

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 978 Session of
1991

INTRODUCED BY JOSEPHS, HAGARTY, MUNDY, STURLA, BISHOP, HARLEY,
ITKIN, HECKLER, LEH, CARONE, ROEBUCK, STEELMAN AND VEON,
APRIL 3, 1991

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 3, 1991

AN ACT

1 Establishing a procedure whereby a person may execute in advance
2 a written declaration indicating to a physician the person's
3 desire for a physician to initiate, continue, withhold or
4 withdraw certain life-sustaining medical treatment in the
5 event the person is incompetent and is determined to be in a
6 terminal condition or to be permanently unconscious;
7 providing for a right of conscience; requiring life-
8 sustaining treatment to pregnant women in certain cases;
9 requiring in certain cases the provision of nutrition and
10 hydration; limiting the power of attorney; and providing
11 penalties.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Advance
11 Directive for Health Care Act.

12 Section 2. Legislative findings; intent.

13 (a) Findings.--The General Assembly finds that all competent
14 adults have a qualified right to control decisions relating to
15 their own medical care. This right is subject to certain
16 interests of society, such as the maintenance of ethical
17 standards in the medical profession and the preservation and
18 protection of human life. Modern medical technological
19 procedures make possible the prolongation of human life beyond
20 natural limits. The application of some procedures to an
21 individual suffering a difficult and uncomfortable process of
22 dying may cause loss of patient dignity and secure only
23 continuation of a precarious and burdensome prolongation of
24 life.

25 (b) Intent.--Nothing in this act is intended to condone,
26 authorize or approve mercy killing, or to permit any affirmative
27 or deliberate act or omission to end life other than as defined
28 in this act. Furthermore, this act shall create no presumption
29 concerning the intent of any person who has not executed a
30 declaration to consent to the use or withholding of life-

1 sustaining procedures in the event of a terminal condition or a
2 state of permanent unconsciousness, except with respect to the
3 provision of nutrition and hydration.

4 Section 3. Definitions.

5 The following words and phrases when used in this act shall
6 have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

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

10 "Declarant." A person who makes a declaration in accordance
11 with this act.

12 "Declaration." A written document, voluntarily executed by
13 the declarant in accordance with this act.

14 "Health care provider." A person who is licensed by the laws
15 of this Commonwealth to administer health care in the ordinary
16 course of business or practice of a profession or one who is in
17 the employ of such a person.

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

20 "Life-sustaining treatment." Any medical procedure or
21 intervention that, when administered to a qualified patient,
22 will serve only to prolong the process of dying or to maintain
23 the patient in a state of permanent unconsciousness. Life-
24 sustaining treatment shall include nutrition and hydration
25 administered by gastric tube or intravenously or any other
26 artificial or invasive means if the declaration of the qualified
27 patient so specifically provides.

28 "Permanently unconscious." A medical condition that has been
29 diagnosed in accordance with currently accepted medical
30 standards and with reasonable medical certainty as total and

1 irreversible loss of consciousness and capacity for interaction
2 with the environment. The term includes without limitation a
3 persistent vegetative state or irreversible coma.

4 "Person." An individual, corporation, partnership,
5 association, or Federal, State or local government or
6 governmental agency.

7 "Qualified patient." A person who has executed a declaration
8 and who has been determined to be in a terminal condition or to
9 be permanently unconscious.

10 "Terminal condition." An incurable and irreversible medical
11 condition caused by injury, disease or physical illness which
12 will, in the opinion of the attending physician, to a reasonable
13 degree of medical certainty, result in death in a short period
14 of time regardless of the continued application of life-
15 sustaining treatment.

16 Section 4. Declaration.

17 (a) Execution.--An individual of sound mind who is 18 years
18 of age or older or who is otherwise authorized to give medical
19 consent on his behalf pursuant to the act of February 13, 1970
20 (P.L.19, No.10), entitled "An act enabling certain minors to
21 consent to medical, dental and health services, declaring
22 consent unnecessary under certain circumstances," may execute at
23 any time a declaration governing the initiation, continuation,
24 withholding or withdrawal of life-sustaining treatment. The
25 declaration must be signed by the declarant, or by another on
26 behalf of and at the direction of the declarant, and must be
27 witnessed by two individuals each of whom is 18 years of age or
28 older. A witness shall not be the person who signed the
29 declaration on behalf of and at the direction of the declarant.

30 (b) Form.--A declaration may but need not be in the

1 following form and may include other specific directions
2 including, but not limited to, designation of another person to
3 make the treatment decision for the declarant if the declarant
4 is incompetent and is determined to be in a terminal condition
5 or to be permanently unconscious:

6 DECLARATION

7 I, , being of sound mind, willfully and
8 voluntarily make this declaration to be followed if I become
9 incompetent. This declaration reflects my firm and settled
10 commitment to refuse life-sustaining treatment under the
11 circumstances indicated below.

