



# MASSACHUSETTS MEDICAL SOCIETY

*Every physician matters, each patient counts.*

**TESTIMONY IN SUPPORT OF H.1692/S.1047  
AN ACT IMPROVING MEDICAL DECISION MAKING  
BEFORE THE JOINT COMMITTEE ON THE JUDICIARY**

**April 22, 2025**

**The Massachusetts Medical Society (MMS) wishes to be recorded in strong support of H.1692/S.1047, An Act improving medical decision making.**

The Massachusetts Medical Society (MMS) is a professional association of over 24,000 physicians, residents, and medical students across all clinical disciplines, organizations, and practice settings. The Medical Society is committed to advocating on behalf of patients, for a better health care system, and on behalf of physicians, to help them provide the best care possible. Central to this mission is a commitment to patient-centered, individualized care that honors patient autonomy. However, when patients lose the capacity to make decisions for themselves, the health care system must ensure that medical decisions can continue in a manner that is both representative of the patient's values and timely enough to support optimal clinical outcomes. For these reasons, the MMS strongly supports establishing a default surrogate hierarchy for certain incapacitated patients, as proposed in H.1692/S.1047.

Patients have a fundamental right to make decisions regarding their medical treatment, even after losing decisional capacity. Accordingly, our laws provide important mechanisms for medical decision making for incapacitated patients. In Massachusetts, the gold standard for this decision-making process is to utilize a health care proxy, which provides a patient's agent with full medical decision-making authority for the patient's medical care, subject to important patient protections. However, when patients have not completed such documents, the current process requires health care providers to seek judicial appointment of a guardian—even for routine medical decisions. This approach, adopted in the guardianship provisions of the Uniform Probate Code adopted in 2009, is often cumbersome, time-consuming, and expensive. It results in delays in care and inefficient use of both health care and judicial resources.

This legislation offers a carefully crafted alternative to improve the medical decision-making process. H.1692/S.1047 would allow attending physicians to appoint a surrogate decision-maker—typically a family member or close associate—according to a defined statutory hierarchy, for patients lacking a health care proxy or Medical Orders for Life-Sustaining Treatment (MOLST) form. This surrogate could then make medical decisions, while ensuring vital patient protections. Importantly, the legislation preserves the existing judicial process for patients requiring extraordinary decisions or mental health-related admissions, and includes explicit procedural safeguards for patients who actively refuse care while lacking decisional capacity.

We now have growing evidence that this bill will work as intended. Two major academic medical centers in Massachusetts conducted chart reviews of cases requiring judicial appointment of medical guardians. These reviews found that in half of the cases, the appointed guardian matched the criteria proposed in H.1692/S.1047— demonstrating that the legislation would have enabled timely, appropriate decisions without judicial involvement. These findings suggest that the bill would preserve the integrity of care decisions while reducing unnecessary strain on the courts and health care system.

In addition to improving decision-making efficiency, the bill would address one facet of the capacity challenges hospitals face by enhancing timely medical-decision making, thereby improving throughput and patient flow. Hospitals across the Commonwealth are experiencing significant bottlenecks, which are keeping patients from efficiently moving through their care journey. Delays in appointing a guardian often lead to prolonged hospital stays for medically stable patients who cannot be discharged to post-acute facilities due to the lack of a decision-maker. This creates congestion that restricts access to hospital beds, slows emergency department admissions, and places an unsustainable burden on health care providers and systems. These delays also increase the risk of hospital-acquired infections, functional decline, and patient dissatisfaction. By enabling more timely discharges, this legislation will help to ensure patients receive care in the most appropriate setting, improving both health outcomes and system capacity.

The need for reform has become even clearer in recent years. During the COVID-19 pandemic, many younger patients presented to the hospital unexpectedly and without a health care proxy. In the worst cases, those patients quickly became incapacitated. In urgent scenarios, the lack of surrogate consent delays care decisions and strains already overburdened hospital resources. This legislation would provide a consistent and respectful framework to guide care during such crises.

Massachusetts is currently one of only four states without a default surrogate consent statute. It is time for the Commonwealth to join the vast majority of states in adopting a thoughtful, balanced solution that protects patient rights while supporting timely medical care.

Accordingly, the MMS urges your strong support of H.1692/S.1047. This bill represents a meaningful step forward in ensuring safe, efficient, and compassionate care for patients without decisional capacity, while reducing unnecessary burdens on both the health care and judicial systems.