

SENATE BILL NO. 671

July 10, 1997, Introduced by Senators DINGELL, GEAKE,
BYRUM, A. SMITH, V. SMITH and SCHWARZ and referred to
the Committee on Judiciary.

A bill to authorize the making of medical treatment decisions for another under certain circumstances; to prohibit the authorization of certain types of medical treatment; and to provide for certain limited immunity from tort liability and from liability for the cost of medical treatment.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan medical treatment decisions act".

3 Sec. 2. As used in this act:

4 (a) "Attending physician" means the physician who has
5 responsibility for the medical treatment provided to a patient.

6 (b) "Health facility" means a health facility or agency
7 licensed or otherwise regulated under article 17 of the public
8 health code, 1978 PA 368, MCL 333.20101 to 333.22260.

1 (c) "Health care provider" means a health facility or an
2 individual who is licensed or otherwise authorized or permitted
3 to provide health care to individuals under article 15 of the
4 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

5 (d) "Interested party" means a patient's spouse, child,
6 parent, sibling, grandparent, grandchild, or a member of the
7 patient's household.

8 (e) "Medical treatment" means a medicine, procedure, serv-
9 ice, or device administered or provided to maintain, diagnose, or
10 treat an individual's physical or mental condition. Medical
11 treatment does not include assistance with the activities of
12 daily living.

13 (f) "Patient" means an individual 18 years of age or older
14 who is receiving medical treatment.

15 (g) "Physician" means an individual licensed under article
16 15 of the public health code, 1978 PA 368, MCL 333.16101 to
17 333.18838, to engage in the practice of medicine or the practice
18 of osteopathic medicine and surgery.

19 (h) "Psychologist" means an individual licensed under arti-
20 cle 15 of the public health code, 1978 PA 368, MCL 333.16101 to
21 333.18838, to engage in the practice of psychology.

22 (i) "Unable to participate in medical treatment decisions"
23 means an inability to understand the possible benefits and risks
24 of alternative courses of medical treatment, including nontreat-
25 ment, or an inability to communicate a medical treatment
26 decision.

1 Sec. 3. A patient has the right to contemporaneously
2 authorize or refuse medical treatment for himself or herself,
3 unless he or she is unable to participate in medical treatment
4 decisions.

5 Sec. 4. If a patient is unable to participate in medical
6 treatment decisions, and if the patient does not have available a
7 patient advocate designated under section 496 of the revised pro-
8 bate code, 1978 PA 642, MCL 700.496, or court appointed guardian
9 with power to make medical treatment decisions, another individ-
10 ual can make a medical treatment decision for the patient in
11 accordance with this act.

12 Sec. 5. Subject to section 10, another individual can make
13 a medical treatment decision for a patient under this act in the
14 following order of priority, if the individual is not prohibited
15 under section 6 from making medical treatment decisions for the
16 patient, is reasonably available, is able to participate in medi-
17 cal treatment decisions, and chooses to act, and if all of the
18 conditions of section 7 are met:

- 19 (a) The patient's spouse.
20 (b) An adult child of the patient.
21 (c) A parent of the patient.
22 (d) An adult sibling of the patient.
23 (e) An adult grandchild of the patient.
24 (f) A grandparent of the patient.

25 Sec. 6. If a patient has indicated orally or in writing
26 that a particular individual or individuals not have authority to
27 make medical treatment decisions for the patient, that individual

1 or those individuals shall not make a medical treatment decision
2 on behalf of the patient under this act. If a patient is
3 estranged from his or her spouse, the spouse does not have
4 authority under this act to make medical treatment decisions on
5 behalf of the patient.

6 Sec. 7. Before another individual can make medical treat-
7 ment decisions for a patient under this act, all of the following
8 must occur:

9 (a) The attending physician and 1 other physician or
10 licensed psychologist shall determine that the patient is unable
11 to participate in medical treatment decisions. The determination
12 shall be entered into the patient's medical record.

13 (b) The attending physician shall make a reasonable effort
14 to determine whether the patient has available a patient advocate
15 designated under section 496 of the revised probate code, 1978 PA
16 642, MCL 700.496, or a court appointed guardian with power to
17 make medical treatment decisions.

