

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 172 Session of
1999

INTRODUCED BY GREENLEAF, LEMMOND, O'PAKE, WHITE, BELL, HOLL AND
WOZNIAK, JANUARY 21, 1999

REFERRED TO PUBLIC HEALTH AND WELFARE, JANUARY 21, 1999

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 advance directives for health care; providing for out-of-
4 hospital do-not-resuscitate orders; granting powers to and
5 imposing duties upon the Department of Health; imposing
6 penalties; adding provisions relating to health care agents
7 and representatives; and making editorial changes.

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

10 Section 1. The heading of Chapter 54 of Title 20 of the
11 Pennsylvania Consolidated Statutes is amended to read:

12 CHAPTER 54

13 [ADVANCE DIRECTIVE FOR] HEALTH CARE

14 Section 2. Chapter 54 of Title 20 is amended by adding a
15 subchapter to read:

16 SUBCHAPTER A

17 PRELIMINARY PROVISIONS

18 Sec.

19 5401. Definitions.

20 § 5401. Definitions.

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

4 "Attending physician." The physician who has primary
5 responsibility for the treatment and care of a declarant or
6 principal.

7 "Declarant." An individual who makes a declaration in
8 accordance with Subchapter B (relating to advance directive for
9 health care).

10 "Declaration." A written document voluntarily executed by
11 the declarant in accordance with Subchapter B (relating to
12 advance directive for health care).

13 "Department." The Department of Health of the Commonwealth.

14 "Do-not-resuscitate order" or "DNR order." A directive that
15 cardiopulmonary resuscitation; intubation, meaning any advanced
16 airway management; defibrillation; cardiac resuscitation
17 medications; and artificial ventilation should not be
18 administered to a particular individual.

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

22 "Health care." Any care, treatment, service or procedure to
23 maintain, diagnose, treat or provide for physical or mental
24 health, custodial or personal care, including any medication
25 program, therapeutical and surgical procedure and life-
26 sustaining treatment.

27 "Health care agent." An individual designated by a principal
28 in a health care power of attorney.

29 "Health care decision." A decision regarding an individual's
30 health care, including, but not limited to:

1 (1) Selection and discharge of health care providers and
2 health care institutions.

3 (2) Approval or disapproval of diagnostic tests,
4 surgical procedures and programs of medication.

5 (3) Directions to initiate, continue, withhold or
6 withdraw all forms of life-sustaining treatment, including
7 orders not to resuscitate.

8 "Health care institution." An institution, facility or
9 agency licensed, certified or otherwise authorized or permitted
10 by law to provide health care in the ordinary course of
11 business.

12 "Health care power of attorney." A writing made by a
13 principal designating an individual to make health care
14 decisions for the principal.

15 "Health care provider." A person who is licensed, certified
16 or otherwise authorized by the laws of this Commonwealth to
17 administer health care in the ordinary course of business or
18 practice of a profession. The term includes personnel recognized
19 under the act of July 3, 1985 (P.L.164, No.45), known as the
20 Emergency Medical Services Act.

21 "Health care representative." An individual authorized under
22 section 5428 (relating to decisions by health care
23 representative) to make health care decisions for a principal.

24 "Incompetent." The lack of sufficient capacity for an
25 individual to make or communicate decisions concerning that
26 individual.

27 "Life-sustaining treatment." Any medical procedure or
28 intervention that, when administered to a declarant or principal
29 who has been determined to be in a terminal condition or to be
30 permanently unconscious, will serve only to prolong the process

1 of dying or to maintain the individual in a state of permanent
2 unconsciousness.

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

6 "Out-of-hospital do-not-resuscitate bracelet" or "out-of-
7 hospital DNR bracelet." A bracelet in the standard format set
8 forth in section 5413.1 (relating to format of out-of-hospital
9 DNR order and identification), supplied by the Department of
10 Health and issued by the attending physician, which may be worn,
11 at the option of the person executing the order, to notify
12 emergency medical services providers of the presence of a do-
13 not-resuscitate order.

14 "Out-of-hospital do-not-resuscitate card" or "out-of-hospital
15 DNR card." A wallet-sized card in the standard format set forth
16 in section 5413.1 (relating to format of out-of-hospital DNR
17 order and identification), supplied by the Department of Health
18 and issued by the attending physician, which may be displayed,
19 at the option of the person executing the order, to notify
20 emergency medical services providers and other health care
21 providers of the presence of an out-of-hospital do-not-
22 resuscitate order.

23 "Out-of-hospital do-not-resuscitate identification" or "out-
24 of-hospital DNR identification." A bracelet, necklace or card
25 in the standard format set forth in section 5413.1 (relating to
26 format of out-of-hospital DNR order and identification),
27 supplied by the Department of Health and issued by the attending
28 physician, which may be worn, at the option of the person
29 executing the order, to notify emergency medical services
30 providers of the presence of a do-not-resuscitate order.

1 "Out-of-hospital do-not-resuscitate necklace" or "out-of-
2 hospital DNR necklace." A necklace in the standard format set
3 forth in section 5413.1 (relating to format of out-of-hospital
4 DNR order and identification), supplied by the Department of
5 Health and issued by the attending physician, which may be worn,
6 at the option of the person executing the order, to notify
7 emergency medical services providers of the presence of a do-
8 not-resuscitate order.

