

**SENATE  
STATE OF MINNESOTA  
NINETY-FOURTH SESSION**

**S.F. No. 2567**

(SENATE AUTHORS: MANN)

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Introduction and first reading  
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act  
1.2 relating to civil law; creating default surrogate for health decisions and providing  
1.3 a process to appoint default surrogate for health decisions; amending Minnesota  
1.4 Statutes 2024, sections 145C.01, subdivision 2, by adding subdivisions; 145C.03,  
1.5 by adding a subdivision; 145C.10; 145C.11; proposing coding for new law in  
1.6 Minnesota Statutes, chapter 145C.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2024, section 145C.01, is amended by adding a subdivision  
1.9 to read:

1.10 Subd. 1c. **Default surrogate for health decisions.** A physician, advanced practice  
1.11 registered nurse, or physician assistant shall not recognize a default surrogate for health  
1.12 decisions unless the individual for whom a health care decision is necessary is an  
1.13 unrepresented individual as defined in subdivision 10. "Default surrogate for health decisions"  
1.14 means either an individual or individuals age 18 or older, or an organization, so long as the  
1.15 individual, individuals, or organization is one of the following:

1.16 (1) an individual or individuals included in the unrepresented individual's kinship system;

1.17 (2) a friend or more than one friend of the unrepresented individual;

1.18 (3) a health care agent appointed by the unrepresented individual in a health care directive  
1.19 that does not include a designation of the power necessary to make the health care decision  
1.20 for which the physician, advanced practice registered nurse, or physician assistant seeks  
1.21 informed consent;

2.1 (4) other individual or individuals designated in writing or verbally by the unrepresented  
 2.2 individual or who are qualified or registered to assist the unrepresented individual in other  
 2.3 respects, including but not limited to:

2.4 (i) a designated representative pursuant to section 144G.08, subdivision 19;

2.5 (ii) a client representative pursuant to section 144A.43, subdivision 1e;

2.6 (iii) a hospice patient's family pursuant to section 144A.75, subdivision 7;

2.7 (iv) an individual under section 144.651, subdivision 10;

2.8 (v) a responsible party pursuant to section 144.6501, subdivision 1, paragraph (e);

2.9 (vi) an individual appointed by the unrepresented individual in a valid power of attorney  
 2.10 pursuant to chapter 523; and

2.11 (vii) a representative payee with respect to governmental benefits; or

2.12 (5) a professional or other individuals supportive of the unrepresented individual such  
 2.13 as:

2.14 (i) clergy and religious order members;

2.15 (ii) care managers;

2.16 (iii) professional advocates;

2.17 (iv) supporters consistent with the definition of supported decision making in section  
 2.18 524.5-102, subdivision 16a; and

2.19 (v) individuals associated with a health care agent organization.

2.20 Sec. 2. Minnesota Statutes 2024, section 145C.01, is amended by adding a subdivision to  
 2.21 read:

2.22 Subd. 1d. **Friends.** "Friends" means adults who exhibit good faith concern for the  
 2.23 unrepresented individual and who are familiar with and supportive of the unrepresented  
 2.24 individual.

2.25 Sec. 3. Minnesota Statutes 2024, section 145C.01, subdivision 2, is amended to read:

2.26 Subd. 2. **Health care agent.** "Health care agent" means an individual age 18 or older  
 2.27 ~~who is~~ or a health care agent organization appointed by a principal in a health care power  
 2.28 of attorney to make health care decisions on behalf of the principal. "Health care agent"  
 2.29 may also be referred to as "agent."

3.1 Sec. 4. Minnesota Statutes 2024, section 145C.01, is amended by adding a subdivision to  
3.2 read:

3.3 Subd. 2a. **Health care agent organization.** "Health care agent organization" means an  
3.4 organization that maintains a group of individuals who are reasonably available to serve as  
3.5 health care agents pursuant to this chapter.

3.6 Sec. 5. Minnesota Statutes 2024, section 145C.01, is amended by adding a subdivision to  
3.7 read:

3.8 Subd. 7b. **Kinship system.** "Kinship system" means a system of social relationships  
3.9 connecting people in a community or culture who are, or are held to be, related, and which  
3.10 defines and regulates the reciprocal obligations within the system, such as family members,  
3.11 religious communities, and ethnic communities.

