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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1586

Session of  
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INTRODUCED BY GLADECK, MORRIS, J. TAYLOR, JACKSON, NAHILL,  
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HECKLER, LASHINGER, ITKIN AND J. H. CLARK, MAY 31, 1989

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REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MAY 31, 1989

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AN ACT

1 Facilitating medical treatment decisionmaking by establishing a  
2 procedure whereby a person may execute in advance a written  
3 declaration indicating to a physician the person's desire for  
4 a physician to initiate, continue, withhold or withdraw  
5 certain medical treatment in the event the person suffers a  
6 terminal illness or injury and is incompetent; requiring in  
7 certain cases the provision of nutrition and hydration; and  
8 providing penalties.

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

10 Section 1. Short title.

11 This act shall be known and may be cited as the Medical  
12 Treatment Decision Act.

13 Section 2. Legislative purpose.

14 The General Assembly finds that all competent adults have a  
15 qualified right to control decisions relating to their own  
16 medical care. This right is subject to certain interests of  
17 society, such as the maintenance of ethical standards in the  
18 medical profession and the preservation and protection of human  
19 life, including the prevention of homicide, euthanasia and  
20 suicide or aided-suicide. The General Assembly further finds  
21 that, in some instances, the use of certain medical procedures  
22 for an incompetent person in a terminal condition may provide  
23 nothing necessary or beneficial to the person or may of itself  
24 impose an unwarranted burden on the person. To insure that the  
25 rights and intentions of a person in a terminal condition may be  
26 respected, even after that person is no longer able to  
27 participate actively in decisions concerning treatment, and to  
28 encourage communication between such a person and his family and  
29 physician, the General Assembly hereby declares its recognition  
30 of the right of a competent adult to make a written declaration

1 respecting the initiation, continuation, withholding or  
2 withdrawing of certain medical treatments in the event that such  
3 person becomes incompetent and is diagnosed as suffering from a  
4 terminal condition. The General Assembly further finds that  
5 while certain medical treatments can be withdrawn or withheld,  
6 it is a person's right to seek the institution or continuation  
7 of reasonable medical treatment which sustains life and that  
8 undertreatment of the terminally ill is not acceptable whether  
9 prompted by economic considerations or assumptions that some  
10 lives are not worth sustaining.

### 11 Section 3. Definitions.

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

15 "Adult." Any person 18 years of age or older.

16 "Attending physician." The physician who has primary  
17 responsibility for the treatment and care of the patient.

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

20 "Euthanasia." The intentional causing of the death of a  
21 person, whether by act or omission, in order to relieve such  
22 person of suffering or other persons or entities of  
23 psychological, financial, social or other burdens. The term  
24 shall not include the withholding or withdrawal of medical  
25 treatment as the term "medical treatment" is defined in this act  
26 and, as to a "patient" as defined in this act, shall not include  
27 the withholding or withdrawal of medical treatment done in  
28 accordance with this act.

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

1 "Life-support system." Any mechanical or electronic device,  
2 except one used for providing nutrition or hydration, utilized  
3 in order to replace, assist or supplement the function of any  
4 human vital organ or combination of organs.

5 "Medical treatment." The use of surgery, treatment,  
6 medication and the utilization of mechanical or electronic  
7 devices to sustain the life of a patient. The term shall not  
8 include any procedure, treatment, intervention or service to  
9 provide nutrition or hydration to a patient unless the nutrition  
10 or hydration could not be physically assimilated by the patient  
11 or would be physically harmful or unreasonably painful to the  
12 patient. The term shall also not include such medication or  
13 medical procedures as are necessary to provide comfort and care  
14 and to alleviate pain.

15 "Patient." A person who has been diagnosed and certified in  
16 writing to be afflicted with a terminal condition by two  
17 physicians, one of whom shall be the attending physician and  
18 both of whom shall have personally examined the patient.

