

## House Bill 235

By: Representatives Shipp of the 58<sup>th</sup>, Tumlin of the 38<sup>th</sup>, Porter of the 143<sup>rd</sup>, Cooper of the 41<sup>st</sup>, Hugley of the 133<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to  
2 consent for surgical or medical treatment, so as to provide that a surrogate decision-making  
3 panel shall be included as a last resort entity that is authorized to consent to surgical or  
4 medical treatment on behalf of an incapacitated person; to provide for legislative findings;  
5 to provide for the establishment of surrogate decision-making panels; to provide for ad hoc  
6 hospital committees; to provide for immunity; to provide for compliance with federal privacy  
7 law; to provide for related matters; to provide for an effective date; to repeal conflicting laws;  
8 and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 The General Assembly finds that all persons in this state should have access to proper health  
12 care in a timely manner. The General Assembly further finds that many hospitals in Georgia  
13 are faced with the dilemma of treating an incapacitated patient for which no one can be  
14 located to make health care decisions on behalf of such patient. It is further found that it  
15 would be in the best interests and health of such patient to establish a designee of last resort  
16 to make health care decisions on behalf of an incapacitated person for which no agent or  
17 family member can be found.

18 style="text-align:center">**SECTION 2.**

19 Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for  
20 surgical or medical treatment, is amended by revising Code Section 31-9-2, relating to  
21 persons authorized to consent to surgical or medical treatment, as follows:

22 "31-9-2.

23 (a) In addition to such other persons as may be authorized and empowered, any one of the  
24 following persons or entities is authorized and empowered to consent, either orally or

1 otherwise, to any surgical or medical treatment or procedures not prohibited by law which  
 2 may be suggested, recommended, prescribed, or directed by a duly licensed physician:

3 (1) Any adult, for himself or herself, whether by living will or otherwise;

4 (1.1) Any person authorized to give such consent for the adult under a health care agency  
 5 complying with Chapter 36 of Title 31, the 'Durable Power of Attorney for Health Care  
 6 Act';

7 (2) In the absence or unavailability of a living spouse, any parent, whether an adult or  
 8 a minor, for his or her minor child;

9 (3) Any married person, whether an adult or a minor, for himself or herself and for his  
 10 or her spouse;

11 (4) Any person temporarily standing in loco parentis, whether formally serving or not,  
 12 for the minor under his or her care; and any guardian, for his or her ward;

13 (5) Any female, regardless of age or marital status, for herself when given in connection  
 14 with pregnancy, or the prevention thereof, or childbirth;

15 (6) Upon the inability of any adult to consent for himself or herself and in the absence  
 16 of any person to consent under paragraphs (2) through (5) of this subsection, the  
 17 following persons in the following order of priority:

18 (A) Any adult child for his or her parents;

19 (B) Any parent for his or her adult child;

20 (C) Any adult for his or her brother or sister; ~~or~~

21 (D) Any grandparent for his or her grandchild; ~~or~~

22 (7) Upon the inability of any adult to consent for himself or herself and in the absence  
 23 of any person to consent under paragraphs (2) through (6) of this subsection, a surrogate  
 24 decision-making panel, as established in Code Section 31-9-8.

25 (b) Any person authorized and empowered to consent under subsection (a) of this Code  
 26 section shall, after being informed of the provisions of this Code section, act in good faith  
 27 to consent to surgical or medical treatment or procedures which the patient would have  
 28 wanted had the patient understood the circumstances under which such treatment or  
 29 procedures are provided.

30 (c) For purposes of this Code section, 'inability of any adult to consent for himself or  
 31 herself' shall mean a determination in the medical record by a licensed physician after the  
 32 physician has personally examined the adult that the adult 'lacks sufficient understanding  
 33 or capacity to make significant responsible decisions' regarding his or her medical  
 34 treatment or the ability to communicate by any means such decisions."

**SECTION 3.**

Said chapter is further amended by inserting a new Code section to read as follows:

"31-9-8.

(a) The Department of Human Resources shall establish and maintain four regional surrogate decision-making panels for the purpose of making health care decisions on behalf of incapacitated persons in the absence of any person to consent on such persons' behalf pursuant to Code Section 31-9-2. Each surrogate decision-making panel shall be composed of community volunteers, businesspersons, attorneys, and others, as determined by the department. The commissioner of human resources shall appoint such panel members, who shall serve at the pleasure of the commissioner. County boards of health shall be authorized to make recommendations to the commissioner for his or her consideration. Panel members shall serve without pay but shall receive standard state per diem for expenses and receive standard travel allowance while convening and while in the discharge of his or her responsibilities. The panels are authorized to utilize technology and other forms of communication which are determined to be the most efficient means to perform their duties.

(b) Within 24 hours of knowledge that no authorized person can be located to consent to surgical or medical treatment on behalf of an incapacitated patient in a hospital in this state, such hospital shall establish and convene an interdisciplinary ad hoc committee to be composed of medical staff, ethicists, clergy, hospital administrators, and the treating physician. Within such 24 hours, the ad hoc committee shall review the patient's medical record and shall make a referral to the appropriate surrogate decision-making panel accompanied by immediate transmittal of the patient's medical record. The surrogate decision-making panel shall make any decisions relating to the patient's surgical or medical treatment, as provided in Code Section 31-9-2, within 48 hours of receiving the referral, based on the best information reasonably available to the panel. After convening the ad hoc committee but prior to the panel's recommendation, such patient's care shall be determined through a two physician recommendation process with the consent of the ad hoc committee; provided, however, that surgical or medical treatment may be provided pursuant to Code Section 31-9-3 in the event of an emergency.

(c) If at any time a person authorized to consent to surgical or medical treatment on behalf of the incapacitated patient becomes available, the ad hoc committee shall immediately disband and the surrogate decision-making panel shall cease any review or involvement in the patient's care.

(d) Any ad hoc committee member or surrogate decision-making panel member who in good faith participates in the health care decisions of an incapacitated patient pursuant to

1 this Code section shall be immune from any civil or criminal liability that might otherwise  
2 be incurred or imposed.

3 (e) All transmissions of medical records pursuant to this Code section shall be deemed to  
4 be in conformity with the privacy and security provisions of the federal Health Insurance  
5 Portability and Accountability Act of 1996, P.L. 104-191."

6 **SECTION 4.**

7 This Act shall become effective upon its approval by the Governor or upon its becoming law  
8 without such approval.

9 **SECTION 5.**

10 All laws and parts of laws in conflict with this Act are repealed.