

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2085

Session of
1998

INTRODUCED BY FLEAGLE, WAUGH, VANCE, TANGRETTI, GEIST, HERSHEY,
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SAYLOR AND WILT, JANUARY 12, 1998

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 17, 1998

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 advance directives for emergency medical service health care;
4 and making an appropriation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 5403, 5407, 5410(b), 5411, 5413 and 5415
8 of Title 20 of the Pennsylvania Consolidated Statutes are
9 amended to read:

10 § 5403. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Attending physician." The physician who has primary
15 responsibility for the treatment and care of the declarant.

16 "Declarant." A person who makes a declaration in accordance
17 with this chapter.

1 "Declaration." A written document voluntarily executed by
2 the declarant in accordance with this chapter.

3 "Emergency medical service provider." A health care provider
4 recognized under the act of July 3, 1985 (P.L.164, No.45), known
5 as the Emergency Medical Services Act.

6 "Emergency medical services do-not-resuscitate bracelet" or
7 "EMS-DNR bracelet." A bracelet in the standard format set forth
8 in section 5413 (relating to emergency medical services),
9 supplied by the Department of Health and issued by the attending
10 physician, which may be worn, at the declarant's option, to
11 notify emergency medical service providers of the presence of a
12 do-not-resuscitate order.

13 "Emergency medical services do-not-resuscitate card" or "EMS-
14 DNR card." A wallet-sized card in the standard format set forth
15 in section 5413 (relating to emergency medical services),
16 supplied by the Department of Health and issued by the attending
17 physician, which may be displayed, at the declarant's option, to
18 notify emergency medical service providers of the presence of a
19 do-not-resuscitate order.

20 "Emergency medical services do-not-resuscitate order" or
21 "EMS-DNR order." An order in the standard format set forth in
22 section 5413 (relating to emergency medical services), supplied
23 by the Department of Health and issued by the attending
24 physician, directing emergency medical service providers to
25 withhold cardiopulmonary resuscitation (cardiac compression,
26 endotracheal intubation, artificial ventilation, defibrillation
27 and other related procedures) from the declarant in the event of
28 respiratory or cardiac arrest.

29 "Health care provider." A person who is licensed or
30 certified by the laws of this Commonwealth to administer health

1 care in the ordinary course of business or practice of a
2 profession. The term includes personnel recognized under the act
3 of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical
4 Services Act.

5 "Incompetent." The lack of sufficient capacity for a person
6 to make or communicate decisions concerning himself.

7 "INVASIVE AIRWAY TECHNIQUE." ANY ADVANCED AIRWAY TECHNIQUE, <—
8 INCLUDING ENDOTRACHEAL AND ESOPHAGEAL INTUBATION.

9 "Life-sustaining treatment." Any medical procedure or
10 intervention that, when administered to a qualified patient,
11 will serve only to prolong the process of dying or to maintain
12 the patient in a state of permanent unconsciousness. Life-
13 sustaining treatment shall include nutrition and hydration
14 administered by gastric tube or intravenously or any other
15 artificial or invasive means if the declaration of the qualified
16 patient so specifically provides.

17 ["Medical command physician." A licensed physician who is
18 authorized to give medical command under the act of July 3, 1985
19 (P.L.164, No.45), known as the Emergency Medical Services Act.]

20 "Permanently unconscious." A medical condition that has been
21 diagnosed in accordance with currently accepted medical
22 standards and with reasonable medical certainty as total and
23 irreversible loss of consciousness and capacity for interaction
24 with the environment. The term includes, without limitation, a
25 persistent vegetative state or irreversible coma.

26 "Person." An individual, corporation, partnership,
27 association or Federal, State or local government or
28 governmental agency.

29 "Qualified patient." A person who has executed a declaration
30 and who has been determined to be in a terminal condition or to

1 be permanently unconscious.

2 "Terminal condition." An incurable and irreversible medical
3 condition in an advanced state caused by injury, disease or
4 physical illness which will, in the opinion of the attending
5 physician, to a reasonable degree of medical certainty, result
6 in death regardless of the continued application of life-
7 sustaining treatment.

