

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY GLADECK, MORRIS, J. TAYLOR, JACKSON, NAHILL,
SAURMAN, HAGARTY, REBER, TIGUE, MOWERY, BUNT, FOX, GEIST,
LANGTRY, MERRY, O'DONNELL, FARMER, ROBINSON, JOHNSON,
HECKLER, LASHINGER, ITKIN AND J. H. CLARK, MAY 31, 1989

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

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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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 Medical
11 Treatment Decision Act.

12 Section 2. Legislative purpose.

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

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4 while certain medical treatments can be withdrawn or withheld,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

10 Section 3. Definitions.

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

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

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

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

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

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

30 "Life-support system." Any mechanical or electronic device,

1 except one used for providing nutrition or hydration, utilized
2 in order to replace, assist or supplement the function of any
3 human vital organ or combination of organs.

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

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

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

28 Section 4. Declaration.

29 (a) Execution.--Any competent adult may, at any time,
30 execute a declaration directing the initiating, continuing,

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

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

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

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

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

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

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

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

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

11 DECLARATION

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

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

1 to alleviate pain.

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

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

11 Signed_____

12 City, County and State of Residence _____

13 Jurat

14 (d) Limitations on declaration.--

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

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

1 treatment will not maintain the patient in such a way as to
2 permit the continuing development and live birth of the
3 unborn child or will be physically harmful or unreasonably
4 painful to the patient or prolong severe pain which cannot be
5 alleviated by medication.

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

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

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

28 Witness_____

29 Witness_____

30 Jurat

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

7 Section 5. Revocation.

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

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

15 (i) taking such an action; and

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

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

27 (3) By an oral expression by the declarant of his intent
28 to revoke the declaration. The revocation shall become
29 effective only upon communication of the revocation to the
30 attending physician by the declarant or by a person acting on

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

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

9 Section 6. Time limitation.

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

22 Section 7. Liability.

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

committed an act of unprofessional conduct if:

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

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

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

(ii) the spouse of the patient;

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

(iv) a parent of the patient; or

(v) the nearest living relative of the patient.

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

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

Section 8. Duty of physician to confirm terminal condition.

(a) Procedure after diagnosis of terminal condition.--An attending physician shall, without delay after the diagnosis of

1 a terminal condition of a person, certify, in writing, the
2 terminal condition of the patient and arrange for the physical
3 examination and diagnosis of the patient's condition by a second
4 physician.

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

15 Section 9. Failure to comply.

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

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

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

28 (b) Transfer to another physician.--Notwithstanding the
29 provisions of subsection (a), an attending physician shall not
30 be considered to have committed an act of unprofessional conduct

1 if:

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

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

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

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

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

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

1 withholding or withdrawal of medical treatment from an insured
2 patient, notwithstanding any term of the policy to the contrary.

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

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

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

15 Section 11. Euthanasia and aided-suicide prohibited.

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

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

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

30 (b) Necessary medical care.--Any section of this act which

1 requires that certain treatment, or nutrition or hydration, or
2 both, be provided establishes a course of necessary medical
3 care.

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

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

22 Section 13. Requirement to provide nutrition and hydration.

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

1 in this act shall relieve the physician, health care provider or
2 health care facility of the obligation to provide other measures
3 deemed necessary to provide comfort to a person or to alleviate
4 his pain regardless of whether a person has a terminal
5 condition.

6 Section 14. Penalties.

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

21 Section 15. Effective date.

22 This act shall take effect immediately.