18 (c) The attending physician shall attempt to communicate to
19 the patient that another individual will be making medical treat-
20 ment decisions for the patient and the name of that individual.
21 If the patient objects, the other individual shall not make a
22 medical treatment decision for that patient without an order by
23 the probate court.

24 (d) The individual who has the highest priority under sec-
25 tion 5 and who chooses to make a medical treatment decision for
26 the patient shall make reasonable efforts to notify each
27 individual with the same priority under section 5 of the medical

1 treatment decision to be made. If there is no one with equal
2 priority under section 5, but there is at least 1 individual with
3 a lower priority, the individual who will be making the medical
4 treatment decision shall make reasonable efforts to notify that
5 individual.

6 (e) The attending physician shall attempt to communicate the
7 medical treatment decision to the patient. The attending physi-
8 cian shall not implement the medical treatment decision if the
9 patient objects, or if the attending physician knows the medical
10 treatment decision is contrary to previously expressed wishes of
11 the patient.

12 (f) The attending physician shall record the medical treat-
13 ment decision and the name of the individual making the medical
14 treatment decision in the patient's medical record. The attend-
15 ing physician may require the person making the medical treatment
16 decision to sign an acknowledgment and an acceptance of his or
17 her role under this act.

18 Sec. 8. In making a medical treatment decision for a
19 patient under this act, an individual shall, considering all
20 available evidence, attempt to make the medical treatment deci-
21 sion the patient would have made were the patient able to partic-
22 ipate in medical treatment decisions. If there is no evidence as
23 to what the patient's medical treatment decision would have been,
24 the individual making the medical treatment decision shall act in
25 the patient's best interest.

26 Sec. 9. Upon determining that a patient is unable to
27 participate in medical treatment decisions, an individual

1 authorized to make medical treatment decisions for the patient
2 under this act may review the patient's medical records, and the
3 attending physician shall fully inform the individual of the
4 patient's medical condition, treatment options, and prospects for
5 recovery.

6 Sec. 10. An individual cannot make a medical treatment
7 decision under this act authorizing 1 or more of the following
8 types of medical treatment for a patient:

9 (a) Psychosurgery.

10 (b) Experimental surgery.

11 (c) Electro-convulsive therapy.

12 (d) Admission to a psychiatric facility.

13 (e) Nontherapeutic sterilization.

14 (f) A medical treatment prohibited by the laws of this
15 state.

16 Sec. 11. If an interested party believes that an individual
17 is in any way not complying with this act, the interested party
18 may petition the probate court or the family division of the cir-
19 cuit court where the patient is located or resides for a determi-
20 nation of that fact and an appropriate order.

21 Sec. 12. (1) An individual who in good faith makes a medi-
22 cal treatment decision for a patient under this act is not crimi-
23 nally or civilly liable for that medical treatment decision.

24 (2) An individual not otherwise liable for the cost of medi-
25 cal treatment of a patient does not become liable for the cost of
26 that medical treatment by making a medical treatment decision

1 under this act, and a health facility or health care provider
2 shall not in any way seek to impose such liability.

3 (3) A physician, nurse, or other health care provider who
4 implements a medical treatment decision made by an individual
5 whom the health care provider reasonably believes to have author-
6 ity under this act to make that medical treatment decision is not
7 criminally or civilly liable for implementing the medical treat-
8 ment decision.

9 (4) Absent intentional misconduct of a health facility
10 administrator or a health care provider, a health facility in
11 which a medical treatment decision made under this act is imple-
12 mented is not criminally or civilly liable for the implementation
13 of the medical treatment decision.

14 Sec. 13. This act does not affect the validity of a docu-
15 ment in which an individual has indicated in advance the type of
16 medical treatment he or she wishes to receive in a particular
17 circumstance, and which document can be honored without reliance
18 on another individual to authorize or refuse the medical
19 treatment.

20 Sec. 14. This act does not require an authorization of med-
21 ical treatment by another individual for a patient if all the
22 following occur simultaneously:

23 (a) The patient needs emergency care.

24 (b) The patient is apparently unable to participate in medi-
25 cal treatment decisions.

26 (c) An individual with authority to make medical treatment
27 decisions for the patient is not immediately available.

1 (d) The medical treatment is not contrary to any of the
2 patient's wishes known to the health care provider.