8 § 5407. Liability.

9 (a) General rule.--No physician, emergency medical service
10 provider or other health care provider who, consistent with this
11 chapter, causes or participates in the initiating, continuing,
12 withholding or withdrawal of life-sustaining treatment from a
13 qualified patient who is incompetent shall, as a result thereof,
14 be subject to criminal or civil liability or be found to have
15 committed an act of unprofessional conduct if the attending
16 physician has followed the declarant's wishes as expressed
17 earlier by the declarant in the form of a declaration and/or
18 EMS-DNR order executed pursuant to this chapter.

19 (b) Absence of declaration or EMS-DNR order, bracelet or
20 card.--The absence of a declaration or EMS-DNR order, bracelet
21 or card by a patient shall not give rise to any presumption as
22 to the intent of the patient to consent to or to refuse the
23 initiation, continuation or termination of life-sustaining
24 treatment.

25 § 5410. Effect on suicide and life insurance.

26 * * *

27 (b) Life insurance.--The making of or failure to make a
28 declaration or EMS-DNR order in accordance with this chapter
29 shall not affect in any manner the sale, procurement or issuance
30 of any policy of life insurance nor shall it be deemed to modify

1 the terms of an existing policy of life insurance. No policy of
2 life insurance shall be legally impaired or invalidated in any
3 manner by the withholding or withdrawal of life-sustaining
4 treatment from an insured patient, notwithstanding any term of
5 the policy to the contrary.

6 § 5411. Declaration optional.

7 No physician or other health care provider and no health care
8 service plan, health maintenance organization, insurer issuing
9 disability insurance, self-insured employee welfare benefit
10 plan, nonprofit hospital plan or Federal, State or local
11 government sponsored or operated program shall:

12 (1) require any person to execute a declaration or EMS-
13 DNR order as a condition for being insured for or receiving
14 health care services; or

15 (2) charge any person a different rate or fee whether or
16 not the person executes or has executed a declaration.

17 § 5413. Emergency medical services.

18 (a) Care given prior to declaration taking effect.--Nothing
19 in this chapter shall be construed to make the provisions of a
20 declaration apply to care given to a patient by emergency
21 medical services personnel prior to the declaration's becoming
22 operative under sections 5405 (relating to when declaration
23 becomes operative) and 5408 (relating to duty of physician to
24 confirm terminal condition).

25 [(b) Care given after declaration takes effect.--The
26 provisions of a declaration shall apply to care given to a
27 patient by emergency medical services personnel after the
28 declaration becomes operative under sections 5405 and 5408 only
29 if:

30 (1) an original declaration, signed by the declarant or

1 other authorized person, is presented to the emergency
2 medical services personnel. The emergency medical services
3 personnel must immediately notify the medical command
4 physician of the presence of the declaration; or

5 (2) the medical command physician, based on prior
6 notification by the attending physician or other health care
7 provider that a valid and operative declaration exists,
8 directs the emergency medical service personnel according to
9 the provisions of the declaration.

10 (c) Uncertainty regarding validity of declaration.--

11 Emergency medical services personnel confronted with any
12 conflicting information regarding the patient's wishes for life-
13 sustaining treatment shall act according to the accepted
14 treatment protocols and standards appropriate to their level of
15 certification.]

16 (b) EMS-DNR orders, bracelets and cards.--The attending
17 physician who makes the determination pursuant to section
18 5405(2) (relating to when declaration becomes operative) shall,
19 if appropriate based on the declaration, issue to the declarant
20 an emergency medical services do-not-resuscitate order, and may
21 issue at the request of the declarant or his surrogate an EMS-
22 DNR bracelet and/or card supplied by the Department of Health.
23 The declarant may, at the declarant's option, wear the bracelet
24 and/or display the order or card to notify emergency medical
25 service providers of the declarant's do-not-resuscitate status.