19 "Terminal condition." An incurable and irreversible medical  
20 condition caused by injury, disease or physical illness which  
21 will, in the opinion of the attending physician, to a reasonable  
22 degree of medical certainty, result in death regardless of the  
23 continued application of medical treatment, including life-  
24 support systems. The term shall not include senility, affliction  
25 with Alzheimer's disease, any form of mental retardation or  
26 mental illness, or chronic mental or physical impairment,  
27 including comatose conditions, which alone will not result in  
28 death.

29 Section 4. Declaration.

30 (a) Execution.--Any competent adult may, at any time,

1 execute a declaration directing the initiating, continuing,  
2 withholding or withdrawal of medical treatment in the event the  
3 person should have a terminal condition and be incompetent. The  
4 declaration shall be signed and dated by the declarant, or by  
5 another person in the declarant's presence at the declarant's  
6 express direction, in the presence of two witnesses. All  
7 signatures must be notarized for the declaration to be  
8 effective. A witness must be at least 18 years of age. A witness  
9 shall not be:

10 (1) Related to the declarant by blood or marriage.

11 (2) Entitled to any portion of the estate of the  
12 declarant under the intestate succession laws of this  
13 Commonwealth, then existing, or under any will of the  
14 declarant, then existing.

15 (3) A person who has a claim against any portion of the  
16 estate of the declarant.

17 (4) The attending physician, an employee of the  
18 attending physician or an employee of a health facility in  
19 which the declarant is a patient.

20 (5) Directly or indirectly financially responsible for  
21 the medical care of the declarant or be an officer, agent or  
22 employee of any government agency, any insurance company or  
23 other organization financially responsible, in whole or in  
24 part, for medical care of the declarant.

25 (6) The person who signed the declaration on behalf and  
26 at the direction of the declarant.

27 (b) Notification.--It is the responsibility of the declarant  
28 to notify the attending physician of the existence of the  
29 declaration. The attending physician, when presented with the  
30 declaration, shall make the declaration, or a copy thereof, a

1 part of the medical records of the declarant.

2 (c) Form.--The declaration may be in the following form and  
3 may include other specific directions, including, but not  
4 limited to, a designation of another person to make the  
5 treatment decision for the declarant should the declarant be  
6 diagnosed as suffering from a terminal condition and be  
7 incompetent or otherwise mentally or physically incapable of  
8 communication. Should any specific direction be held to be  
9 invalid, the invalidity shall not affect other directions of the  
10 declaration which can be given effect without the invalid  
11 direction.

12 DECLARATION

13 Declaration made this \_\_\_\_ day of \_\_\_\_\_  
14 (month, year). I, \_\_\_\_\_, being of  
15 sound mind, willfully and voluntarily make known my  
16 desire that my dying shall not be artificially prolonged  
17 under the circumstances set forth below, and do hereby  
18 declare:

19 (1) If at any time I should have an incurable  
20 condition caused by injury, disease or illness certified  
21 to be a terminal condition by two physicians who have  
22 personally examined me, one of whom shall be my attending  
23 physician, and the physicians have determined that my  
24 death will occur whether or not medical treatment,  
25 including life-support systems, are utilized and where  
26 the application of medical treatment, including life-  
27 support systems, would serve only to artificially prolong  
28 the dying process, I direct that such treatment be  
29 withheld or withdrawn, and that I be permitted to die  
30 naturally with only the administration of medication or

1 the performance of any medical procedure deemed necessary  
2 to alleviate pain.

3 (2) In the absence of my ability to give directions  
4 regarding the use of such medical treatment, it is my  
5 intention that this declaration shall be honored by my  
6 family and physician as the final expression of my wish  
7 to refuse medical treatment and accept the consequences  
8 from such refusal.

9 (3) I understand the full import of this declaration  
10 and I am emotionally and mentally competent to make this  
11 declaration.