9 "Out-of-hospital do-not-resuscitate order" or "out-of-
10 hospital DNR order." An order in the standard format set forth
11 in section 5413.1 (relating to format of out-of-hospital DNR
12 order and identification), supplied by the Department of Health
13 and issued by the attending physician, directing health care
14 providers, including all emergency medical services personnel,
15 to withhold cardiopulmonary resuscitation (cardiac compression,
16 endotracheal intubation, artificial ventilation, defibrillation
17 and other related procedures) from the person executing the
18 order in the event of respiratory or cardiac arrest.

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

25 "Person." Any individual, corporation, partnership,
26 association or other similar entity, or any Federal, State or
27 local government or governmental agency.

28 "Principal." An individual who executes a health care power
29 of attorney, who designates an individual to act or disqualifies
30 an individual from acting as a health care representative, or an

1 individual for whom a health care representative is acting.

2 "Terminal condition." An incurable and irreversible medical
3 condition in an advanced state which will, in the opinion of the
4 attending physician, to a reasonable degree of medical
5 certainty, result in death regardless of whether life-sustaining
6 treatment would prolong the individual's life.

7 Section 3. Chapter 54 of Title 20 is amended by adding a
8 subchapter heading to read:

9 SUBCHAPTER B

10 ADVANCE DIRECTIVE FOR HEALTH CARE

11 Section 4. Sections 5401, 5402, 5403, 5404, 5405, 5407,
12 5409, 5410, 5411, 5412 and 5413 of Title 20 are amended to read:

13 § [5401] 5402. Short title of [chapter] subchapter.

14 This [chapter] subchapter shall be known and may be cited as
15 the Advance Directive for Health Care Act.

16 § [5402] 5403. Legislative findings and intent.

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

29 (b) Intent.--Nothing in this [chapter] subchapter is
30 intended to condone, authorize or approve mercy killing,

1 euthanasia or aided suicide or to permit any affirmative or
2 deliberate act or omission to end life other than as defined in
3 this [chapter] subchapter. Furthermore, this [chapter]
4 subchapter shall create no presumption concerning the intent of
5 any person who has not executed a declaration to consent to the
6 use or withholding of life-sustaining procedures in the event of
7 a terminal condition or a state of permanent unconsciousness.

8 [§ 5403. Definitions.

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

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

14 "Declarant." A person who makes a declaration in accordance
15 with this chapter.

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

18 "Health care provider." A person who is licensed or
19 certified by the laws of this Commonwealth to administer health
20 care in the ordinary course of business or practice of a
21 profession. The term includes personnel recognized under the act
22 of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical
23 Services Act.

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

26 "Life-sustaining treatment." Any medical procedure or
27 intervention that, when administered to a qualified patient,
28 will serve only to prolong the process of dying or to maintain
29 the patient in a state of permanent unconsciousness. Life-
30 sustaining treatment shall include nutrition and hydration

1 administered by gastric tube or intravenously or any other
2 artificial or invasive means if the declaration of the qualified
3 patient so specifically provides.

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

7 "Permanently unconscious." A medical condition that has been
8 diagnosed in accordance with currently accepted medical
9 standards and with reasonable medical certainty as total and
10 irreversible loss of consciousness and capacity for interaction
11 with the environment. The term includes, without limitation, a
12 persistent vegetative state or irreversible coma.

13 "Person." An individual, corporation, partnership,
14 association or Federal, State or local government or
15 governmental agency.

16 "Qualified patient." A person who has executed a declaration
17 and who has been determined to be in a terminal condition or to
18 be permanently unconscious.

19 "Terminal condition." An incurable and irreversible medical
20 condition in an advanced state caused by injury, disease or
21 physical illness which will, in the opinion of the attending
22 physician, to a reasonable degree of medical certainty, result
23 in death regardless of the continued application of life-
24 sustaining treatment.]

25 § 5404. Declaration.

26 (a) Execution.--An individual of sound mind who is 18 years
27 of age or older or who has graduated from high school or has
28 married may execute [at any time] a declaration governing the
29 initiation, continuation, withholding or withdrawal of life-
30 sustaining treatment. The declaration [must] shall be signed and

1 dated by the declarant by signature or mark, or by another on
2 behalf of and at the direction of the declarant[, and must]. If
3 the declaration is executed by mark or by another individual,
4 then it shall be witnessed by two individuals each of whom is 18
5 years of age or older. A witness shall not be the [person]
6 individual who signed the declaration on behalf of and at the
7 direction of the declarant. Neither a health care provider nor
8 its agent shall sign a declaration on behalf of and at the
9 direction of the declarant if that health care provider or agent
10 provides health care services to the declarant.

11 (b) Form.--A declaration may [but need not be in the
12 following form] be in any written form, including the following
13 form, expressing the wishes of the declarant regarding the
14 initiation, continuation, withholding or withdrawal of life-
15 sustaining treatment and may include other specific directions,
16 including, but not limited to, designation of another [person]
17 individual to make the treatment decision for the declarant if
18 the declarant is incompetent and is determined to be in a
19 terminal condition or to be permanently unconscious.

