her*
20 *designee has consulted with and obtained a consensus on the*
21 *designation of the proxy decision-maker with the medical ethics*
22 *committee of the medical facility where the adult patient is*
23 *receiving care or, if that medical facility does not have a medical*
24 *ethics committee, the medical ethics committee at another medical*
25 *facility that does have such a committee; and*

26 **(d)** *The identity of the physician, physician assistant or*
27 *advanced practice registered nurse designated as the proxy*
28 *decision-maker is documented in the medical record of the adult*
29 *patient for whom such a physician, physician assistant or*
30 *advanced practice registered nurse will be designated as the proxy*
31 *decision-maker.*

32 **Sec. 16. 1.** *The authority of a physician, physician assistant*
33 *or advanced practice registered nurse acting as a proxy decision-*
34 *maker for an adult patient pursuant to section 15 of this act*
35 *terminates in the event that:*

36 **(a)** *An interested person is selected and willing to serve as a*
37 *proxy decision-maker;*

38 **(b)** *A guardian is appointed for the adult patient;*

39 **(c)** *The adult patient regains decisional capacity;*

40 **(d)** *The adult patient is transferred or discharged from a*
41 *medical facility where the adult patient is receiving care, unless*
42 *the proxy decision-maker expresses his or her intention to*
43 *continue to serve as a proxy decision-maker; or*

44 **(e)** *The physician, physician assistant or advanced practice*
45 *registered nurse acting as the proxy decision-maker for the patient*



1 *decides to no longer serve as the proxy decision-maker for the*
2 *adult patient.*

3 *2. If the authority of the proxy decision-maker terminates*
4 *pursuant to subsection I, the attending provider of health care*
5 *must document the reason for the termination in the medical*
6 *record of the adult patient.*

7 **Sec. 17.** *In carrying out decisions concerning medical*
8 *treatment on behalf of the adult patient for whom a proxy*
9 *decision-maker has been selected:*

10 *1. The attending provider of health care may make medical*
11 *treatment decisions for routine treatments and procedures that are*
12 *low-risk and are within broadly accepted standards of medical*
13 *practice.*

14 *2. The attending provider of health care shall obtain the*
15 *written consent of the proxy decision-maker and consensus with*
16 *the medical ethics committee for medical treatment that would*
17 *otherwise require a written and informed consent of the adult*
18 *patient, including, without limitation, for treatment involving*
19 *anesthesia, treatment involving a significant risk of complication*
20 *or invasive procedures.*

21 *3. The attending provider of health care shall obtain an*
22 *independent concurring opinion from a physician other than from*
23 *the proxy decision-maker, and obtain a consensus with the*
24 *medical ethics committee, for medical treatment that is provided at*
25 *the end of life, is nonbeneficial and involves withholding or*
26 *withdrawing specific medical treatments.*

27 *4. A directive made by a proxy decision-maker to withhold or*
28 *withdraw artificial nourishment and hydration from an adult*
29 *patient is valid only if the attending physician and a second*
30 *independent physician trained in neurology or neurosurgery*
31 *certify in the adult patient's medical record that the provision or*
32 *continuation of artificial nourishment or hydration is merely*
33 *prolonging the act of dying and are unlikely to result in the*
34 *restoration of the adult patient to independent neurological*
35 *functioning.*

36 **Sec. 18.** *Upon the request of a proxy-decision maker who has*
37 *made or is considering a decision to withhold or withdraw medical*
38 *treatment for an adult patient, a medical facility that is providing*
39 *care for the adult patient shall provide the assistance of a medical*
40 *ethics committee. If a medical facility does not have a medical*
41 *ethics committee, the medical facility must make a referral for*
42 *such assistance to the proxy decision-maker.*

43 **Sec. 19.** *If any interested person, guardian or attending*
44 *provider of health care believes an adult patient has regained*
45 *decisional capacity, the attending provider of health care must:*



- 1 1. *Reexamine the adult patient;*
- 2 2. *Determine whether the adult patient has regained*
- 3 *decisional capacity;*
- 4 3. *Enter the decision and the basis therefore into the adult*
- 5 *patient's medical record; and*
- 6 4. *Notify the adult patient, the proxy decision-maker and the*
- 7 *person who initiated the redetermination of the adult patient's*
- 8 *decisional capacity.*

9 **Sec. 20.** *1. Any medical facility or provider of health care*
10 *that makes reasonable attempts in good faith to locate and*
11 *communicate with a proxy decision-maker is not subject to civil or*
12 *criminal liability or discipline for unprofessional conduct for*
13 *making such reasonable attempts.*

14 2. *A provider of health care acting in good faith as a proxy*
15 *decision-maker pursuant to section 15 of this act is not subject to*
16 *civil or criminal liability or discipline for unprofessional conduct*
17 *for acting as a proxy decision-maker. An attending provider of*
18 *health care or his or her designee remain responsible for his or*
19 *her negligent acts or omissions to act in accordance with the*
20 *accepted professional standards of medical practice.*

21 **Sec. 21.** *The provisions of sections 2 to 21, inclusive, of this*
22 *act must not be construed to:*

23 1. *Preclude any person from initiating guardianship*
24 *proceedings pursuant to chapter 159 of NRS, for any reason.*

25 2. *Condone, authorize or approve mercy killing, euthanasia*
26 *or assisted suicide.*

27 3. *Permit any affirmative or deliberative act to end a person's*
28 *life, except as to permit natural death.*

29 4. *Affect the right of an adult patient to make decisions*
30 *concerning his or her medical treatment if he or she has the*
31 *decisional capacity to do so.*

32 5. *Affect or render invalid any valid advance directive in*
33 *effect for the adult patient.*

34 **Sec. 22.** *This act becomes effective upon passage and approval*
35 *for the purpose of adopting regulations and performing any*
36 *preliminary administrative tasks that are necessary to carry out the*
37 *provisions of this act, and on January 1, 2020, for all other purposes.*