12 Signed\_\_\_\_\_

13 City, County and State of Residence \_\_\_\_\_

14 Jurat

15 (d) Limitations on declaration.--

16 (1) The declaration may include directions, including,  
17 but not limited to, a designation of another person to  
18 participate in the making of the treatment decision for the  
19 declarant should the declarant be diagnosed as suffering from  
20 a terminal condition and be incompetent or otherwise mentally  
21 incapable of communication. However, a designee may not  
22 participate in the treatment decision unless the patient does  
23 not then have and will not regain, to a reasonable degree of  
24 medical certainty, the capacity to make decisions for  
25 himself.

26 (2) Notwithstanding the form or the specific directions  
27 of a declaration, medical treatment must be provided to a  
28 pregnant patient with a terminal condition unless, to a  
29 reasonable degree of medical certainty, as certified on the  
30 patient's medical chart by the attending physician and an

obstetrician who has examined the patient, such medical treatment will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the patient or prolong severe pain which cannot be alleviated by medication.

(3) Should any specific direction in the declaration be held to be invalid, the invalidity shall not offset other directions of the declaration which can be effected without the invalid direction.

(e) Witnessing of a declaration.--The witnesses to a declaration must sign a statement at the time the declaration is executed which statement must be attached to the declaration and be in substantially the following form:

I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am at least 18 years of age and am not related to the declarant by blood or marriage, have no claim against any portion of the estate of the declarant, am not entitled to any portion of the estate of the declarant according to the laws of intestate succession of Pennsylvania or under any will of the declarant or codicil thereto, nor am I directly or indirectly financially responsible for declarant's medical care. I am not the declarant's attending physician, an employee of the attending physician or an employee of the health facility in which the declarant is a patient.

Witness \_\_\_\_\_

Witness \_\_\_\_\_



1           Jurat

2       (f) Right to have medical treatment initiated or  
3 continued.--Nothing in this section shall be construed to  
4 prohibit a person from executing a declaration pursuant to this  
5 section which directs the initiation or continuation of medical  
6 treatment in the event the person should have a terminal  
7 condition.

8 Section 5. Revocation.

9       (a) Methods.--A declaration may be revoked at any time by  
10 the declarant, without regard to his mental state or competency,  
11 by any of the following methods:

12           (1) By being canceled, defaced, obliterated, burnt, torn  
13 or otherwise destroyed by the declarant or by some person in  
14 his presence and by his direction. Revocation of a  
15 declaration shall become effective only upon:

16                   (i) taking such an action; and

17                   (ii) upon communication of revocation to the  
18 attending physician by the declarant or by a person  
19 acting on behalf of the declarant.

20           (2) By a written revocation of the declarant expressing  
21 his intent to revoke, signed and dated by the declarant. The  
22 revocation shall become effective only upon communication of  
23 the revocation to the attending physician by the declarant or  
24 by a person acting on behalf of the declarant. The attending  
25 physician shall record in the medical record of the patient  
26 the time and date when he received notification of the  
27 written revocation.

28           (3) By an oral expression by the declarant of his intent  
29 to revoke the declaration. The revocation shall become  
30 effective only upon communication of the revocation to the

1 attending physician by the declarant or by a person acting on  
2 behalf of the declarant. The attending physician shall record  
3 in the medical record of the patient the time, date and place  
4 of the revocation and the time, date and place, if different,  
5 of when he received notification of the revocation.

6 (b) Effect upon criminal or civil liability.--There shall be  
7 no criminal or civil liability on the part of any person for  
8 failure to act upon a revocation made pursuant to this section  
9 unless that person has actual knowledge of the revocation.

10 Section 6. Time limitation.

11 A declaration executed in accordance with this act shall be  
12 effective for five years from the date of execution, provided  
13 that, if the declarant becomes incompetent within five years  
14 after the execution of the declaration and remains incompetent  
15 at the time of the determination of a terminal condition as  
16 provided by section 8, the declaration shall continue in effect.  
17 Upon the expiration of the declaration, a new declaration must  
18 be executed should the declarant wish to make a written  
19 declaration pursuant to this act. However, if the declaration  
20 has expired and the physician proceeds under section 7(a)(2),  
21 there shall be a presumption in favor of the expired declaration  
22 as the express wish of the patient concerning medical treatment.