20 DECLARATION

21 I, _____, being of sound mind, willfully and
22 voluntarily make this declaration to be followed if I become
23 incompetent. This declaration reflects my firm and settled
24 commitment to refuse life-sustaining treatment under the
25 circumstances indicated below.

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

30 I direct that treatment be limited to measures to keep me

1 comfortable and to relieve pain, including any pain that
2 might occur by withholding or withdrawing life-sustaining
3 treatment.

4 [In addition, if I am in the condition described above, I
5 feel especially strong about the following forms of
6 treatment:

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

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

9 I () do () do not want tube feeding or any other
10 artificial or invasive form of nutrition (food) or hydration
11 (water).

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

13 I () do () do not want any form of surgery or invasive
14 diagnostic tests.

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

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

17 I realize that if I do not specifically indicate my
18 preference regarding any of the forms of treatment listed
19 above, I may receive that form of treatment.]

20 Other instructions:

21 I () do () do not want to designate another person as
22 my surrogate to make medical treatment decisions for me if I
23 should be incompetent and in a terminal condition or in a
24 state of permanent unconsciousness. Name and address of
25 surrogate (if applicable):

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

28 I () do () do not want to make an anatomical gift of
29 all or part of my body, subject to the following limitations,
30 if any:

1 I made this declaration on the day of (month,
2 year).

3 Declarant's signature:

4 Declarant's address:

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

8 Witness's signature:

9 Witness's address:

10 Witness's signature:

11 Witness's address:

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

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

21 § 5405. When declaration becomes operative.

22 A declaration becomes operative when:

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

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

27 When the declaration becomes operative, the attending physician
28 and other health care providers shall act in accordance with its
29 provisions or comply with the transfer provisions of section
30 5409 (relating to unwillingness to comply[;] and transfer of

1 declarant).

2 § 5407. Liability.

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

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

20 § 5409. Unwillingness to comply[;] and transfer of declarant.

21 (a) Attending physician or health care provider.--If an
22 attending physician or other health care provider cannot in good
23 conscience comply with a declaration or if the policies of the
24 health care provider preclude compliance with a declaration, the
25 attending physician or health care provider shall so inform the
26 declarant, or, if the declarant is incompetent, shall so inform
27 the declarant's surrogate, or, if a surrogate is not named in
28 the declaration, shall so inform the family, guardian or other
29 representative of the declarant. The attending physician or
30 health care provider shall make every reasonable effort to

1 assist in the transfer of the declarant to another physician or
2 health care provider who will comply with the declaration.

3 (b) Employee or staff member of health care provider.--An
4 employee or staff member of a health care provider shall not be
5 required to participate in the withholding or withdrawal of
6 life-sustaining treatment. It shall be unlawful for an employer
7 to discharge or in any other manner to discriminate against an
8 employee or staff member who informs the employer [that he does
9 not] of a wish not to participate in the withholding or
10 withdrawal of life-sustaining treatment. The employer may
11 require the employee or staff member to express [his] such
12 wishes in writing.

13 (c) Liability.--If transfer under subsection (a) is not
14 possible, the provision of life-sustaining treatment to a
15 declarant shall not subject a health care provider to criminal
16 or civil liability or administrative sanction for failure to
17 carry out the provisions of a declaration.

18 § 5410. Effect on suicide and life insurance.

19 (a) Criminal effect.--The withholding or withdrawal of life-
20 sustaining treatment from a [qualified patient] declarant who
21 has been determined to be in a terminal condition or to be
22 permanently unconscious in accordance with the provisions of
23 this [chapter] subchapter shall not, for any purpose, constitute
24 suicide or homicide.

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

1 manner by the withholding or withdrawal of life-sustaining
2 treatment from an insured patient, notwithstanding any term of
3 the policy to the contrary.

4 § 5411. Declaration optional.

5 No physician 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 Federal, State or local
9 government sponsored or operated program shall:

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

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

16 § 5412. Preservation of existing rights.

17 The provisions of this [chapter] subchapter shall not impair
18 or supersede any existing rights or responsibilities not
19 addressed in this [chapter] subchapter.

20 § 5413. Emergency medical services.

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

28 (b) Care given after declaration takes effect.--The
29 provisions of a declaration shall apply to care given to a
30 patient by emergency medical services personnel after the

1 declaration becomes operative under sections 5405 and 5408 only
2 if:

3 (1) an original declaration, signed by the declarant or
4 other authorized person, is presented to the emergency
5 medical services personnel. The emergency medical services
6 personnel must immediately notify the medical command
7 physician of the presence of the declaration; or

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

13 (c) Uncertainty regarding validity of declaration.--
14 Emergency medical services personnel confronted with any
15 conflicting information regarding the patient's wishes for life-
16 sustaining treatment shall act according to the accepted
17 treatment protocols and standards appropriate to their level of
18 certification.

19 (d) Applicability.--This section is applicable only in those
20 instances where an out-of-hospital DNR order is not in effect.

21 Section 5. Title 20 is amended by adding sections to read:

22 § 5413.1. Format of out-of-hospital DNR order and
23 identification.

