

1994 BILL 223

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 223

HEALTH CARE INSTRUCTIONS ACT

MR. YANKOWSKY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 223
Mr. Yankowsky

BILL 223

1994

HEALTH CARE INSTRUCTIONS ACT

(Assented to , 1994)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

definitions

- 1(1) In this Act,
- (a) "directive" means a health care directive under this Act;
 - (b) "health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic or other health-related purpose, and includes nutrition, hydration, personal hygiene and choice of residence;
 - (c) "health care agent" means a person appointed in a directive as a health care agent;
 - (d) "health care decision" means consent, refusal to consent or withdrawal of consent to health care;
 - (e) "health care practitioner" means a person responsible for providing health care;
 - (f) "health care proxy" means a person who is a health care proxy under this Act.
- (2) For the purposes of this Act, a person has capacity to make a health care decision if the person is able to understand

the information that is relevant to making the decision and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision.

Mental Health Act
prevails

2 In the case of a "formal patient", as defined in the *Mental Health Act*, this Act does not apply and the *Mental Health Act* prevails.

PART 1

HEALTH CARE DIRECTIVE

Qualifications to
make a directive

3 A person who is at least 16 years of age and understands the nature and effect of a health care directive may make a health care directive.

Directive's
contents

4(1) In a directive a person may

- (a) provide instructions and information about future health care decisions to be made on his behalf;
- (b) appoint individuals as his health care agent for all or for specified health care matters and may appoint alternates in case the first appointed individuals are unavailable or unwilling to act as health care proxies;
- (c) appoint the occupant of an office as his health care agent;
- (d) state who is not to act as his health care proxy.

(2) A person may appoint a former spouse to be his health care agent.

Signing a directive

5 To be valid a directive must be written and the person who makes the directive must

- (a) sign it in the presence of a witness who is not appointed in the directive as a health care agent, or

- (b) direct another person to sign it when he and another witness are present, in which case the person signing and the witness may not be a health care agent appointed in the directive.

Revoking,
terminating a
directive

6(1) A directive may be revoked by the person who made it if he understands the effect of revoking it.

(2) A directive may only be revoked

- (a) by a later directive,
- (b) by a written declaration that expresses an intention to revoke all or part of the directive,
- (c) by destroying, with the intent to revoke, all original signed copies of the directive, or
- (d) directing another person to destroy, with the intention to revoke, all original signed copies of the directive in the presence of the person who made the directive.

(3) If a person has made a directive in which his spouse is appointed as a health care agent and subsequently the marriage is terminated by divorce or is found to be void or declared a nullity by a court, the appointment is terminated.

PART 2

INCAPACITATED PERSONS HEALTH CARE

Division 1 Health Care Proxy

Incapacitated
patient

7(1) If a health care practitioner has a patient who requires the administration of health care but lacks the capacity to make a health care decision or is unable to communicate a health care decision,

- (a) the health care practitioner must make a reasonable attempt to determine whether the patient has a health care proxy who is available, and

(b) the health care decision may be made on a patient's behalf by the health care proxy.

(2) A health care practitioner is not required to obtain a health care proxy's consent in the case of emergency health care, if the health care is necessary to preserve the patient's life or health and the delay involved in obtaining consent from a health care proxy could, in the opinion of the health care practitioner, pose a significant risk to the patient.

Health care proxy

8(1) A health care proxy must be at least 16 years of age and be the first named person or a member of the category of persons on the following list:

- (a) a guardian appointed under the *Dependent Adults Act* with authority to make health care decisions on behalf of the incapacitated person;
- (b) a health care agent appointed by the incapacitated person in his directive under this Act or in a directive that meets the requirements of section 10;
- (c) the incapacitated person's health care practitioner who is responsible for the proposed health care.

(2) Notwithstanding subsection (1), if a person has indicated in a directive that he does not wish an individual to act as his health care agent the individual may only act as the health care proxy if he is the person's guardian appointed under the *Dependent Adults Act*.

(3) Notwithstanding subsection (1), a health care proxy other than a guardian under the *Dependent Adults Act*, health care agent and health care practitioner may not act as a health care proxy unless they have had personal involvement with the incapacitated person at some time during the preceding 12 months.

(4) A health care proxy other than a guardian under the *Dependent Adults Act*, health care agent or health care practitioner may apply to the Court of Queen's Bench to shorten or waive the 12-month requirement under subsection (3).

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9(1) If more than one person in a category is qualified to act as a health care proxy, the decision of the majority prevails, and in the absence of a majority decision, the health care proxy becomes the next available person or category of persons listed in section 8(1).

(2) If more than one person is qualified to act as health care proxy, the persons must designate one person from among themselves to communicate their health care decisions to the health care practitioner and the practitioner may assume that the person is communicating the health care decision of the majority of the proxies unless the practitioner has reasonable grounds to believe that it is not so.

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ectives

10(1) For the purposes of section 8(1)(b) a directive that is not made in Alberta has the same effect as though it were made in accordance with this Act if

(a) it meets the requirements of section 5 and has not been revoked in accordance with section 6, or

(b) it was made under and meets the requirements for making a directive established by the legislation of

(i) the jurisdiction where the directive was made, or

(ii) the jurisdiction where the person who made the directive was habitually resident at the time the directive was made or revoked.

(2) A person who determines who is a health care proxy may rely on a certificate from an individual purporting to be a lawyer in the jurisdiction where the directive was made that certifies that a directive meets the requirements of the jurisdiction for making or revoking a directive.

Division 2

Health Care Decisions

Proxy's guide for
decisions

11(1) A health care proxy shall

- (a) follow any relevant and unambiguous instructions in the incapacitated person's directive;
- (b) in the absence of relevant and unambiguous instructions, act in accordance with what the proxy believes would be the incapacitated person's wishes, if competent;
- (c) if the proxy does not know the person's wishes, make the health care decision that the proxy believes to be in the incapacitated person's best interests.

