



H.B. 201

126th General Assembly
(As Introduced)

Reps. Seaver, Law, Latta, Gilb, Wolpert, Fessler

BILL SUMMARY

- Gives priority for the purpose of consenting to withholding or withdrawing life-sustaining treatment for a patient in a permanently unconscious state or a terminal condition to the individual listed among those who may consent to withholding or withdrawing life-sustaining treatment who agrees in writing to not withhold or withdraw life-sustaining treatment from the patient and agrees in writing to incur all of the costs associated with the patient's medical care and life-sustaining treatment.

CONTENT AND OPERATION

Who may consent to the withholding or withdrawal of life-sustaining treatment

Current law

Current law provides that certain individuals and classes of individuals may give consent to withhold or withdraw life-sustaining treatment from a patient in a permanently unconscious state or a terminal condition. The appropriate individual or class of individuals, in accordance with the following descending order of priority, are as follows (hereafter "priority individuals or class of individuals") (R.C. 2133.08(B)):

- (1) If any, the guardian of the patient;
- (2) The patient's spouse;
- (3) An adult child of the patient or, if there is more than one adult child, a majority of the patient's adult children who are available within a reasonable period of time for consultation with the patient's attending physician;
- (4) The patient's parents;

(5) An adult sibling of the patient or, if there is more than one adult sibling, a majority of the patient's adult siblings who are available within a reasonable period of time for such consultation;

(6) The nearest adult who is not described in (1) to (5) above who is related to the patient by blood or adoption, and who is available within a reasonable period of time for such consultation.

Operation of the bill

The bill gives first priority for consenting to the withholding or withdrawing of life-sustaining treatment for a patient in a permanently unconscious state or terminal condition to any individual listed above in the "priority individuals or class of individuals" who agrees in writing to not withhold or withdraw life-sustaining treatment from the patient and agrees in writing to incur the costs associated with the medical care and life-sustaining treatment of the patient (R.C. 2133.08(B)(1)).

Consent to withholding or withdrawal of life-sustaining treatment

Current law

Under current law, if written consent to the withholding or withdrawal of life-sustaining treatment is given by the appropriate individual or individuals listed above in the "priority individuals or class of individuals" to the attending physician of an adult patient, and if all of the following apply in connection with the patient, then, generally, the patient's attending physician may withhold or withdraw the life-sustaining treatment (R.C. 2133.08(A)(1)):

(1) The attending physician and one other physician who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards (hereafter referred to as "reasonable determination") that the patient is in a terminal condition or the patient currently is and for at least the immediately preceding 12 months has been in a permanently unconscious state (hereafter referred to as "terminal condition or permanently unconscious state"), and the attending physician additionally makes a reasonable determination that the patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment and that there is no reasonable possibility that the patient will regain the capacity to make those informed decisions.

(2) The patient does not have a declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state (hereafter referred to as "declaration"), whichever

applies, or a durable power of attorney for health care (hereafter referred to as "DPAFHC"), or has a document that purports to be such a declaration or a DPAFHC but that document is not legally effective.

(3) The consent of the appropriate individual or individuals is given after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(4) The appropriate individual or individuals who give a consent are of sound mind and voluntarily give the consent.

(5) If a consent would be given by a majority of the patient's adult children who are available within a reasonable period of time for consultation with the patient's attending physician, the attending physician made a good faith effort, and used reasonable diligence, to notify those children.

Operation of the bill

Under the bill, the patient's attending physician may withhold or withdraw the patient's life-sustaining treatment only if both of the following apply: (1) all of the requirements described in "**Current law**," above, are met and (2) additionally no individual specified above in the list of "priority individuals or class of individuals" has provided a written agreement to not withhold or withdraw life-sustaining treatment from the patient and a written agreement to incur the costs associated with the medical care and life-sustaining treatment of the patient (R.C. 2133.08(A)(1)).

Objection to the consent to the withholding or withdrawal of life-sustaining treatment

Current law

Under current law, within 48 hours after an individual listed above in the list of "priority individuals or class of individuals" gives a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and communicates the consent to the patient's attending physician, any individual described in that list who objects to the consent must advise the attending physician of the grounds for the objection. If the individual communicates an objection to the attending physician within that 48-hour period, that individual must file within two business days of that communication a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician in the probate court of the county in which the patient is located for the issuance of an order reversing the consent of the priority individual

or class of individuals. The probate court is then required to conduct a hearing on the complaint. (R.C. 2133.08(E)(1).)

If the decision of the priority individual or class of individuals was to consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by a preponderance of the evidence, and if applicable, a reasonable determination, one or more of the following (R.C. 2133.08(E)(3)):

(1) The patient is not in a terminal condition, the patient is not in a permanently unconscious state, or the patient has not been in a permanently unconscious state for at least the immediately preceding 12 months.

(2) The patient is able to make informed decisions regarding the administration of life-sustaining treatment.

(3) There is a reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.

(4) The patient has a legally effective declaration or a legally effective DPAFHC.

(5) The decision to withhold or withdraw life-sustaining treatment is not consistent with the previously expressed intention of the patient.

(6) The decision to withhold or withdraw life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment.

(7) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(8) The priority individual, or any member of the priority class of individuals, who made the decision to withhold or withdraw life-sustaining treatment was not of sound mind or did not voluntarily make the decision.

(9) If the decision of a priority class of individuals is involved, the patient's attending physician did not make a good faith effort, and use reasonable diligence,

to notify the patient's adult children who were available within a reasonable period of time for consultation.

(10) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with R.C. 2133.08.

Operation of the bill

The bill continues to authorize the court to reverse the consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient if one or more of the factors listed in paragraphs (1) through (10) above are met and additionally requires the court to reverse that consent if an individual described in the above list of "priority individuals or class of individuals" has provided a written agreement to not withhold or withdraw life-sustaining treatment from the patient and a written agreement to incur the costs associated with the medical care and life-sustaining treatment of the patient (R.C. 2133.08(E)(3)).

COMMENT

1. "Life-sustaining treatment" means any medical procedure, treatment, intervention, or other measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying (R.C. 2133.01(Q)).

2. "Permanently unconscious state" means a state of permanent unconsciousness in a declarant or other patient that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, is characterized by both of the following (R.C. 2133.08(U)):

(a) Irreversible unawareness of one's being and environment.

(b) Total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering.

(3) "Terminal condition" means an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty, as determined in accordance with reasonable medical standards by a declarant's or other patient's attending physician and one other physician who has examined the declarant or other patient, both of the following apply (R.C. 2133.08(AA)):

(a) Irreversible unawareness of one's being and environment.

(b) Total loss of cerebral cortical functioning, resulting in the declarant or other patient having no capacity to experience pain or suffering.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-19-05	p. 673

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