24 (a) Format of out-of-hospital DNR order.--The department
25 shall make available within 180 days of the effective date of
26 this subsection standard out-of-hospital DNR orders for issuance
27 to persons by attending physicians of this Commonwealth. The
28 form of the order shall contain, but is not limited to, the
29 following:

30 PENNSYLVANIA EMERGENCY MEDICAL SERVICES

1 OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER

2 Patient's full legal name:

3 I, the undersigned, state that I am the attending physician
4 of the patient named above. The above-named patient, through the
5 signing of this document by the above-named patient or the
6 above-named patient's surrogate, has executed an out-of-hospital
7 do-not-resuscitate order.

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

19 Signature of attending physician:

20 Printed name of attending physician:

21 Dated:

22 Attending physician's emergency telephone number:

23 Signature of patient (if capable of making informed decisions):

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

1 displaying this form or the out-of-hospital do-not-resuscitate
2 bracelet, necklace or card to my emergency medical services
3 caregivers.

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

6 I, the undersigned, hereby certify that I am authorized to
7 provide consent on the patient's behalf by virtue of having been
8 designated as the patient's surrogate and/or by virtue of my
9 relationship to the patient (specify relationship: _____). I
10 hereby direct that in the event of the patient's cardiac and/or
11 respiratory arrest, efforts at cardiopulmonary resuscitation not
12 be initiated. I understand that I may revoke these directions at
13 any time by giving verbal instructions to the emergency medical
14 services providers, by physical cancellation or destruction of
15 this form and/or the patient's out-of-hospital do-not-
16 resuscitate bracelet, necklace or card, or by simply not
17 displaying this form or the out-of-hospital do-not-resuscitate
18 bracelet, necklace or card to the patient's emergency medical
19 services caregivers.

20 (b) Format of out-of-hospital DNR bracelet.--The department
21 shall make available within 180 days of the effective date of
22 this subsection standard out-of-hospital DNR bracelets for
23 issuance to persons by attending physicians. The bracelets shall
24 be uniform in design and shall on the face clearly indicate, but
25 not be limited to, the following information:

26 (1) Out-of-hospital do-not-resuscitate status.

27 (2) The name of the patient.

28 (3) The name of the attending physician.

29 (c) Format of out-of-hospital DNR necklace.--The department
30 shall make available within 180 days of the effective date of

this subsection standard out-of-hospital DNR necklaces for
issuance to persons by attending physicians. The necklaces shall
be uniform in design and shall on the face clearly indicate, but
not be limited to, the following information:

(1) Out-of-hospital do-not-resuscitate status.

(2) The name of the patient.

(3) The name of the attending physician.

(d) Format of out-of-hospital DNR card.--The department
shall make available within 180 days of the effective date of
this subsection standard out-of-hospital do-not-resuscitate
cards for issuance to persons by attending physicians. The cards
shall be wallet-sized and contain, but not be limited to, the
following:

PENNSYLVANIA EMERGENCY MEDICAL SERVICES

OUT-OF-HOSPITAL DO-NOT-RESUSCITATE CARD

Patient's full legal name:

Attending physician's name:

This patient has executed an out-of-hospital do-not-
resuscitate order. Emergency medical services 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 above-named
patient or the above-named patient's surrogate.

(e) Department contracting permitted.--The department may
contract with any public or private entity in order to

facilitate all or part of its responsibilities under this section.

§ 5413.2. Out-of-hospital DNR order and identification.

(a) Liability.--No physician, emergency medical services provider or other health care provider who, consistent with this section, withholds life-sustaining treatment in compliance with an out-of-hospital do-not-resuscitate order or identification shall, as a result of withholding such treatment, be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct.

(b) Out-of-hospital DNR orders and identification.--Through the use of an out-of-hospital do-not-resuscitate order, bracelet, necklace or card a person may signify to a health care provider, including all emergency medical services personnel, that the person's attending physician has issued an out-of-hospital do-not-resuscitate order. The choice of whether to wear an out-of-hospital do-not-resuscitate bracelet or necklace or to carry an out-of-hospital do-not-resuscitate card is that of the individual exercising his right to execute an out-of-hospital do-not-resuscitate order, and this choice does not affect the out-of-hospital do-not-resuscitate status of this individual.

(c) Issuance of out-of-hospital DNR orders and identification.--The attending physician of a person who chooses to exercise his right to execute an out-of-hospital do-not-resuscitate order shall issue to this person an out-of-hospital do-not-resuscitate order, and may issue, at the request of the person executing the order, an out-of-hospital do-not-resuscitate bracelet, necklace and card.

(d) Revocation.--An out-of-hospital do-not-resuscitate order may be revoked at any time and in any manner, including removal

by a person or his surrogate of the person's out-of-hospital do-not-resuscitate identification without regard to the person's mental or physical condition.

(e) Emergency medical services.--Emergency medical services personnel shall comply with an out-of-hospital do-not-resuscitate order if any one or more than one of the following apply:

(1) The order is apparent.

(2) Out-of-hospital DNR identification, such as an out-of-hospital DNR bracelet, necklace or card, is immediately available as provided for in subsection (b).