26 (c) Revocation of EMS-DNR order.--The declarant or the
27 declarant's surrogate may revoke the declarant's EMS-DNR status
28 at any time without regard to the declarant's physical or mental
29 condition and in any manner, including verbally or by destroying
30 or not displaying the order, bracelet or card. Revocation of the

declaration shall also serve to revoke the EMS-DNR order, though emergency medical service providers shall not be subject to civil or criminal liability or administrative sanction for failure to verify the declaration prior to complying with the EMS-DNR order.

(d) Effect of EMS-DNR order, bracelet or card.--Emergency medical service providers are hereby authorized to and shall comply, subject to subsection (e), with an approved Department of Health-issued EMS-DNR order if made aware of such by examining an EMS-DNR bracelet, card or the order itself. Such providers shall have no duty to examine the underlying declaration. "Compliance" for purposes of this subsection shall mean the withholding of cardiopulmonary resuscitation (cardiac compression, invasive airway techniques, artificial ventilation, defibrillation and other related procedures) from the declarant in the event of respiratory or cardiac arrest. "Compliance" shall also mean the discontinuance and cessation of such resuscitative measures in the event the emergency medical service provider is presented with an EMS-DNR order, card and/or bracelet after initiating such resuscitative measures. Emergency medical service providers shall provide other medical interventions necessary and appropriate to provide comfort and alleviate pain, including intravenous fluids, medications, oxygen and any other intervention appropriate to the level of the certification of the provider, unless otherwise directed by the declarant or the declarant's surrogate.

(e) Unwillingness of emergency medical service provider to comply.--Emergency medical services providers who cannot in good conscience comply with an EMS-DNR order shall make a good faith effort to proceed under section 5409 (relating to unwillingness

1 to comply; transfer of declarant) and, so long as such good
2 faith effort is made, shall not be subject to civil or criminal
3 liability or administrative sanction for failure to comply with
4 an EMS-DNR order. Emergency medical service providers unable to
5 comply with an EMS-DNR order under this subsection shall not be
6 subject to discipline, termination, demotion or other
7 retribution by their employer or the EMS organization with which
8 they are affiliated solely for their actions under this
9 subsection.

10 (f) Uncertainty regarding validity of order, bracelet or
11 card.--Emergency medical service providers who in good faith are
12 uncertain about the validity of an EMS-DNR order, bracelet or
13 card shall render care in accordance with their level of
14 certification. Such providers shall not be subject to civil or
15 criminal liability or administrative sanction for failure to
16 comply with an EMS-DNR order under this subsection.

17 (g) Format of EMS-DNR order.--The Department of Health
18 shall, with the advice of the Pennsylvania Emergency Health
19 Services Council and with the assistance of the regional
20 emergency medical services councils, make available within 180
21 days of the effective date of this subsection standard EMS-DNR
22 orders for issuance to declarants by attending physicians of
23 this Commonwealth. The form of the order shall contain, but not
24 be limited to, the following:

25 PENNSYLVANIA EMERGENCY MEDICAL SERVICES

26 DO-NOT-RESUSCITATE ORDER

27 Patient's full legal name:

28 I, the undersigned, state that I am the attending
29 physician of the patient named above. The above-named
30 patient has executed an advance directive for health care

1 and I have made the determination that this patient is
2 incompetent and in a terminal condition or in a state of
3 permanent unconsciousness and that their declaration is
4 now operative.

5 I direct any and all emergency medical service
6 personnel, commencing on the effective date of this
7 order, to withhold cardiopulmonary resuscitation (cardiac
8 compression, invasive airway techniques, artificial
9 ventilation, defibrillation and other related procedures)
10 from the declarant in the event of the declarant's
11 respiratory or cardiac arrest. I further direct such
12 personnel to provide to the patient other medical
13 interventions, such as intravenous fluids, oxygen or
14 other therapies necessary to provide comfort care or to
15 alleviate pain, unless directed otherwise by the
16 declarant or the declarant's lawful surrogate.