23 Section 7. Liability.

24 (a) General rule.--No physician, licensed health care  
25 professional, health care provider, health care facility or  
26 employee thereof who, in good faith and pursuant to reasonable  
27 medical standards and otherwise consistent with this act, causes  
28 or participates in the initiating, continuing, withholding or  
29 withdrawal of medical treatment, including life-support systems,  
30 from a patient who is incompetent shall, as a result thereof, be

1 subject to criminal or civil liability, or be found to have  
2 committed an act of unprofessional conduct if:

3 (1) the attending physician has followed the patient's  
4 wishes as expressed earlier by the patient in the form of a  
5 declaration executed pursuant to this act; or

6 (2) in a situation where there appears to exist no  
7 declaration executed pursuant to this act, the physician has  
8 obtained the written informed consent of any of the following  
9 individuals who shall be guided by the express or implied  
10 wishes of the patient concerning medical treatment, these  
11 persons to be consulted in the following order of priority:

12 (i) the guardian of the person of the patient if one  
13 has been appointed;

14 (ii) the spouse of the patient;

15 (iii) the adult child of the patient or, if the  
16 patient has more than one adult child, by a majority of  
17 the adult children who are reasonably available for  
18 consultation;

19 (iv) a parent of the patient; or

20 (v) the nearest living relative of the patient.

21 (b) Express consent.--The written informed consent of the  
22 first of the individuals listed in subsection (a)(2) willing to  
23 consult and competent to render the consent shall constitute the  
24 written informed consent required by subsection (a)(1).

25 (c) Absence of declaration.--The absence of a declaration by  
26 a patient shall not give rise to any presumption as to the  
27 intent of the patient to consent to or to refuse the initiation,  
28 continuation or termination of medical treatment.

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

30 (a) Procedure after diagnosis of terminal condition.--An

1 attending physician shall, without delay after the diagnosis of  
2 a terminal condition of a person, certify, in writing, the  
3 terminal condition of the patient and arrange for the physical  
4 examination and diagnosis of the patient's condition by a second  
5 physician.

6 (b) Informing patient of terminal condition.--Once written  
7 certification and confirmation of the terminal condition of a  
8 declarant is made, a person who made a declaration must be  
9 advised by the attending physician of his terminal condition.  
10 The current wishes of the person shall, at all times, supersede  
11 the effect of the declaration. If the person is diagnosed as  
12 incompetent, the declarant shall become a patient as defined in  
13 this act only upon written certification and confirmation of a  
14 terminal condition by the attending physician and the second  
15 physician.

16 Section 9. Failure to comply.

17 (a) Unprofessional conduct.--An attending physician shall be  
18 deemed to have refused to comply with this act and be considered  
19 to have committed an act of unprofessional conduct if:

20 (1) the physician fails to consider and act upon the  
21 declaration of a patient or the treatment consent of a person  
22 designated to participate in the treatment decision by the  
23 declarant in the declaration to the extent that the  
24 declaration or decision is consistent with this act and is  
25 pursuant to reasonable medical standards; or

26 (2) as to a patient without a declaration executed  
27 pursuant to this act, the physician fails to act consistent  
28 with the terms of this act and reasonable medical standards.

29 (b) Transfer to another physician.--Notwithstanding the  
30 provisions of subsection (a), an attending physician shall not

1 be considered to have committed an act of unprofessional conduct  
2 if:

3 (1) the physician advises or attempts to advise the  
4 designee of the patient named in his validly executed  
5 declaration (but if there is no such declaration and  
6 designee, then the first available person in the order of  
7 priority set forth in section 7(a)(2)) of the physician's  
8 unwillingness to act; and

9 (2) the physician further advises or attempts to advise  
10 him that the patient may be transferred to the care of  
11 another physician chosen by the patient's representative with  
12 arrangements for such transfer being the responsibility of  
13 the patient's representative.