(3) Emergency medical services personnel are either aware of or are made aware of the existence of an out-of-hospital DNR order.

(f) Effect on suicide and life insurance.--The withholding of life-sustaining treatment in compliance with an out-of-hospital do-not-resuscitate order shall not constitute suicide or homicide and shall not have any effect on life insurance.

(g) No presumption.--This section shall not create a presumption concerning the intent of any person who does not possess out-of-hospital do-not-resuscitate identification with respect to the withholding of the life-sustaining procedures encompassed by an out-of-hospital do-not-resuscitate order.

(h) Persons to whom section is applicable.--This section is applicable to all persons who have executed an out-of-hospital do-not-resuscitate order.

(i) Recognition of other states' out-of-hospital DNR orders.--Out-of-hospital DNR orders valid in states other than this Commonwealth will be recognized in this Commonwealth to the extent that these orders are consistent with the law of this

1 Commonwealth. This Commonwealth has recognized the right of
2 persons in the exercise of their right of self-determination
3 with respect to their health care to have physicians provide for
4 the issuance of out-of-hospital DNR orders as well as
5 appropriate identification, such as an out-of-hospital DNR
6 bracelet, necklace or card, that an out-of-hospital DNR order
7 exists. Since this person may be in a state other than this
8 Commonwealth when the recognition of the right to forego
9 cardiopulmonary resuscitation occurs, this Commonwealth
10 encourages all of its sister states to recognize this order as a
11 recognition of the person's right to refuse this form of medical
12 treatment.

13 Section 6. Sections 5415 and 5416 of Title 20 are amended to
14 read:

15 § 5415. Penalties.

16 [Any person who willfully conceals, cancels, defaces,
17 obliterates or damages the declaration of another without the
18 consent of the declarant commits a felony of the third degree.
19 Any person who falsifies or forges the declaration of another,
20 or willfully conceals or withholds personal knowledge of a
21 revocation as provided in section 5406 (relating to revocation),
22 with the intent to cause a withholding or withdrawal of life-
23 sustaining treatment contrary to the wishes of the declarant
24 and, because of such an act, directly causes life-sustaining
25 treatment to be withheld or withdrawn and death to be hastened
26 shall be subject to prosecution for criminal homicide as
27 provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide).
28 Any person who willfully, by undue influence, fraud or duress,
29 causes a person to execute a declaration pursuant to this
30 chapter commits a felony of the third degree.]

1 (a) Unauthorized change.--A person commits a felony of the
2 third degree if that person willfully conceals, cancels, alters,
3 defaces, obliterates or damages any one of the following:

4 (1) The declaration of another, without the consent of
5 the declarant.

6 (2) The out-of-hospital DNR order of another, without
7 the consent of the individual who executed the order.

8 (3) The out-of-hospital DNR identification as set forth
9 in section 5413.1(b), (c) and (d) (relating to format of out-
10 of-hospital DNR order and identification), without the
11 consent of the individual who possesses the identification.

12 (b) Criminal homicide.--A person is subject to prosecution
13 for criminal homicide as provided in 18 Pa.C.S. Ch. 25 (relating
14 to criminal homicide) if that person, with the intent to cause a
15 withholding or withdrawal of life-sustaining treatment contrary
16 to the wishes of another, directly causes life-sustaining
17 treatment to be withheld or withdrawn and death to be hastened
18 by either:

19 (1) Falsifying or forging the declaration of another, or
20 willfully concealing or withholding personal knowledge of a
21 revocation as provided in section 5406 (relating to
22 revocation).

23 (2) Falsifying or forging the out-of-hospital DNR order
24 or out-of-hospital DNR identification of another, or
25 willfully concealing or withholding personal knowledge of a
26 revocation as provided in section 5413.2 (relating to out-of-
27 hospital DNR order and identification).

28 (c) Undue influence, fraud and duress.--A person commits a
29 felony of the third degree if that person willfully, by undue
30 influence, fraud or duress, causes an individual to execute a

1 declaration or out-of-hospital DNR order pursuant to this
2 subchapter.

3 [§ 5416. Severability.

4 The provisions of this chapter are severable, and, if any
5 word, phrase, clause, sentence, section or provision of the
6 chapter is for any reason held to be unconstitutional, the
7 decision of the court shall not affect or impair any of the
8 remaining provisions of this chapter. It is hereby declared as
9 the legislative intent that this chapter would have been adopted
10 had such unconstitutional word, phrase, clause, sentence,
11 section or provision thereof not been included herein.]

12 Section 7. Chapter 54 is amended by adding a subchapter to
13 read:

14 SUBCHAPTER C

15 HEALTH CARE AGENTS AND REPRESENTATIVES

16 Sec.

17 5421. Short title of subchapter.

18 5422. General provisions.

19 5423. Form of health care power of attorney.

20 5424. Countermand, amendment and revocation.

21 5425. Operation of health care power of attorney.

22 5426. Appointment of health care agents.

23 5427. Relation of health care agent to court-appointed
24 guardian and other agents.

25 5428. Decisions by health care representative.

26 5429. Duties of attending physician and health care provider.

27 5430. Limitations on liability.

28 5431. Unwillingness to comply and transfer of principal.

