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Chapter No. 529

12/SS01/R574SG

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***SENATE BILL NO. 2854***

Originated in Senate

*J. Powell*

Secretary

SENATE BILL NO. 2854

AN ACT TO AUTHORIZE THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS TO OBTAIN JUDICIAL APPROVAL TO MAKE HEALTH-CARE DECISIONS FOR AN OFFENDER WHO LACKS THE CAPACITY TO MAKE SUCH DECISIONS AND WHO DOES NOT HAVE A RELATIVE AVAILABLE TO MAKE SUCH DECISIONS; TO AUTHORIZE THE DEPARTMENT TO PROVIDE AN OFFENDER WITH THE FORMS NECESSARY TO EXECUTE AN ADVANCE HEALTH-CARE DIRECTIVE; TO AMEND SECTION 93-13-135, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE CHANCERY COURT OF THE COUNTY OF RESIDENCE OF AN OFFENDER TO APPOINT A GUARDIAN TO MAKE HEALTH-CARE DECISIONS FOR THE OFFENDER; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The following words and phrases that are used in this section are defined in Section 41-41-203: advance health-care directive, agent, capacity, guardian, health-care decision, individual instruction, person, power of attorney for health care and surrogate.

(2) For an offender who is a resident of Mississippi, the department may petition the chancery court of the county of residence of the offender to appoint the commissioner as guardian for an offender who lacks the capacity to make a health-care decision and who does not have a relative or other person available to make the decision.

(3) The department may, consistent with Sections 41-41-201 through 41-41-229, provide an offender with the forms necessary to execute an advance health-care directive.

(4) The department shall place an original or copy of the directive in the offender's medical record, attach the directive to the offender's commitment report and provide a copy of the directive to case management.

(5) If a department physician determines that an offender's life expectancy is less than one (1) year or that the offender is to undergo certain medical procedures to be determined by the department medical director, the department shall provide the offender with the opportunity to alter or execute a written advance health-care directive.

(6) When the department provides an offender with the forms necessary to execute an advance health-care directive, Sections 41-41-201 through 41-41-229 and the following provisions apply:

(a) Absent a court order to the contrary, an offender in the department's custody shall not act as the agent, guardian or surrogate for the offender executing an advance health-care directive. But the principal offender may designate another offender as the agent, guardian or surrogate without judicial approval if the offenders are related by blood, marriage or adoption.

(b) Absent a court order to the contrary, a department employee shall not act as the agent, guardian or surrogate for the offender executing an advance health-care directive. But the principal offender may designate a department employee as the agent, guardian or surrogate without judicial approval if the offender and the employee are related by blood, marriage or adoption.

(c) In addition to the restrictions in Section 41-41-205, neither an offender in the department's custody nor a department employee shall be used as a witness for a power of attorney for health care that an offender executes while in the department's custody.

**SECTION 2.** Section 93-13-135, Mississippi Code of 1972, is amended as follows:

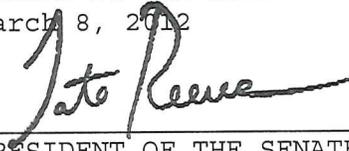
93-13-135. (1) When any offender shall be sentenced to the Penitentiary for a year or longer, the chancery court of the county of his residence, or where any of his property may be, may

appoint a guardian, who shall take charge of the real and personal estate of the offender. The guardianship shall cease when the term of imprisonment shall expire or the offender dies; and so much of the estate of the offender as may be then in the hands of his guardian, shall be restored to him, or his legal representatives in case of his death, the guardian having such reasonable allowance therefrom for his services as the court may deem proper.

(2) A chancery court of the county of residence of an offender who is a resident of Mississippi may appoint a guardian to make health-care decisions for the offender. Process shall be served as provided in Section 93-13-281, unless joined in by that person or those persons prescribed in that section. The health-care guardianship shall cease when the offender's term of imprisonment expires or the offender dies. A guardian appointed under this subsection shall make and file annual accounts of the health-care decisions made on behalf of the offender.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE SENATE  
March 8, 2012



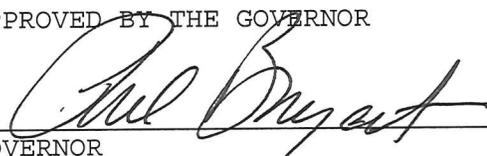
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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
April 10, 2012



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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



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GOVERNOR

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