

Surrogate Consent for “Unbefriended” Individuals in Absence of Advance Directive

State; Citation	Type Statute	Decision-Maker for Unbefriended	Limitations on Type of Decision
Alabama Ala. Code 1975 §22-8A-11(d)(7) (2007)	Comprehensive Health Care Decisions Act	A committee composed of the patient's primary treating physician and the ethics committee of the facility where the patient is undergoing treatment or receiving care, acting unanimously; or if there is no ethics committee, by unanimous consent of a committee appointed by the chief of medical staff or chief executive officer of the facility and consisting of at least the following: (i) the primary treating physician; (ii) the chief of medical staff or his or her designee; (iii) the patient's clergyman, if known and available, or a member of the clergy who is associated with, but not employed by or an independent contractor of the facility, or a social worker associated with but neither employed by nor an independent contractor of the facility. In the event a surrogate decision is being made by an ethics committee or appointed committee of the facility where the patient is undergoing treatment or receiving care, the facility shall notify the Alabama Department of Human Resources for the purpose of allowing the department to participate in the review of the matter pursuant to its responsibilities under the Adult Protective Services Act.	Patient must be in terminal condition or permanently unconscious. Certification requirements.
Arizona Ariz. Rev. Stat. Ann. §36-3231 (West 2007)	Comprehensive Health Care Decisions Act	Patient's attending physician . . . after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision. For the purposes of this subsection, "institutional ethics committee" means a standing committee of a licensed health care institution appointed or elected to render advice concerning ethical issues involving medical treatment.	Not apply to decisions to withdraw nutrition or hydration. Not apply to mental health treatment limitations.
Connecticut Conn. Gen. Stat. §19a-571(a)	Comprehensive Health Care Decisions Act [Note: Physicians as primary decision-makers,	Any licensed physician licensed . . . or any licensed medical facility who or which withholds, removes or causes the removal of a life support system of an incapacitated patient shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such withholding or removal, provided . . . (3) the attending physician has considered the patient's wishes concerning the withholding or withdrawal of life support systems. . . . If the wishes of the patient have not been expressed in a living will the attending physician shall determine the wishes of the patient by consulting any statement made by the patient directly to the attending	Limited to removal or withholding of life support systems, and patient is in terminal condition or permanently unconscious. Pregnancy limitation.

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	along with designated others]	physician and, if available, the patient's health care representative, the patient's next of kin, the patient's legal guardian or conservator, if any, any person designated by the patient . . . and any other person to whom the patient has communicated his wishes, if the attending physician has knowledge of such person.	
Florida Fla. Stat. Ann §765.401(h) & 765.113 (West 2007)	Comprehensive Health Care Decisions Act	A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.	Not apply to abortion, sterilization. Electroshock therapy, psychosurgery, experimental treatment not approved by IRB, or voluntary admission to mental health facility. Pregnancy limitation.
Mississippi Miss. Code Ann. §41-41-211(9) & 215(9)	Comprehensive Health Care Decisions Act	An owner, operator or employee of a residential long-term health care institution at which the patient is a resident if there is no advance health-care directive to the contrary and a licensed physician who is not an owner, operator or employee of the residential long-term health care institution at which the patient is a resident has determined that the patient is in need of health care. A surrogate may not be an owner, operator, or employee of a residential long-term health-care institution at which the patient is receiving care unless related to the patient by blood, marriage, or adoption, except in the case of a <u>patient of a state-operated facility</u> . . .	Not apply to admission to mental health institution. Limited to decisions to withhold or discontinue life support, nutrition, hydration, or other treatment, care, or support.
New York N.Y. Pub. Health Law §2966	Specialized Surrogate Consent Statute applicable only to DNR orders	An attending physician (a) may issue an order not to resuscitate the patient, provided that the attending physician determines, in writing, that, to a reasonable degree of medical certainty, resuscitation would be medically futile, and another physician selected by a person authorized by the hospital to make such selection, after personal examination of the patient, reviews and concurs in writing with such determination	Limited to withholding or withdrawal of life-prolonging measures where the patient is terminal or permanently unconscious.

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North Carolina N.C. Gen. Stat. §90-322(b)	Living Will Statute	At the discretion of the attending physician the life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.	Limited to withholding or withdrawal of life-prolonging measures where patient is terminal or permanently unconscious.
Oregon Or. Rev. Stat. §127.635(3) & (4)	Comprehensive Health Care Decisions Act	Upon the direction and under the supervision of the attending physician.	Limited to withdrawal or withholding of life-sustaining procedures for a patient in terminal condition or permanently unconscious, or who meets other conditions related to pain or advanced progressive illness.
Tennessee Tenn. Code Ann. §68-11-1806	Comprehensive Health Care Decisions Act	<p>The patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the institution or institutions at which the patient is then receiving health care. . . . A designated physician may make health care decisions for the patient after the designated physician either: (A) Consults with and obtains the recommendations of an institution's ethics mechanism; or (B) Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.</p> <p>Disqualified surrogates: A health care provider or employee of a health care provider may not act as a surrogate, if the health care provider becomes the principal's treating health care provider.</p> <p>An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as a surrogate [only] if . . . a relative.</p>	Limited to withholding or withdrawal of artificial nutrition and hydration.
Texas Tex. Health & Safety Code Ann. §166.039(e)	Advance Directives Act	If the patient does not have a legal guardian and a person listed . . . is not available, a treatment decision made [by the attending physician] must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a	Applies to a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment

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<p>§166.088(f)</p> <p>§313.004</p>	<p>Out of Hospital DNR Provisions</p> <p>Specialized provision applicable to patients in hospital or nursing home</p>	<p>patient.</p> <p>If no relative, out of hospital DNR order must be concurred in by another physician not involved in treatment of patient or who is a representative of the ethics or medical committee of the facility.</p> <p>A member of the clergy.</p>	<p>Limited to out of hospital DNR orders.</p> <p>Not apply to voluntary inpatient mental health services; Electroconvulsive treatment; or appointment of another surrogate decision-maker. Pregnancy limitation.</p>
<p>West Virginia W. Va. Code §16-30-8 (West 2007)</p>	<p>Comprehensive Health Care Decisions Act</p>	<p>Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department of health and human resources may from time to time designate in rules.</p> <p>The following persons may not serve as a surrogate: (1) A treating health care provider of the person who is incapacitated; (2) an employee of a treating health care provider not related to the person who is incapacitated; (3) an owner, operator or administrator of a health care facility serving the person who is incapacitated; or (4) any person who is an employee of an owner, operator or administrator of a health care facility serving the person who is incapacitated and who is not related to that person.</p>	<p>None listed.</p>