29 5432. Effect on life insurance.

30 5433. Conditioning services or action.

1 5434. Criminal penalties.

2 5435. Effect on other State law.

3 5436. Conflicting health care powers of attorney.

4 5437. Validity.

5 § 5421. Short title of subchapter.

6 This subchapter shall be known and may be cited as the Health
7 Care Agents and Representatives Act.

8 § 5422. General provisions.

9 (a) Who may execute a health care power of attorney.--An
10 individual of sound mind who is 18 years of age or older or has
11 graduated from high school or has married may execute a health
12 care power of attorney.

13 (b) Execution.--A health care power of attorney shall be
14 signed and dated by the principal by signature or mark, or by
15 another on behalf of and at the direction of the principal. If
16 the health care power of attorney is executed by mark or by
17 another individual, then it shall be witnessed by two
18 individuals, each of whom is 18 years of age or older. A witness
19 shall not be the individual who signed the health care power of
20 attorney on behalf of and at the direction of the principal.
21 Neither a health care provider nor its agent shall sign a health
22 care power of attorney on behalf of and at the direction of the
23 principal if that health care provider or agent provides health
24 care services to the principal.

25 § 5423. Form of health care power of attorney.

26 (a) Requirements.--A health care power of attorney shall:

27 (1) Identify the principal and appoint the health care
28 agent.

29 (2) Declare that the principal authorizes the health
30 care agent to have authority to make health care decisions on

1 behalf of the principal.

2 (b) Optional provisions.--A health care power of attorney
3 may, but need not:

4 (1) Describe the limitations, if any, that the principal
5 imposes upon the authority of the health care agent.

6 (2) Indicate the intent of the principal regarding the
7 initiation, continuation, withholding or withdrawal of life-
8 sustaining treatment.

9 (3) Disqualify an individual from acting as a health
10 care representative, prohibit the appointment of a health
11 care representative or provide for an order of priority of
12 appointment of a health care representative pursuant to
13 section 5428(c) (relating to decisions by health care
14 representative).

15 (4) Nominate a guardian of the person of the principal
16 as provided in section 5427(b) (relating to relation of
17 health care agent to court-appointed guardian and other
18 agents).

19 (5) Contain other provisions as the principal may
20 specify regarding the implementation of health care decisions
21 and related actions by the health care agent.

22 (c) Invalidity of specific direction.--Should any specific
23 direction in the health care power of attorney be held to be
24 invalid, the invalidity shall not negate other directions of the
25 health care power of attorney which can be effected without the
26 invalid direction.

27 § 5424. Countermand, amendment and revocation.

28 (a) Countermand of health care decision.--A principal may
29 countermand a health care decision made by the principal's
30 health care agent at any time and in any manner without regard

1 to the principal's mental or physical capacity by personally
2 informing the attending physician or health care provider. The
3 attending physician or health care provider shall make
4 reasonable efforts to inform promptly the health care agent of
5 the countermand. A countermand shall not affect the authority of
6 the health care agent to make other health care decisions in
7 accordance with the health care power of attorney.

8 (b) Amendment.--A principal while of sound mind may amend a
9 health care power of attorney by a writing executed in
10 accordance with the provisions of section 5422(b) (relating to
11 general provisions). An amendment may include the revocation in
12 part of the health care power of attorney or the designation of
13 new or additional health care agents.

14 (c) Divorce.--If the principal's spouse is designated as the
15 principal's health care agent and thereafter either spouse files
16 an action in divorce, the designation of the spouse as health
17 care agent shall be revoked as of the time the action is filed,
18 unless it clearly appears from the health care power of attorney
19 that the designation was intended to continue to be effective
20 notwithstanding the filing of an action in divorce by either
21 spouse.

22 (d) Revocation.--A principal while of sound mind may revoke
23 a health care power of attorney by a writing executed in
24 accordance with the provisions of section 5422(b) or by
25 personally informing the attending physician, health care
26 provider or health care agent that the health care power of
27 attorney is revoked.

28 (e) Effect of revocation.--A physician or other health care
29 provider may rely on the effectiveness of a health care power of
30 attorney unless notified of its revocation. A health care agent,

1 knowing of the revocation, shall not make or attempt to make
2 health care decisions for the principal.

3 § 5425. Operation of health care power of attorney.

4 (a) When operative.--Unless specifically provided otherwise
5 in the health care power of attorney, a health care power of
6 attorney becomes operative when a copy of the health care power
7 of attorney is provided to the attending physician and the
8 attending physician determines that the principal is unable to
9 make or communicate health care decisions and becomes
10 inoperative during such time as, in the determination of the
11 attending physician, the principal is able to make and
12 communicate health care decisions.

13 (b) Duration.--Unless the health care power of attorney
14 states a time of termination, it is valid until revoked by the
15 principal or the principal's guardian of the person,
16 notwithstanding the lapse of time since its execution. Unless
17 specifically provided otherwise in the health care power of
18 attorney, a health care power of attorney becomes inoperative
19 during such time as, in the determination of the attending
20 physician, the principal has the ability to make and communicate
21 health care decisions.

