

**ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018**  
**COMMITTEE STATEMENT**  
**LB104**

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**Hearing Date:** Thursday February 09, 2017  
**Committee On:** Judiciary  
**Introducer:** Bolz  
**One Liner:** Provide for a surrogate to make health care decisions

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 7 Senators Baker, Ebke, Halloran, Hansen, Krist, Morfeld, Pansing Brooks  
**Nay:**  
**Absent:** 1 Senator Chambers  
**Present Not Voting:**

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**Verbal Testimony:**

**Proponents:**

Senator Kate Bolz  
Debra Timm  
Kim Robak

**Representing:**

Introducer  
self  
Nebraska Methodist Health System

**Opponents:**

**Representing:**

**Neutral:**

Tom Venzor  
Jerry Stilmock  
  
Bub Windle

**Representing:**

Nebraska Catholic Conference  
Nebraska State Volunteer Firefighter Association &  
Nebraska Fire Chiefs Association  
Nebraska State Bar Association

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**Summary of purpose and/or changes:**

LB 104 authorizes individuals to designate a surrogate, outside the traditional "power of attorney" structure, to make health care decisions on their behalf.

Section 1- Definitions.

Section 2- Surrogates will be called upon when the adult or emancipated minor lacks the capacity to act in their own interests and no guardian has been appointed.

Patients may make the designation of their surrogate to the health care provider. If no surrogate has been designated, or they are unavailable, any member of the patient's family may step into the role in the following priority: spouse, adult child, parent, or adult sibling. If the designated surrogate and any of the previously acknowledged surrogate stand-ins are unavailable, an adult who has shown a close, personal relationship; reading as "exhibited special care and concern for the patient"; may act as surrogate.

Surrogates shall notify the patient's family of their status as soon as possible upon being called upon to act in the surrogate role. If more than one family member claims authority to act as surrogate, and there is a disagreement among them as to the proper course of action, the health care provider will act based on the wishes of a majority of the family members. If the family members are evenly divided, all "lower priority" family members are disqualified from making the decision.

Surrogates are expected to make health care decisions based on the patient's own instructions and wishes, and lacking

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those instructions, act in the patient's best interest and in light of the patient's values. Decisions made by a surrogate on health care does not require judicial approval.

A patient can provide notice revoking a surrogate's authority both in a signed writing, or by informing the health care provider personally.

Owners, operators, or employees of a private, DHHS, or Corrections health care facility are prohibited from serving as a surrogate for a patient unless related by blood, marriage, or adoption.

Health care providers may require a surrogate to provide a written declaration stating the facts of their authority as a surrogate. Providing a false declaration of this type will be considered perjury.

Section 3- Allows that surrogates may make decisions regarding terminally ill patients under their authority.

Section 4- States that the authority of a guardian of an adult ward shall not change or eliminate the authority of a surrogate properly appointed under LB 104.

Section 5- Appointment of a surrogate removes power of attorney for health care decisions from the patient's actual attorney (attorney in fact).

Section 6- Surrogates are granted authority to make decisions regarding a patient's anatomical gifts.

Section 7- The Department of Corrections Medical Director is tasked with crafting a community standard in assisting inmates in selecting a health care surrogate.

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**Explanation of amendments:**

AM1464 strikes the original provisions and provides the following:

Section 2: Modifies legislative intent language to indicate that purpose of surrogacy is to facilitate care for a person who is incapacitated and does not already have a guardian or other advance directive.

Section 3: Definitions modified to harmonize language with Health Care Power of Attorney Act (HCPOA Act).

Section 4: Clarifies that incapacity to make healthcare decisions does not imply incapacity for other purposes. Modifies eligibility of spouse to serve as surrogate, to avoid estranged spouses from serving. Clarifies that persona appointed as surrogate may decline such appointment. Clear and convincing evidence of abuse would disqualify potential surrogate as well. Subsection 3 is reworded for clarity. Subsection 5 provides a decision-making hierarchy (into what are termed "classes or priority") to resolve potential disputes between interested parties. Subsection 6 clarifies end-points for surrogate authority: appointment of guardian, individual deemed competent, another person with higher priority becomes available, transfer to another care facility, or the patient dies. Subsection 7(b) provides for documentation of a decision to disqualify a person from serving as a surrogate.

Section 6: Harmonizing language from HCPOA Act, and new language providing that designation of surrogate be included in patient's medical record.

Section 12: Language based on HCPOA Act section to provide judicial remedy of surrogate revocation based on illegal act being authorized by the surrogate, failure or unwillingness to perform, where the surrogate cannot be disqualified by means provided elsewhere in the bill.

Section 17: Requires prompt facility action in transferring patient based on surrogate decision.

Section 21: To address concerns raised by the Nebraska State Bar Association, would clarify appeals procedure under the Act and to provide for delay of surrogate's decision-making authority while legal challenge is pending.

Other AM sections are substantially the same as those in the introduced version of LB 104 or contain harmonizing language based on the HCPOA Act already in law.

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Laura Ebke, Chairperson