3.12 Sec. 6. Minnesota Statutes 2024, section 145C.01, is amended by adding a subdivision to  
3.13 read:

3.14 Subd. 10. **Unrepresented individual.** "Unrepresented individual" means an individual  
3.15 age 18 or older who:

3.16 (1) has not previously executed a health care directive containing health care instructions  
3.17 or appointing a health care agent;

3.18 (2) has previously executed a health care directive appointing a health care agent but  
3.19 the individual has revoked the health care power of attorney under section 145C.09, or has  
3.20 appointed a health care agent who is not reasonably available, or who has not given the  
3.21 health care agent in the reasonable professional judgment of the physician, advanced practice  
3.22 registered nurse, or physician assistant the powers that are necessary to make the health  
3.23 care decision for which the physician, advanced practice registered nurse, or physician  
3.24 assistant seeks informed consent;

3.25 (3) has previously executed a health care directive containing health care instructions  
3.26 which did not appoint a health care agent but has revoked the health care directive under  
3.27 section 145C.09, or has provided health care instructions insufficient in the reasonable  
3.28 professional judgment of the physician, advanced practice registered nurse, or physician  
3.29 assistant to permit the physician, advanced practice registered nurse, or physician assistant  
3.30 to act; or

3.31 (4) is not currently subject to a guardianship in which the power to make health care  
3.32 decisions has been granted pursuant to section 524.5-313, paragraph (c).

4.1 Sec. 7. Minnesota Statutes 2024, section 145C.03, is amended by adding a subdivision to  
4.2 read:

4.3 Subd. 4. Health care agent organization appointed as agent. If the principal executes  
4.4 a health care power of attorney appointing a health care agent organization as the principal's  
4.5 health care agent, the health care power of attorney shall include the name, address, telephone  
4.6 number, and email address of the health care agent organization, and the name of at least  
4.7 one individual associated with the health care agent organization designated by the principal  
4.8 to act as agent on behalf of the health care agent organization. The health care agent  
4.9 organization may designate a successor agent or agents if the initial agent is not reasonably  
4.10 available at the time the health care power of attorney becomes effective pursuant to section  
4.11 145C.06.

4.12 Sec. 8. Minnesota Statutes 2024, section 145C.10, is amended to read:

4.13 **145C.10 PRESUMPTIONS.**

4.14 (a) The principal is presumed to have the capacity to execute a health care directive and  
4.15 to revoke a health care directive, absent clear and convincing evidence to the contrary.

4.16 (b) A health care provider or health care agent may presume that a health care directive  
4.17 is legally sufficient absent actual knowledge to the contrary. A health care directive is  
4.18 presumed to be properly executed, absent clear and convincing evidence to the contrary.

4.19 (c) A health care agent or default surrogate for health decisions, and a health care provider  
4.20 acting pursuant to the direction of a health care agent or default surrogate for health decisions,  
4.21 are presumed to be acting in good faith, absent clear and convincing evidence to the contrary.

4.22 (d) A health care directive is presumed to remain in effect until the principal modifies  
4.23 or revokes it, absent clear and convincing evidence to the contrary.

4.24 (e) This chapter does not create a presumption concerning the intention of an individual  
4.25 who has not executed a health care directive and, except as otherwise provided by section  
4.26 145C.15, does not impair or supersede any right or responsibility of an individual to consent,  
4.27 refuse to consent, or withdraw consent to health care on behalf of another in the absence of  
4.28 a health care directive, including but not limited to a default surrogate for health decisions.

4.29 (f) A copy of a health care directive is presumed to be a true and accurate copy of the  
4.30 executed original, absent clear and convincing evidence to the contrary, and must be given  
4.31 the same effect as an original.

5.1 (g) When a patient lacks decision-making capacity and is pregnant, and in reasonable  
5.2 medical judgment there is a real possibility that if health care to sustain her life and the life  
5.3 of the fetus is provided the fetus could survive to the point of live birth, the health care  
5.4 provider shall presume that the patient would have wanted such health care to be provided,  
5.5 even if the withholding or withdrawal of such health care would be authorized were she not  
5.6 pregnant. This presumption is negated by health care directive provisions described in  
5.7 section 145C.05, subdivision 2, paragraph (a), clause (10), that are to the contrary, or, in  
5.8 the absence of such provisions, by clear and convincing evidence that the patient's wishes,  
5.9 while competent, were to the contrary.

5.10 Sec. 9. Minnesota Statutes 2024, section 145C.11, is amended to read:

5.11 **145C.11 IMMUNITIES.**

5.12 Subdivision 1. **Health care agent and default surrogate for health decisions.** A health  
5.13 care agent or default surrogate for health decisions is not subject to criminal prosecution or  
5.14 civil liability if the health care agent acts in good faith.

