

The House Committee on Judiciary offers the following substitute to HB 235:

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 for additional persons and entities
3 that shall be authorized to consent to surgical or medical treatment on behalf of an
4 incapacitated person; to provide for legislative findings; to provide for immunity; to amend
5 Article 2 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to
6 procedure for appointment of guardians for adults, so as to provide for expedited judicial
7 intervention for the appointment of a temporary medical consent guardian; to provide for
8 definitions; to provide requirements for a petition, supporting documentation, and notice; to
9 provide for preliminary and evidentiary hearings; to provide for termination of a temporary
10 medical consent guardianship; to provide for immunity; to provide for related matters; to
11 provide for an effective date; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 The General Assembly finds and declares that timely access to health care for all persons is
15 an important objective for the State of Georgia; that the autonomy of persons with
16 decision-making capacity to make health care decisions for themselves must be respected;
17 and that, in cases involving persons with impaired decision-making capacity, efforts should
18 be made to ensure that health care decisions are based, to the extent possible, on the patient's
19 own personal beliefs and values or, when such beliefs and values are unknown, based on the
20 patient's best interests. The General Assembly further finds that the current process of
21 judicial authorization to obtain consent for medical care for those with impaired
22 decision-making capacity has in some cases resulted in undue delay in the provision of
23 necessary care. The General Assembly further finds and declares that the public interest will
24 be served by continuing to support the surrogate decision-making role of family members,
25 while assuring that those individuals without available family members have access to
26 medical care, consistent with the patient's values and preferences.

1 (b) Any person authorized and empowered to consent under subsection (a) of this Code
 2 section shall, after being informed of the provisions of this Code section, act in good faith
 3 to consent to surgical or medical treatment or procedures which the patient would have
 4 wanted had the patient understood the circumstances under which such treatment or
 5 procedures are provided. The person who consents on behalf of the patient in accordance
 6 with subsection (a) of this Code section shall have the right to visit the patient in
 7 accordance with the hospital or health care facility's visitation policy.

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

13 (d)(1) No hospital or other health care facility, health care provider, or other person or
 14 entity shall be subject to civil or criminal liability or discipline for unprofessional conduct
 15 solely for complying in good faith with any direction or decision by any person
 16 authorized and empowered to consent under subsection (a) of this Code section even if
 17 death or injury to the patient ensues. Each hospital or other health care facility, health
 18 care provider, and any other person or entity who acts in good faith reliance on any such
 19 direction or decision shall be protected and released to the same extent as though such
 20 person had interacted directly with the patient as a fully competent person.

21 (2) No person authorized and empowered to consent under subsection (a) of this Code
 22 section who, in good faith, acts with due care for the benefit of the patient, or who fails
 23 to act, shall be subject to civil or criminal liability for such action or inaction."

24 SECTION 3.

25 Article 2 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to
 26 procedure for appointment of guardians for adults, is amended by adding a new Code section
 27 to read as follows:

28 "29-4-18.

29 (a) As used in this Code section, the term:

30 (1) 'Adult unable to consent' means a person 18 years of age or older who has been
 31 determined in his or her medical records by a licensed physician after the physician has
 32 personally examined the adult that he or she lacks sufficient understanding or capacity
 33 to make significant responsible decisions regarding his or her medical treatment or the
 34 ability to communicate by any means such decisions.

35 (2) 'Life-sustaining procedures' means medications, machines, or other medical
 36 procedures or interventions which, when applied to a medical consent ward in a terminal

1 condition or in a state of permanent unconsciousness, could in reasonable medical
 2 judgment keep such medical consent ward alive but cannot cure the medical consent ward
 3 and where, in the judgment of the medical consent ward's primary treating physician and
 4 a second physician, death will occur without such procedures or interventions.

5 (3) 'Medical consent ward' means a ward for whom the court has appointed a temporary
 6 medical consent guardian pursuant to this Code section for a limited time and only for the
 7 purposes of consenting to surgical or medical treatment or procedures not prohibited by
 8 law.

9 (4) 'Proposed medical consent ward' means an adult unable to consent who is or has been
 10 a patient in a health care institution or of a health care provider.

11 (5) 'State of permanent unconsciousness' means an incurable or irreversible condition in
 12 which the medical consent ward is not aware of himself or herself or his or her
 13 environment and in which such medical consent ward is showing no behavioral response
 14 to his or her environment.

15 (6) 'Temporary medical consent guardian' means an individual appointed pursuant to the
 16 provisions of this Code section for a limited time and only for the purposes of consenting
 17 to surgical or medical treatment or procedures not prohibited by law.

18 (7) 'Terminal condition' means an incurable or irreversible condition which would result
 19 in the medical consent ward's death in a relatively short period of time.

20 (b) In the absence, after reasonable inquiry, of a person authorized or willing to consent
 21 for the proposed medical consent ward under the provisions of Code Section 31-9-2, any
 22 interested person, including the proposed medical consent ward, may file a petition for the
 23 appointment of a temporary medical consent guardian. The petition shall be filed in the
 24 court of the county in which the proposed medical consent ward is domiciled or is found.

