



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 79

130th General Assembly
(As Introduced)

Reps. Boose, J. Adams, Becker, Blair, Grossman

BILL SUMMARY

- Provides that an individual's statutory priority to consent to the withholding or withdrawal of life-sustaining treatment for a patient who is in a terminal condition is forfeited if the individual is charged with felonious assault or aggravated assault against the patient directly resulting in the patient being in a terminal condition from the physical harm or serious physical harm suffered as a result of the offense.
- Provides that, if a member of a class of individuals entitled to decide whether to consent to the withholding or withdrawal of life-sustaining treatment for a patient who is in a terminal condition has been charged with felonious assault or aggravated assault against the patient directly resulting in the patient being in a terminal condition from the physical harm or serious physical harm suffered as a result of the offense, that member is not competent to so decide, and the other members of the class of individuals are entitled to make the decision.

CONTENT AND OPERATION

Consent to withholding or withdrawal of life-sustaining treatment

Under the current "Modified Uniform Rights of the Terminally Ill Act,"¹ if written consent to the withholding or withdrawal of "life-sustaining treatment" (defined below in "**Definitions**"), witnessed by two individuals who satisfy the witness eligibility criteria set forth in the law, is given by the appropriate individual or individuals as specified below to the attending physician of a patient who is an adult, and if all of the conditions specified in the law apply in connection with the patient, then generally the

¹ R.C. Chapter 2133.

patient's attending physician may withhold or withdraw the life-sustaining treatment.² A consent to withhold or withdraw life-sustaining treatment may be given by the appropriate individual or individuals, in accordance with the following descending order of priority:³

(1) If any, the guardian of the patient. This provision does not permit or require, and cannot be construed as permitting or requiring, the appointment of a guardian for 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 that 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 that consultation.

The bill provides that the above descending order of priority of individuals is subject to the bill's provisions described in this and the following paragraphs. If an appropriate individual entitled to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient who is in a "terminal condition" (see "**Definitions**," below) has been charged with the offense of felonious assault under R.C. 2903.11 or the offense of aggravated assault under R.C. 2903.12 against the patient and the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, the individual is not competent to so decide, and the next priority individual or class of individuals specified is authorized to make the decision.⁴

If a member of a class of individuals entitled to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient who is in a

² R.C. 2133.08(A)(1).

³ R.C. 2133.08(B).

⁴ R.C. 2133.08(C)(2)(a).

terminal condition has been charged with the offense of felonious assault under R.C. 2903.11 or the offense of aggravated assault under R.C. 2903.12 against the patient and the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, that member is not competent to so decide, and the other members of the class of individuals are authorized to make the decision.⁵

Objections to consent

Existing law provides that within 48 hours after a written consent is communicated to the patient's attending physician, any individual described in the above priority of individuals who objects to the consent must advise the attending physician of the grounds for the objection. Within two business days after communicating the objection, the objecting individual must file a complaint against the consenting party with priority, the patient's attending physician, and the consulting physician in the probate court of the county in which the patient is located requesting the issuance of an order reversing the consent; failure to so file a complaint will render the objection void.⁶

The bill provides that an individual who is not competent to give consent under its provisions as described above is excluded from the priority individuals who are entitled to object as described in the preceding paragraph to a consent that is given.⁷

Technical changes

The bill makes technical changes in referring to the existing provisions listing the priority individuals in R.C. 2133.09(A)(4) (withholding or withdrawing nutrition and hydration from patient who has been in permanently unconscious state for at least 12 months) and R.C. 2133.12(E)(2)(c) (use or continuation of comfort care for a patient).

Definitions

Existing law, not changed by the bill, defines the following terms:⁸

⁵ R.C. 2133.08(C)(2)(b).

⁶ R.C. 2133.08(E)(1).

⁷ R.C. 2133.08(E)(1).

⁸ R.C. 2133.01(Q) and (AA), not in the bill.

"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.

"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, there can be no recovery and death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

Background

The "Modified Uniform Rights of the Terminally Ill Act" (R.C. Chapter 2133.) authorizes the creation of a living will (called a "declaration" under that Chapter). A living will is an instrument in which a person of sound mind and over the age of 18 may declare the person's intention regarding the withholding or withdrawal of life-sustaining treatment when the person is in a terminal condition, in a permanently unconscious state, or in either a terminal condition or permanently unconscious state. R.C. Chapter 2133. also establishes a procedure applying to persons who have not executed a living will (i.e., nondeclarants) by which specified persons may execute a written consent to the withholding or withdrawal of life-sustaining treatment from the person. That Chapter further creates a procedure for making an objection to such a consent and vests exclusive jurisdiction in the probate court to hear and determine any objections.

HISTORY

ACTION	DATE
Introduced	02-26-13

H0079-I-130.docx/emr

