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Title: Health Care Surrogate Decision-Making

Introduced by: David Schoenfeld for the Medical Student Section

Original Authors: Joshua D. Donkin, Mason Geno, Brent Oldham, David L. Schoenfeld, Manraj S. Sekhon, and Paul Zeller

Referred to: Reference Committee B

House Action: **DISAPPROVED**

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Whereas, 95 percent of critical care patients are in general lacking medical decision-making capacity; and of those ICU patients, 16 percent lack a surrogate decision-maker. Additionally, 3 percent of nursing home residents and a large, but unspecified number of individuals in a variety of settings, lack a surrogate decision-maker when facing end-of-life decisions<sup>1,2</sup>, and

Whereas, current Michigan law set forth by the Dignified Death Act, Section 333.5653(g) states, "patient surrogate" means the parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or the legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment", and

Whereas, the Dignified Death Act does not allow physicians to consistently designate an individual who could make health care decisions on behalf of the patient's best interests, or determine priority among available surrogates<sup>3,4</sup>, and

Whereas, the lack of a family consent law or other forms of surrogate decision-making statutes has resulted in individual health care organizations creating policies that lack consistency across the state, causing frustration for both providers and patients, and

Whereas, this incompatibility often results in inappropriate implementation<sup>5</sup>, and

Whereas, some patients do not have immediate family members available or willing to make health care decisions on their behalf should they be rendered incapacitated, Michigan law as currently implemented does not allow for physicians to rely on distant relatives or close friends who are familiar with the wishes and values of the patient without first seeking their appointment as the patient's guardian by the court, and

Whereas, many states including Indiana, Ohio, and Illinois have established a precedent allowing attending physicians to identify a surrogate decision maker for a patient using a predetermined priority without court order or judicial involvement<sup>6,7,8</sup>, and

Whereas, Michigan currently has a defined legal hierarchy of priority for court-appointed guardianship as set forth by the Estates and Protected Individuals Code, Section 700.5313, which could provide a framework for physicians to appoint surrogate decision makers, and

Whereas, studies have shown reductions in cost of care in the end-of-life setting due to advance care planning and established surrogates<sup>9</sup>, and

Whereas, past MSMS resolutions, in the spirit of promoting surrogate health care decision-making that serve the patient's best interests, have promoted implementing and evaluating physician and patient education about advanced directives, increased funding for public guardians to improve

55 health and treatment for incapacitated patients, reimbursing physicians for encouraging patients to  
56 complete advanced directives, and support for facilitating sound decision-making to maximize  
57 efficiency without resorting to judicial review<sup>10,11,12,13</sup> ; therefore be it  
58

59 RESOLVED: That MSMS supports legislation that grants autonomy to the attending physician  
60 to appoint a health care surrogate decision maker according to an established legal hierarchy when a  
61 patient is rendered incapacitated, similar to the existing framework for court appointed guardianship;  
62 and be it further  
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64 RESOLVED: That MSMS supports the expansion of the health care surrogate decision-making  
65 hierarchy to include individuals without familial relations who understand the patient's wishes and  
66 values.  
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69 WAYS AND MEANS COMMITTEE FISCAL NOTE: NONE

### **Relevant MSMS Policy:**

#### **Death with Dignity Law**

An attending physician should be allowed legally to participate with the patient and/or the legally appointed agent in deciding the continuation of medical treatment when faced with terminal illness.

MSMS will work with interested groups to resolve and clarify the legal and ethical dilemmas surrounding the withholding and withdrawal of life support therapy. (Prior to 1990)

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<sup>1</sup> <http://onlinelibrary.wiley.com/cmich.idm.oclc.org/doi/10.1111/j.1532-5415.2012.04212.x/full>

<sup>2</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4816524/>

<sup>3</sup> <https://www.michbar.org/file/barjournal/article/documents/pdf4article2376.pdf>

<sup>4</sup> [http://www.michigan.gov/documents/miseniors/Health\\_Care\\_Decision\\_Making\\_For\\_a\\_Resident\\_in\\_a\\_NH\\_1\\_2013\\_410651\\_7.pdf](http://www.michigan.gov/documents/miseniors/Health_Care_Decision_Making_For_a_Resident_in_a_NH_1_2013_410651_7.pdf)

<sup>5</sup> <https://www.michbar.org/file/barjournal/article/documents/pdf4article2376.pdf>

<sup>6</sup> <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2111&ChapterID=60>

<sup>7</sup> <http://codes.ohio.gov/orc/2133.08>

<sup>8</sup> [https://iga.in.gov/static-documents/3/e/8/1/3e816a67/TITLE16\\_AR36\\_ch1.pdf](https://iga.in.gov/static-documents/3/e/8/1/3e816a67/TITLE16_AR36_ch1.pdf)

<sup>9</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4838173/>

<sup>10</sup> Advance Directive Discussion Resolution 75-10

<sup>11</sup> Public Guardians for Incapacitated Patients Resolution 39-16

<sup>12</sup> "Advance Directives for All" Campaign Resolution 35-09A

<sup>13</sup> AMA Code of Medical Ethics 5.2 Advanced Directives