25 (c) The petition for appointment of a temporary medical consent guardian shall set forth:

26 (1) A statement of the facts upon which the court's jurisdiction is based;

27 (2) The name, address, and county of domicile of the proposed medical consent ward,
 28 if known;

29 (3) The name, address, and county of domicile of the petitioner and the petitioner's
 30 relationship to the proposed medical consent ward;

31 (4) A statement of the reasons the temporary medical consent guardian is sought,
 32 including:

33 (A) Facts that support the need for such guardian including facts that establish what
 34 medical decisions are needed and why those decisions are needed without undue delay;

35 (B) Facts that support the determination that the proposed medical consent ward lacks
 36 sufficient capacity to make or communicate medical treatment decisions; and

37 (C) The anticipated duration of the temporary medical consent guardianship;

1 (5) The fact that no other person appears to have authority and willingness to act in the
2 circumstances, whether under a power of attorney, trust, or otherwise;

3 (6) The reason for any omission in the petition for an appointment of a temporary
4 medical consent guardian in the event full particulars are lacking; and

5 (7) Whether a petition for the appointment of a guardian or conservator has been filed
6 or is being filed in conjunction with the petition for the appointment of the temporary
7 medical consent guardian.

8 (d) Upon the filing of a petition for a temporary medical consent guardian, the court shall
9 review the petition to determine whether there is probable cause to believe that the
10 proposed medical consent ward lacks decision-making capacity and is in need of a
11 temporary medical consent guardian and either:

12 (1) Dismiss the petition and provide the proposed medical consent ward with the order
13 dismissing the petition; or

14 (2) If the court determines that there is probable cause to believe that the proposed
15 medical consent ward is in need of a temporary medical consent guardian, immediately:

16 (A) Appoint legal counsel to represent the proposed medical consent ward, which
17 counsel may be the same counsel who is appointed to represent such adult in the
18 hearing on the petition for guardianship, if any such petition has been filed, and the
19 court shall inform counsel of the appointment;

20 (B) Order a preliminary hearing to be conducted within 72 hours after the filing of the
21 petition; and

22 (C) Notify any proposed medical consent ward of any proceedings by service of all
23 pleadings on such proposed medical consent ward, which notice shall be served
24 personally on the proposed medical consent ward by an officer of the court and shall
25 not be served by mail, and such notice shall inform the proposed medical consent ward:

26 (i) That he or she has the right to attend any hearing that is held in connection with
27 the petition to appoint a temporary medical consent guardian;

28 (ii) That he or she may lose important rights to control the management of his or her
29 person if a temporary medical consent guardian is appointed;

30 (iii) That legal counsel has been appointed on his or her behalf; and

31 (iv) The date and time of the preliminary hearing on the petition to appoint a
32 temporary medical consent guardian.

33 (e) Unless waived by the court, notice of the petition and the preliminary hearing shall also
34 be served on the following persons who have not joined in the petition or otherwise
35 consented to the proceedings:

36 (1) The administrator of the hospital or other health care facility where the proposed
37 medical consent ward is located;

- 1 (2) The primary treating physician and other physicians believed to have provided any
2 medical opinion or advice about any condition of the proposed medical consent ward
3 relevant to this petition;
- 4 (3) All other persons the petitioner believes may have information concerning the
5 expressed wishes of the proposed medical consent ward; and
- 6 (4) Any other persons as the court may direct.
- 7 (f) At the preliminary hearing, the court, in its discretion, shall:
- 8 (1) Appoint a temporary medical consent guardian;
- 9 (2) Order an evidentiary hearing to be conducted not later than four days after the
10 preliminary hearing; or
- 11 (3) Dismiss the petition and provide the proposed medical consent ward with the order
12 dismissing the petition.
- 13 (g) If the court orders an evidentiary hearing, in addition to any other evidence presented
14 to the court, the court may consider any case review by the hospital's or health care
15 facility's ethics committee or subcommittee thereof or by any other appointed ethics
16 mechanism.
- 17 (h) If the court holds an evidentiary hearing, the court, in its discretion, shall either:
- 18 (1) Appoint a temporary medical consent guardian; or
- 19 (2) Dismiss the petition and provide the proposed medical consent ward with the order
20 dismissing the petition.
- 21 (i) The court shall have the authority to appoint as a temporary medical consent guardian
22 any individual the court deems fit with consideration given to any applicable conflict of
23 interest issue so as long as such individual is: (1) willing and able to become involved in
24 the proposed medical consent ward's health care decisions and (2) willing to exercise
25 reasonable care, diligence, and prudence and to consent in good faith to medical or surgical
26 treatment or procedures which the proposed medical consent ward would have wanted had
27 he or she not been incapacitated. Where the medical consent ward's preferences are not
28 known, the temporary medical consent guardian shall agree to act in the medical consent
29 ward's best interests. However, a temporary medical consent guardian shall not be
30 authorized to withdraw life-sustaining procedures unless specifically authorized by the
31 court pursuant to this Code section.
- 32 (j) The temporary medical consent guardianship shall terminate on the earliest of:
- 33 (1) The court's removal of the temporary medical consent guardian;
- 34 (2) The effective date of the appointment of a permanent guardian under Code Section
35 29-4-2;
- 36 (3) The duration of the current hospitalization or stay in another health care facility of
37 the medical consent ward; or

1 (4) Sixty days from the date of appointment of the temporary medical consent guardian.

2 (k)(1) No hospital or other health care facility, health care provider, or other person or
3 entity shall be subject to civil or criminal liability or discipline for unprofessional conduct
4 solely for complying in good faith with any direction or decision by a temporary medical
5 consent guardian, even if death or injury to the medical consent ward ensues. Each
6 hospital or other health care facility, health care provider, and any other person or entity
7 who acts in good faith reliance on any direction or decision by a temporary medical
8 consent guardian shall be protected and released to the same extent as though such person
9 had interacted directly with the medical consent ward as a fully competent person.

10 (2) No temporary medical consent guardian who, in good faith, acts with due care for the
11 benefit of the medical consent ward, or who fails to act, shall be subject to civil or
12 criminal liability for such action or inaction."

13 **SECTION 4.**

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

16 **SECTION 5.**

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