12 I direct my attending physician to withhold or withdraw
13 life-sustaining treatment that serves only to prolong the
14 process of my dying, if I should be in a terminal condition
15 or in a state of permanent unconsciousness.

16 I direct that treatment be limited to measures to keep me
17 comfortable and to relieve pain, including any pain that
18 might occur by withholding or withdrawing life-sustaining
19 treatment.

20 In addition, if I am in the condition described above, I
21 feel especially strongly about the following forms of
22 treatment:

23 I () do () do not want cardiac resuscitation.

24 I () do () do not want mechanical respiration.

25 I () do () do not want tube feeding or any other
26 artificial or invasive form of nutrition (food) or hydration
27 (water).

28 I () do () do not want blood or blood products.

29 I () do () do not want any form of surgery or invasive
30 diagnostic tests.

1 I () do () do not want kidney dialysis.

2 I () do () do not want antibiotics.

3 I realize that if I do not specifically indicate my
4 preference regarding any of the forms of treatment listed
5 above, I may receive that form of treatment.

6 Other instructions:

7
8

9 I () do () do not want to designate another person as
10 my surrogate to make life-sustaining treatment decisions for
11 me if I should be incompetent and in a terminal condition or
12 in a state of permanent unconsciousness. I understand that my
13 designated surrogate is not authorized to consent to the
14 withholding or withdrawal of artificial nutrition and
15 hydration unless I have provided specific directions. My
16 specific directions to my surrogate in connection with
17 artificial nutrition and hydration are:

18
19

20 Name and address of surrogate (if applicable):

21
22

23 Name and address of substitute surrogate (if surrogate
24 designated above is unable to serve):

25
26

27 I () do () do not want this declaration to be followed
28 if I am pregnant at the time I am declared incompetent.

29 I made this declaration on the day of
30 (month, year).

1 Declarant's signature:

2 Declarant's address:

3 The declarant or the person on behalf of and at the
4 direction of the declarant knowingly and voluntarily signed
5 this writing by signature or mark in my presence.

6 Witness's signature:

7 Witness's address:

8 Witness's signature:

9 Witness's address:

10 (c) Invalidity of specific direction.--Should any specific
11 direction in the declaration be held to be invalid, the
12 invalidity shall not offset other directions of the declaration
13 which can be effected without the invalid direction.

14 (d) Medical record.--A physician or other health care
15 provider who is furnished a copy of the declaration shall make
16 it a part of the declarant's medical record and, if unwilling to
17 comply with the declaration, promptly so advise the declarant.

18 Section 5. When declaration becomes operative.

19 A declaration becomes operative when:

20 (1) a copy is provided to the attending physician; and

21 (2) the declarant is determined by the attending
22 physician to be incompetent and in a terminal condition or in
23 a state of permanent unconsciousness.

24 When the declaration becomes operative, the attending physician
25 and other health care providers shall act in accordance with its
26 provisions or pursuant to the provisions of section 9.

27 Section 6. Revocation.

28 (a) General rule.--A declaration may be revoked at any time
29 and in any manner by the declarant, without regard to the
30 declarant's mental or physical condition. A revocation is

1 effective upon communication to the attending physician or other
2 health care provider by the declarant or a witness to the
3 revocation.

4 (b) Medical record.--The attending physician or other health
5 care provider shall make the revocation a part of the
6 declarant's medical record.

7 Section 7. Liability.

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

17 (b) Absence of declaration.--The absence of a declaration by
18 a patient shall not give rise to any presumption as to the
19 intent of the patient to consent to or to refuse the initiation,
20 continuation or termination of life-sustaining treatment.

21 Section 8. Duty of physician to confirm terminal condition.

22 For purposes of section 5, an attending physician shall,
23 without delay after the diagnosis that the declarant is in a
24 terminal condition or in a state of permanent unconsciousness,
25 certify in writing that the declarant is in a terminal condition
26 or in a state of permanent unconsciousness and arrange for the
27 physical examination and confirmation of the terminal condition
28 or state of permanent unconsciousness of the declarant by a
29 second physician.

30 Section 9. Conscience clause.

1 (a) General rule.--Nothing in this act shall obligate a
2 health care provider to follow any declaration or direction with
3 respect to the life-sustaining treatment or care of a person if
4 such declaration or direction would be contrary to the
5 conscience of a health care provider who is an individual or
6 would be contrary to the stated ethical or moral principles or
7 policies of an institutional health care provider.

8 (b) Procedure.--An attending physician who or health care
9 provider which is unwilling to follow a declaration for reasons
10 as set forth in subsection (a) shall so advise the declarant's
11 representative, guardian or family of that unwillingness and
12 shall take all reasonable steps to transfer care of the
13 declarant to another physician or health care provider which
14 transfer shall be at the expense of that person or entity
15 responsible for the cost of declarant's care.

16 (c) Effect.--If such transfer is not possible, the provision
17 of life-sustaining treatment to a declarant shall not subject
18 any health care provider to criminal or civil liability or
19 administrative sanction for failure to carry out the provisions
20 of an advance directive for health care.