5.15 Subd. 2. **Health care provider.** (a) With respect to health care provided to a patient  
5.16 with a health care directive, a health care provider is not subject to criminal prosecution,  
5.17 civil liability, or professional disciplinary action if the health care provider acts in good  
5.18 faith and in accordance with applicable standards of care.

5.19 (b) A health care provider is not subject to criminal prosecution, civil liability, or  
5.20 professional disciplinary action if the health care provider relies on a health care decision  
5.21 made by the health care agent and the following requirements are satisfied:

5.22 (1) the health care provider believes in good faith that the decision was made by a health  
5.23 care agent appointed to make the decision and has no actual knowledge that the health care  
5.24 directive has been revoked; and

5.25 (2) the health care provider believes in good faith that the health care agent is acting in  
5.26 good faith.

5.27 (c) A health care provider who administers health care necessary to keep the principal  
5.28 alive, despite a health care decision of the health care agent or default surrogate for health  
5.29 decisions to withhold or withdraw that treatment, is not subject to criminal prosecution,  
5.30 civil liability, or professional disciplinary action if that health care provider promptly took  
5.31 all reasonable steps to:

5.32 (1) notify the health care agent or default surrogate for health decisions of the health  
5.33 care provider's unwillingness to comply;

6.1 (2) document the notification in the principal's medical record; and

6.2 (3) permit the health care agent or default surrogate for health decisions to arrange to  
6.3 transfer care of the principal to another health care provider willing to comply with the  
6.4 decision of the health care agent or default surrogate for health decisions.

6.5 (d) A health care provider is not subject to criminal prosecution, civil liability, or  
6.6 professional disciplinary action if the health care provider relies on a health care decision  
6.7 made by a default surrogate for health decisions when the following requirements are  
6.8 satisfied:

6.9 (1) the health care provider believes in good faith that the default surrogate for health  
6.10 decisions meets the requirements in section 145C.18, subdivision 1, clause (3); and

6.11 (2) the health care provider believes in good faith that the default surrogate for health  
6.12 decisions is acting in good faith.

6.13 **Sec. 10. [145C.18] HEALTH CARE DECISIONS FOR UNREPRESENTED**  
6.14 **INDIVIDUALS.**

6.15 Subdivision 1. **Requirements to appoint.** When a physician, advanced practice registered  
6.16 nurse, or physician assistant needs to obtain a health care decision from or on behalf of an  
6.17 individual, the physician, advanced practice registered nurse, or physician assistant may  
6.18 obtain the health care decision from a default surrogate for health decisions subject to the  
6.19 reasonable satisfaction, in the good faith and reasonable professional judgment of the  
6.20 physician, advanced practice registered nurse, or physician assistant of all the following  
6.21 conditions:

6.22 (1) the individual is an unrepresented individual pursuant to section 145C.01, subdivision  
6.23 10;

6.24 (2) the unrepresented individual does not have decision-making capacity pursuant to  
6.25 section 145C.01, subdivision 4, with respect to the health care decision and does not have  
6.26 the capacity pursuant to section 145C.02 to execute a health care directive, or has the capacity  
6.27 pursuant to section 145C.02 to execute a health care directive but declines to do so;

6.28 (3) each default surrogate for health decisions recognized by the physician, advanced  
6.29 practice registered nurse, or physician assistant:

6.30 (i) has demonstrated or expressed the willingness and ability to demonstrate good faith  
6.31 concern for the unrepresented individual;

7.1 (ii) is familiar with or is willing and able to become familiar with and supportive of the  
7.2 unrepresented individual's current personal values and life choices;

7.3 (iii) would be reasonably available to make health care decisions;

7.4 (iv) would act in good faith;

7.5 (v) would be reasonably acceptable to the unrepresented individual given the  
7.6 unrepresented individual's reasonably determinable personal values and life choices; and

7.7 (vi) would not be considered ineligible to serve as a health care agent consistent with  
7.8 section 145C.03, subdivision 2; and

7.9 (4) the physician, advanced practice nurse, or physician assistant documents the process  
7.10 undertaken to satisfy the foregoing conditions and the rationale for the recognition of each  
7.11 default surrogate for health decisions.

7.12 Subd. 2. **Other laws.** Each default surrogate for health decisions recognized pursuant  
7.13 to subdivision 1 shall be considered to have specific authorization in law, including but not  
7.14 limited to section 144.293, subdivision 2, clause (2), and Code of Federal Regulations, title  
7.15 45, sections 164.502 and 164.510, paragraph (b), with respect to access to patient records  
7.16 relevant to the health care decision for which the default surrogate for health decisions is  
7.17 recognized.