17 Signature of attending physician:

18 Printed name of attending physician:

19 Dated:

20 Attending physician's emergency telephone number:

21 Signature of patient (if capable of making informed
22 decisions):

23 I, the undersigned, hereby direct that in the event
24 of my cardiac and/or respiratory arrest, efforts at
25 cardiopulmonary resuscitation not be initiated. I
26 understand that I may revoke these directions at any time
27 by giving verbal instructions to the emergency medical
28 service providers, by physical cancellation or
29 destruction of this form or my EMS-DNR bracelet or card,
30 or by simply not displaying this form or the EMS-DNR

bracelet or card for my EMS caregivers.

Signature of surrogate (if patient is incapable of making informed decisions):

I, the undersigned, hereby certify that I am authorized to provide consent on the patient's behalf by virtue of having been designated as the patient's surrogate and/or by virtue of my relationship to the patient (specify relationship: _____). I hereby direct that in the event of the patient's cardiac and/or respiratory arrest, efforts at cardiopulmonary resuscitation not be initiated. I understand that I may revoke these directions at any time by giving verbal instructions to the emergency medical service providers, by physical cancellation or destruction of this form and/or the patient's EMS-DNR bracelet or card, or by simply not displaying this form or the EMS-DNR bracelet or card for the patient's EMS caregivers.

(h) Format of EMS-DNR bracelet.--The Department of Health shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available within 180 days of the effective date of this subsection standard EMS-DNR bracelets for issuance to declarants by attending physicians. The bracelets shall be uniform in design and shall at a minimum on the face clearly indicate EMS-DNR and the name of the patient and attending physician.

(i) Format of EMS-DNR card.--The Department of Health shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available within 180 days of the

effective date of this subsection standard EMS-DNR cards for
issuance to declarants by attending physicians. The cards shall
be wallet-sized and contain, but not be limited to, the
following:

PENNSYLVANIA EMERGENCY MEDICAL SERVICES

DO-NOT-RESUSCITATE CARD

Patient's full legal name:

Attending physician's name:

This patient has an operative advance directive and
emergency medical services do-not-resuscitate order. EMS
personnel are instructed not to perform cardiopulmonary
resuscitation (cardiac compression, endotracheal
intubation, artificial ventilation, defibrillation and
other related procedures) on this patient in the event of
the patient's respiratory or cardiac arrest. Do provide
to the patient other medical interventions, such as
intravenous fluids, oxygen or other therapies deemed
necessary to provide comfort care or to alleviate pain,
unless directed otherwise by the declarant or the
declarant's lawful surrogate.

§ 5415. Penalties.

Any person who willfully conceals, cancels, defaces,
obliterates or damages the declaration or EMS-DNR order,
bracelet or card of another without the consent of the declarant
commits a felony of the third degree. Any person who falsifies
or forges the declaration or EMS-DNR order, bracelet or card of
another, or willfully conceals or withholds personal knowledge
of a revocation as provided in section 5406 (relating to
revocation) or 5413(c) (relating to emergency medical services),
with the intent to cause a withholding or withdrawal of life-

1 sustaining treatment contrary to the wishes of the declarant
2 and, because of such an act, directly causes life-sustaining
3 treatment to be withheld or withdrawn and death to be hastened
4 shall be subject to prosecution for criminal homicide as
5 provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide).
6 Any person who willfully, by undue influence, fraud or duress,
7 causes a person to execute a declaration or EMS-DNR order
8 pursuant to this chapter commits a felony of the third degree.

9 Section 2. The Department of Health shall, with the advice
10 of the Pennsylvania Emergency Health Services Council and with
11 the assistance of the regional emergency medical services
12 councils, develop and make available to health care providers
13 recognized under the act of July 3, 1985 (P.L.164, No.45), known
14 as the Emergency Medical Services Act, within 180 days of the
15 effective date of this act educational materials relating to the
16 implementation of the provisions of this act. The department
17 shall also cause the requirements of this act to be included as
18 part of the curricula for health care providers recognized under
19 the Emergency Medical Services Act.

20 Section 3. The sum of \$50,000, or as much thereof as may be
21 necessary, is hereby appropriated to the Department of Health
22 for the fiscal year July 1, 1998, to June 30, 1999, to carry out
23 the provisions of this act.

24 Section 4. This act shall take effect in 60 days.