14 (c) Declaration or direction must be consistent with medical  
15 standards.--Nothing in this act shall obligate a physician,  
16 health care provider or health care facility to follow a  
17 patient's declaration or the directions of the patient's  
18 designee, if such declaration or direction would be contrary to  
19 reasonable medical standards.

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

22 (a) Suicide.--The withholding or withdrawal of medical  
23 treatment from a patient in accordance with the provisions of  
24 this act shall not, for any purpose, constitute a suicide or  
25 causing or aiding a suicide.

26 (b) Life insurance.--The making of, or failure to make, a  
27 declaration in accordance with this act shall not affect in any  
28 manner the sale, procurement or issuance of any policy of life  
29 insurance, nor shall it be deemed to modify the terms of an  
30 existing policy of life insurance. No policy of life insurance

1 shall be legally impaired or invalidated in any manner by the  
2 withholding or withdrawal of medical treatment from an insured  
3 patient, notwithstanding any term of the policy to the contrary.

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

10 (1) shall require any person to execute a declaration as  
11 a condition for being insured for, or receiving, health care  
12 services; or

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

16 Section 11. Euthanasia and aided-suicide prohibited.

17 Nothing in this act shall be construed to condone, authorize  
18 or approve euthanasia or aided-suicide, or to permit any  
19 affirmative or deliberate act or omission to end life other than  
20 to permit the natural process of dying as provided in this act.

21 Section 12. Preservation of existing rights; required  
22 treatment; power of attorney.

23 (a) Legal rights not impaired.--The provisions of this act  
24 are cumulative with existing law regarding the right of an  
25 individual to consent or refuse to consent to medical treatment  
26 and shall not impair or supersede any existing rights or  
27 responsibilities which a health care provider, a patient,  
28 including a minor or incompetent patient, or the family of a  
29 patient may have in regard to the withholding or withdrawal of  
30 medical treatment under the laws of this Commonwealth.

1 (b) Necessary medical care.--Any section of this act which  
2 requires that certain treatment, or nutrition or hydration, or  
3 both, be provided establishes a course of necessary medical  
4 care.

5 (c) Pregnant patients.--Whether or not a patient had made a  
6 declaration pursuant to this act, medical treatment must be  
7 provided to a pregnant patient with a terminal condition unless,  
8 to a reasonable degree of medical certainty, as certified on the  
9 patient's medical chart by the attending physician and an  
10 obstetrician who has examined the patient, such medical  
11 treatment will not maintain the patient in such a way as to  
12 permit the continuing development and live birth of the unborn  
13 child or will be physically harmful or unreasonably painful to  
14 the patient or prolong severe pain which cannot be alleviated by  
15 medication.

16 (d) Power of attorney.--A power of attorney executed  
17 pursuant to 20 Pa.C.S. Ch. 56 (relating to powers of attorney)  
18 shall, as to the treatment for a patient with a terminal  
19 condition, have no greater effect than a declaration executed  
20 pursuant to this act notwithstanding any specific grant of power  
21 by a patient regarding medical care, nursing care or medical and  
22 surgical procedures.

23 Section 13. Requirement to provide nutrition and hydration.

24 Nothing in this act shall relieve a person, whether or not he  
25 has a terminal condition, of the right and obligation to  
26 receive, or the physician, health care provider or health care  
27 facility of the obligation to provide, nutrition and hydration  
28 except that as to a patient with a terminal condition such  
29 nutrition and hydration may be withheld if it could not be  
30 physically assimilated by the patient or would be physically

1 harmful or unreasonably painful to the patient. Further, nothing  
2 in this act shall relieve the physician, health care provider or  
3 health care facility of the obligation to provide other measures  
4 deemed necessary to provide comfort to a person or to alleviate  
5 his pain regardless of whether a person has a terminal  
6 condition.

7 Section 14. Penalties.

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

22 Section 15. Effective date.

23 This act shall take effect immediately.