22 (c) Extent of authority of agent.--Except as expressly
23 provided otherwise in a health care power of attorney, and
24 subject to subsection (d), a health care agent shall have the
25 authority to make any and all health care decisions and to
26 exercise any and all rights and powers concerning the
27 principal's care, custody and health care treatment that the
28 principal could have made and exercised.

29 (d) Life-sustaining treatment decisions.--All life-
30 sustaining treatment decisions made by a health care agent shall

1 be subject to sections 5405 (relating to when declaration
2 becomes operative), 5408 (relating to duty of physician to
3 confirm terminal condition) and 5414 (relating to pregnancy).

4 (e) Health care decisions.--After consultation with health
5 care providers, and after consideration of the prognosis and
6 acceptable medical alternatives regarding diagnosis, treatments
7 and side effects, the health care agent shall make health care
8 decisions in accordance with the health care agent's
9 understanding and interpretation of any instructions given by
10 the principal at a time when the principal had the capacity to
11 make and communicate health care decisions. Instructions shall
12 include any declaration made by the principal and any clear
13 written or oral directions which cover the situation presented.
14 In the absence of instructions, the health care agent shall make
15 health care decisions in conformity with the health care agent's
16 assessment of the principal's preferences and values, including
17 religious and moral beliefs. If the health care agent does not
18 know enough about the principal's instructions, preferences and
19 values to make a decision, the health care agent shall act in
20 accordance with the health care agent's assessment of the
21 principal's best interests.

22 (f) Health care information.--Unless specifically provided
23 otherwise in the health care power of attorney, a health care
24 agent has the same rights and limitations as the principal to
25 request, examine, copy and consent or refuse to consent to the
26 disclosure of medical or other health care information.
27 Disclosure of medical or other health care information to a
28 health care agent does not constitute a waiver of any
29 evidentiary privilege or of a right to assert confidentiality.
30 Any health care provider that discloses such information to a

1 health care agent in good faith shall not be liable for that
2 disclosure. A health care agent shall not disclose health care
3 information regarding the principal except as is reasonably
4 necessary to perform the agent's obligations to the principal or
5 as otherwise required by law.

6 (g) Court approval unnecessary.--A health care decision made
7 by a health care agent for a principal is effective without
8 court approval.

9 § 5426. Appointment of health care agents.

10 (a) Multiple and successor health care agents.--A principal
11 may in a health care power of attorney provide for:

12 (1) The appointment of more than one health care agent,
13 who shall act jointly unless the health care power of
14 attorney provides otherwise.

15 (2) The appointment of one or more successor agents who
16 shall serve in the order named in the health care power of
17 attorney, unless the principal expressly directs to the
18 contrary.

19 (b) Limitation on appointment of agent.--Unless related by
20 blood, marriage or adoption, a health care agent may not be the
21 principal's attending physician or other health care provider,
22 nor an owner, operator or employee of a health care institution
23 in which the principal is receiving care.

24 § 5427. Relation of health care agent to court-appointed
25 guardian and other agents.

26 (a) Accountability of health care agent.--If a principal who
27 has executed a health care power of attorney is later
28 adjudicated an incapacitated person and a guardian of the person
29 to make health care decisions is appointed, the health care
30 agent is accountable to the guardian as well as to the

1 principal. The guardian shall have the same power to revoke or
2 amend the health care power of attorney that the principal would
3 have if the principal were not incapacitated.

4 (b) Nomination of guardian of person.--A principal may in a
5 health care power of attorney nominate the guardian of the
6 person for that principal for consideration by the court if
7 incapacity proceedings for the principal's person are thereafter
8 commenced. If the court determines that the appointment of a
9 guardian is necessary, the court shall make its appointment in
10 accordance with the principal's most recent nomination except
11 for good cause or disqualification.

12 (c) Reasonable expenses.--A health care agent may incur
13 reasonable expenses, including the purchase of health care
14 insurance, in fulfilling the health care needs for the principal
15 to the extent the expenses are not otherwise covered by
16 insurance or other similar benefits. Any guardian of the estate
17 of the principal or agent acting on behalf of the principal
18 under a power of attorney if that agent has the power to
19 disburse the principal's funds shall pay for the expenses or
20 reimburse the health care agent for the expenses from the
21 principal's funds.

22 § 5428. Decisions by health care representative.

23 (a) General rule.--A health care representative may make a
24 health care decision for an individual whose attending physician
25 has determined that the individual lacks the ability to make or
26 communicate health care decisions if:

27 (1) the individual is 18 years of age or older or has
28 graduated from high school or has married;

29 (2) the individual does not have a health care power of
30 attorney, or the individual's health care agent is not

1 reasonably available or has indicated an unwillingness to act
2 and no alternate health care agent is reasonably available;
3 and

4 (3) a guardian of the person to make health care
5 decisions has not been appointed for the individual.

6 (b) Extent of authority of health care representative.--The
7 authority of a health care representative shall be the same as
8 provided for a health care agent in sections 5425(c), (d), (e),
9 (f) and (g) (relating to operation of health care power of
10 attorney) and 5427(c) (relating to relation of health care agent
11 to court-appointed guardian and other agents).

