

HOUSE BILL NO. 825

INTRODUCED BY M. CUNNINGHAM

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HEALTH CARE PROXY DECISIONMAKERS; PROVIDING FOR A PATIENT-DESIGNATED TRUSTED DECISIONMAKER; PROVIDING A HIERARCHY IN SELECTING A DECISIONMAKER; AND AMENDING SECTIONS 50-5-110, 50-5-1301, AND 50-5-1303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Patient designation of trusted decisionmaker as proxy --

documentation by attending health care provider -- limitations on other proxies. (1) At any time, after admission to a hospital, before an attending health care provider determines that an adult patient lacks decisional capacity under 50-5-1302, the patient may designate a trusted decisionmaker to make health care decisions on behalf of the patient in the event the patient does not have decisional capacity.

(2) (a) The patient may designate a trusted decisionmaker by communicating to the patient's health care provider, or to a health care professional acting under the direction of the patient's health care provider, orally or otherwise, the identity of the individual whom the patient trusts to make health care decisions on the patient's behalf.

(b) The health care provider shall ensure that the communication by the patient designating a trusted decisionmaker is witnessed by a third party, who may be another health care professional or who may be a friend or family member of the patient.

(3) After the patient designates a trusted decisionmaker, the attending health care provider shall immediately notify the patient's family of the designation and shall document the following information related to the designation in the patient's health record:

(a) the identity of the trusted decisionmaker; and

(b) contact information of the trusted decisionmaker, to the extent it is available.

Amendment - 1st Reading/2nd House-blue - Requested by: Melody Cunningham - (S) Public Health, Welfare and Safety

- 2025

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Drafter: Chanan Brown,

HB0825.001.001

(4) When an individual is designated as a trusted decisionmaker under this section, an attending health care provider may not seek to select a lay proxy decisionmaker under 50-5-1303 or a medical proxy decisionmaker under 50-5-1304 unless the attending health care provider has made reasonable efforts to contact the trusted decisionmaker and the trusted decisionmaker cannot be contacted.

(5) A trusted decisionmaker is designated under this section, and the trusted decisionmaker remains in place until the patient completes an advance directive ~~or~~, completes a medical durable power of attorney, designates another trusted decisionmaker, or is discharged from the hospital.

NEW SECTION. Section 2. Hierarchy of decisionmaker selection. When a decisionmaker is needed for a patient who lacks decisional capacity as determined under 50-5-1302, the decisionmaker must be selected from the following available individuals in the order listed:

- (1) a guardian appointed by the patient under 72-5-316 who has medical decisionmaking authority;
- (2) an agent appointed by the patient in a medical durable power of attorney or an individual designated by the patient in an ~~advanced~~ advance medical directive;
- (3) a trusted decisionmaker designated under [section 1];
- (4) a spouse of the patient;
- (5) an adult child of the patient;
- (6) a parent of the patient;
- (7) a sibling of the patient;
- (8) a close friend of the patient who has a deep understanding of the patient's wishes; and
- (9) any other proxy appointed under Title 50, chapter 5, part 13.

Section 3. Section 50-5-110, MCA, is amended to read:

"50-5-110. Patient bill of rights. (1) The following rights may be exercised by a patient or, if the patient lacks decisionmaking capacity, is legally incompetent, or is a minor, by a patient's designated surrogate ~~or~~, lay proxy decisionmaker, as defined in 50-5-1301, or trusted decisionmaker as designated under [section 1]:

- (a) The patient has the right to be treated with dignity and respect.