

HCS HB 381 -- HEALTH CARE RECORDS OF DECEASED (Evans)

COMMITTEE OF ORIGIN: Standing Committee on Health and Mental Health Policy

This bill allows a health care provider to disclose a deceased patient's health care or payment records to the executor or administrator of his or her estate, or the power of attorney for health care that specifically directs the health care records be released to him or her after death. If no one has been appointed, and the deceased did not object to disclosure of his or her records in writing, the records may be released, upon written request, to his or her surviving spouse or personal representative, as specified in the bill. The bill specifies that disclosures under the bill cannot be inconsistent with any prior expressed preference of the deceased that is known to the health care provider.

In addition, this bill establishes the "Designated Health Care Decision-Maker Act."

In its main provisions, the bill:

- (1) Limits the determination of incapacity of a patient to a specific process and permits a health care provider or facility to rely upon the health care decisions made by a designated health care decision-maker if certain procedures are followed;
- (2) Requires a physician or other provider to make reasonable efforts to inform potential designated health care decision-makers of a determination that a patient is incapacitated as specified in the bill;
- (3) Delineates a list of priority of persons who may make health care decisions for an incapacitated patient as specified in the bill and excludes certain persons from the list if specified circumstances exist;
- (4) Permits any person interested in the welfare of an incapacitated patient to petition the probate court for an order determining the care to be provided to the patient;
- (5) Prohibits a designated health care decision-maker from withdrawing or withholding nutrition or hydration that is ingested through natural means and permits a designated health care decision-maker to withdraw or withhold artificially supplied nutrition or hydration if specified requirements are met;
- (6) Requires the patient's physician to re-examine the patient if the designated health care decision-maker, physician, or anyone in

the priority list believes the patient is no longer incapacitated;

(7) Prohibits any facility or provider who makes good faith and reasonable efforts to identify, locate, and communicate with potential designated health care decision-makers from being subject to civil or criminal liability or regulatory sanctions for such actions;

(8) Permits a provider or facility to decline to comply with a health care decision of a patient or designated health care decision-maker if the provider or facility has a moral or religious objection to the decision so long as the facility or provider takes certain actions as specified in the bill;

(9) Prohibits health care from being denied based on the view that extending the life of certain individuals is of a lower value than extending the life of other specified individuals or on the basis that the provider or facility disagrees with how the patient or decision maker values extension of life versus the risk of disability; and

(10) Prohibits a provider or facility from withholding or withdrawing medical treatment from a pregnant patient.

This bill is similar to HCS HB 2482 and HB 2502 (2016).