21 Section 10. Effect on suicide and life insurance; declaration
22 optional.

23 (a) Criminal effect.--The withholding or withdrawal of life-
24 sustaining treatment from a qualified patient in accordance with
25 the provisions of this act shall not, for any purpose,
26 constitute suicide or homicide.

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

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

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

12 (1) require any person to execute a declaration as a
13 condition for being insured for, or receiving, health care
14 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 Section 11. Preservation of existing rights; required treatment
18 of pregnant women; power of attorney.

19 (a) Legal rights not impaired.--The provisions of this act
20 shall not impair any existing right of a competent individual to
21 consent to or refuse to consent to his or her medical treatment.
22 All other existing rights which a person or health care provider
23 may have regarding the initiation, withholding or withdrawal of
24 life-sustaining treatment shall continue in effect except as
25 superseded by the provisions of this act.

26 (b) Power of attorney.--An attorney-in-fact appointed under
27 a power of attorney shall have no authority to consent to the
28 withholding or withdrawal of nutrition and hydration from the
29 principal who executed the power unless such power of attorney
30 expressly grants such authority to the attorney-in-fact and

1 specifies the conditions under which such withholding or
2 withdrawal may occur.

3 (c) Pregnancy.--Notwithstanding the existence of any
4 declaration or direction to the contrary, life-sustaining
5 treatment must be provided to a pregnant woman who is
6 incompetent and has a terminal condition or who is permanently
7 unconscious unless, to a reasonable degree of medical certainty
8 as certified on the patient's medical chart by the attending
9 physician and an obstetrician who has examined the patient, such
10 life-sustaining treatment will not maintain the pregnant woman
11 in such a way as to permit the continuing development and live
12 birth of the unborn child or will be physically harmful to the
13 pregnant woman or would cause pain to the pregnant woman which
14 cannot be alleviated by medication.

15 Section 12. Nutrition and hydration.

16 (a) Presumption.--It is presumed that every incompetent
17 person has directed his health care providers to provide him
18 with nutrition and hydration to a degree that is sufficient to
19 sustain life. This presumption shall not apply in any of the
20 following circumstances:

21 (1) If the incompetent person has a declaration executed
22 pursuant to the act which specifically authorized the
23 withholding or withdrawal of nutrition and hydration and the
24 person has a terminal condition or is permanently
25 unconscious.

26 (2) If the incompetent person has a terminal condition
27 or is permanently unconscious and the attending physician
28 knows, by clear and convincing evidence, that the person
29 while competent had made the decision to forego nutrition and
30 hydration or to have nutrition and hydration withdrawn,

1 provided that such decision was clearly expressed and
2 specifically related to the provision of nutrition and
3 hydration.

4 (3) If, in the reasonable medical opinion of the
5 attending physician, the administration of nutrition and
6 hydration:

7 (i) is not medically possible;

8 (ii) would itself cause severe, intractable and
9 long-lasting pain to the incompetent person;

10 (iii) could not be physically assimilated by the
11 incompetent person; or

12 (iv) would cause serious uncorrectable medical
13 complications.

14 (4) If, in the reasonable medical opinion of the
15 attending physician, the incompetent person:

16 (i) is chronically and irreversibly incompetent; and

17 (ii) is in the final stage of a terminal condition
18 and whose death from the underlying terminal condition is
19 imminent, provided however, nutrition and hydration may
20 not be withheld or withdrawn if the incompetent person
21 would die as a result of the deprivation of nutrition and
22 hydration rather than from the underlying terminal
23 condition.

24 (b) Prohibition.--This act specifically prohibits any person
25 from authorizing the withdrawal or withholding of nutrition and
26 hydration, and any health care provider or other person from
27 withdrawing or withholding nutrition or hydration from an
28 incompetent person except as provided in this act.

29 (c) Other measures.--Nothing in this act shall relieve the
30 physician, health care provider or health care facility of the

1 obligation to provide other measures deemed necessary to provide
2 comfort to a person or to alleviate his pain regardless of
3 whether a person has a terminal condition.

4 Section 13. Penalties.

5 Any person who willfully conceals, cancels, defaces,
6 obliterates or damages the declaration of another without the
7 consent of the declarant commits a felony of the third degree.
8 Any person who falsifies or forges the declaration of another,
9 or willfully conceals or withholds personal knowledge of a
10 revocation as provided in section 6, with the intent to cause a
11 withholding or withdrawal of life-sustaining treatment contrary
12 to the wishes of the declarant and, because of such an act,
13 directly causes life-sustaining treatment to be withheld or
14 withdrawn and death to be hastened, shall be subject to
15 prosecution for criminal homicide as provided in 18 Pa.C.S. Ch.
16 25 (relating to criminal homicide). Any person who willfully, by
17 undue influence, fraud or duress, causes a person to execute a
18 declaration pursuant to this act commits a felony of the third
19 degree.

20 Section 14. Effective date.

21 This act shall take effect immediately.