(2) A health care proxy may only consent, on behalf of an incapacitated person, to the following if the incapacitated person's directive contains clear instructions to do so:

- (a) health care if its primary purpose is for research;
- (b) psychosurgery;
- (c) sterilization that is not medically necessary to protect the person's health;
- (d) removing tissue from the person's body, while living,
 - (i) for transplantation to another person, or
 - (ii) for medical education or research purposes.

(3) A health care proxy may apply to the Court of Queen's Bench for advice and directions.

Patient notified
about proxy

12 If a health care practitioner has a patient described in section 7(1), the practitioner shall advise the person that health care decisions will be taken on the person's behalf by the person's health care proxy and that any existing health care directive of the person comes into force and remains in force while the person does not have the capacity to make or communicate a health care

decision.

capacitated
patient objects to
decision

13 If a health care practitioner determines that a person lacks the capacity to make a health care decision and the person objects to the proposed health care treatment, the health care treatment may not be administered on the basis of consent obtained from the person's health care proxy unless a 2nd health care practitioner confirms that the person lacks the capacity to make the health care decision.

Court reviews
decisions,
terminates
appointments

14(1) Any interested person may apply to the Court of Queen's Bench to have

(a) the determination of who is the health care proxy reviewed, and

(b) the health care proxy's proposed health care decision or health care decision reviewed.

(2) If the Court considers that the health care proxy's health care decision is unreasonable having regard to the criteria set out in section 11, it may rescind the proxy's decision and substitute its own health care decision based on the criteria set out in section 11.

(3) The Court may issue an order stating that the person may no longer act as a health care proxy if the Court considers that the person is likely to continue to make unreasonable health care decisions or that the person is unsuitable to act as a health care proxy.

health
information

15 Notwithstanding any other enactment respecting the disclosure of confidential health information, but subject to any limitation set out in a health care directive, a health care proxy has the right to be provided with all the health care information and records that the person for whom he acts as proxy would have if the person had the capacity to make a health care decision but the health care proxy may only use the contents of the health care information and records to carry out the duties of a health care proxy.

PART 3

MISCELLANEOUS

- Liability protection** 16(1) No action lies against a health care proxy by reason only of having acted in good faith in accordance with this Act.
- (2) If a health care practitioner makes a reasonable attempt under section 7(1), the practitioner is not liable for failing to find the correct health care proxy.
- (3) No action lies against a health care practitioner who administers or refrains from administering health care to another person by reason only that the health care practitioner has acted in good faith in accordance with a health care decision made by a health care proxy.
- No disentitlements** 17 If a health care proxy has acted in good faith, a health care decision made by the proxy does not affect the proxy's or his spouse's entitlement to the following:
- (a) a disposition under the will of the person who made the directive;
- (b) the proceeds of an insurance policy on the life of a person who made a directive;
- (c) a share under the *Intestate Succession Act* of the estate of a person who made a directive.
- No presumptions** 18 No inference or presumption arises because a person does not have a directive.
- Offence** 19 Any person who, without the consent of the person who made or revoked a directive, wilfully conceals, or alters the directive or the revocation of the directive is guilty of an offence and liable to a fine of not more than \$2000.
- Consequential** 20 *Section 13(4)(e.1) of the Alberta Health Care Insurance Act is*

amended by adding "health care proxy, as defined in the Health Care Instructions Act," after "personal representative".

sequential

21 *The Dependent Adults Act is amended*

(a) in section 1

(i) in clause (h) by striking out "and" at the end of subclause (iv), adding "and" at the end of subclause (v) and by adding the following after subclause (v):

(vi) health care, as defined in the Health Care Instructions Act;

(ii) by adding the following after clause (h):

(h.01) "health care directive" means a health care directive as defined in the Health Care Instructions Act;

(h.02) "health care agent" means a health care agent as defined in the Health Care Instructions Act;

(h.03) "health care proxy" means a health care proxy as defined in the Health Care Instructions Act;

(b) in section 3(2) by adding the following after clause (e.1):

(e.2) a health care agent under a health care directive made by a person in respect of whom the application is made if the agent is not the applicant or a person served pursuant to this subsection,

(c) in section 11(a) by adding "subject to the Health Care Instructions Act," before "in the best";

(d) in section 15(2) by adding the following after clause (e.1):

(e.2) a health care agent under a health care directive made by a person in respect of whom the application is made if the agent is not the applicant

or a person served pursuant to this subsection,

(e) *by repealing section 20.1;*

(f) *in section 22(2) by adding the following after clause (e.1):*

(e.2) a health care proxy if the proxy is not the applicant or a person served pursuant to this subsection,

(g) *section 68(2) is amended by adding the following after clause (a.1):*

(a.2) any health care proxy,

Consequential 22 *Section 40(5)(a) of the Hospitals Act is amended by adding "or his health care proxy as defined in the Health Care Instructions Act" after "legal representative".*

Consequential 23 *The Human Tissue Gift Act is amended*

(a) *in section 3*

(i) *by adding the following after subsection (1):*

(1.1) A health care proxy, as defined in the *Health Care Instructions Act*, may consent to the removal forthwith of tissue from a person's body and consent to its implantation in another body if the person's health care directive directs that it be done.

(ii) *in subsection (2) by striking out "subsection (1)" and substituting "subsections (1) and (1.1)";*

(b) *in section 5(1)*

(i) *by renumbering clause (a) as clause (a.1);*

(ii) *by adding the following before clause (a.1):*

(a) his health care proxy, as defined in the *Health Care Instructions Act*, or

(iii) *in clause (a.1) by adding "if none or if none is readily available" before "his spouse".*