

Regular Session, 2012

SENATE BILL NO. 114

BY SENATOR MILLS

HEALTH CARE. Amends the advance directive statute to conform it with the general consent statute regarding the authorized persons order of priority. (8/1/12)

1 AN ACT

2 To amend and reenact R.S. 40:1299.58.5(A)(2)(a) and (b) and (3), relative to declarations  
3 concerning medical procedures; to provide with respect to the order of priority for  
4 the procedure for making a declaration for a qualified patient who has not previously  
5 made a declaration; to provide for voting number when the class involves multiple  
6 persons; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1299.58.5(A)(2)(a) and (b) and (3) are hereby amended and  
9 reenacted to read as follows:

10 §1299.58.5. Procedure for making a declaration for a qualified patient who has not  
11 previously made a declaration

12 A.(1) \* \* \*

13 (2) When a comatose or incompetent person or a person who is physically  
14 or mentally incapable of communication has been certified as a qualified patient and  
15 has not previously made a declaration, any of the following individuals in the  
16 following order of priority, if there is no individual in a prior class who is reasonably  
17 available, willing, and competent to act, may make a declaration on the qualified

1 patient's behalf:

2 (a) ~~Any person or persons previously designated by the patient, while an~~  
3 ~~adult, by written instrument signed by the patient in the presence of at least two~~  
4 ~~witnesses, to have the authority to make a declaration for the patient in the event of~~  
5 ~~the patient's inability to do so. If the instrument so authorizes more than one person,~~  
6 ~~it may include the order in which the persons designated shall have authority to make~~  
7 ~~the declaration.~~ **The judicially appointed tutor or curator of the patient if one**  
8 **has been appointed. This Subparagraph shall not be construed to require such**  
9 **appointment in order that a declaration can be made under this Section.**

10 (b) ~~The judicially appointed tutor or curator of the patient if one has been~~  
11 ~~appointed. This Subparagraph shall not be construed to require such appointment~~  
12 ~~in order that a declaration can be made under this Section.~~ **Any person or persons**  
13 **previously designated by an adult patient by written instrument signed by the**  
14 **patient in the presence of at least two witnesses, to have the authority to make**  
15 **a declaration for the patient in the event of the patient's inability to do so. If the**  
16 **instrument so authorizes more than one person, it may include the order in**  
17 **which the persons designated shall have authority to make the declaration.**

18 \* \* \*

19 (3) If there is more than one person within the above named class in  
20 Subparagraphs (d) through (g), then the declaration shall be made by ~~at~~ **a majority**  
21 of that class available for consultation upon good faith efforts to secure participation  
22 of all of that class.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Christopher D. Adams.

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DIGEST

Mills (SB 114)

Present law provides the procedure for making a declaration concerning medical procedures  
for a qualified patient who has not previously made a declaration.

Proposed law swaps the order of priority and moves a judicially appointed tutor or curator  
to the first position on the order of priority and moves any person previously designated by

patient to second on the order of priority.

Proposed law changes the requirement that all available members of a class make the declaration to the requirement that a majority of the available members of the class make the declaration.

Effective August 1, 2012.

(Amends R.S. 40:1299.58.5(A)(2)(a) and (b) and (3))