12 (c) Who may act as health care representative.--An
13 individual of sound mind may, by a signed writing or by
14 personally informing the attending physician or the health care
15 provider, designate one or more individuals to act as health
16 care representative. In the absence of a designation or if no
17 designee is reasonably available, any member of the following
18 classes who is reasonably available, in descending order of
19 priority, may act as health care representative:

- 20 (1) the spouse unless an action for divorce is pending;
- 21 (2) an adult child;
- 22 (3) a parent;
- 23 (4) an adult brother or sister;
- 24 (5) an adult grandchild; or
- 25 (6) an adult who has exhibited special care and concern
26 for the principal and who is familiar with the principal's
27 personal values.

28 An individual may by a signed writing, including a health care
29 power of attorney, provide for a different order of priority. An
30 individual with a higher priority who is willing to act as a

1 health care representative may assume the authority to act
2 notwithstanding the fact that another individual has previously
3 assumed that authority.

4 (d) Disqualification.--An individual of sound mind may
5 disqualify one or more individuals from acting as health care
6 representative in the same manner as subsection (c) provides for
7 the designation of a health care representative. An individual
8 may also disqualify one or more individuals from acting as
9 health care representative by a health care power of attorney.
10 Upon the petition of any member of the classes set forth in
11 subsection (c), the court may for cause shown disqualify an
12 individual otherwise eligible to serve as a health care
13 representative.

14 (e) Limitation on designation of health care
15 representative.--Unless related by blood, marriage or adoption,
16 a health care representative may not be the principal's
17 attending physician or other health care provider, nor an owner,
18 operator or employee of a health care institution in which the
19 principal is receiving care.

20 (f) Decision of health care representative.--If more than
21 one member of a class assumes authority to act as a health care
22 representative, and they do not agree on a health care decision
23 and the attending physician or health care provider is so
24 informed, the attending physician or health care provider may
25 rely on the decision of a majority of the members of that class
26 who have communicated their views to the attending physician or
27 health care provider. If the class of health care
28 representatives is evenly divided concerning the health care
29 decision and the attending physician or health care provider is
30 so informed, an individual having a lower priority may not act

1 as a health care representative. So long as the class remains
2 evenly divided, no decision shall be deemed made until such time
3 as the parties resolve their disagreement. Notwithstanding such
4 disagreement, nothing in this subsection shall preclude the
5 administration of health care treatment in accordance with
6 accepted standards of medical practice.

7 (g) Duty of health care representative.--Immediately upon
8 assuming authority to act, a health care representative shall
9 communicate the assumption of authority to the members of the
10 principal's family specified in subsection (c) who can be
11 readily contacted.

12 (h) Countermand of health care decision.--A principal may
13 countermand a health care decision made by the health care
14 representative at any time and in any manner without regard to
15 the principal's mental or physical capacity by personally
16 informing the attending physician or health care provider. The
17 attending physician or health care provider shall make
18 reasonable efforts to inform promptly the health care
19 representative of the countermand. A countermand shall not
20 affect the authority of the health care representative to make
21 other health care decisions.

22 (i) Court approval unnecessary.--A health care decision made
23 by a health care representative for a principal is effective
24 without court approval.

25 (j) Written declaration of health care representative.--An
26 attending physician or health care provider may require a person
27 claiming the right to act as health care representative for a
28 principal to provide a written declaration made under penalty of
29 perjury stating facts and circumstances reasonably sufficient to
30 establish the claimed authority.

1 § 5429. Duties of attending physician and health care provider.

2 (a) Communication of health care decision.--Before
3 implementing a health care decision made by a health care agent
4 or by a health care representative, an attending physician or
5 health care provider, whenever possible, shall promptly
6 communicate to the principal the decision made and the identity
7 of the person making the decision.

8 (b) Compliance with decisions of health care agent or health
9 care representative.--An attending physician or health care
10 provider shall comply with health care decisions made by a
11 health care agent, subject to any specific limitations contained
12 in the health care power of attorney, or by a health care
13 representative to the same extent as if the decisions had been
14 made by the principal.

15 (c) Medical record.--Any attending physician or health care
16 provider who is given a health care power of attorney shall
17 arrange for the health care power of attorney or a copy to be
18 placed in the principal's medical record.

19 (d) Medical record entry.--Any attending physician or health
20 care provider to whom an amendment or revocation of a health
21 care power of attorney is communicated or to whom the
22 designation or disqualification of a health care representative
23 is communicated shall promptly enter the information in the
24 principal's medical record and maintain a copy if one is
25 furnished.

26 (e) Record of determination.--Any attending physician who
27 makes a determination that a principal is unable or has regained
28 the ability to make and communicate health care decisions or
29 makes a determination which affects the authority of a health
30 care agent or health care representative shall enter the

1 determination in the principal's medical record and, if
2 possible, shall inform promptly the principal and any health
3 care agent or health care representative of the determination.
4 § 5430. Limitations on liability.

5 (a) Attending physician, health care provider and health
6 care institution.--Any attending physician, health care
7 provider, health care institution and other person who acts in
8 good faith shall not be subject to civil or criminal liability,
9 discipline for unprofessional conduct or administrative
10 sanctions for:

11 (1) complying with any direction or decision of an
12 individual who the health care provider believes in good
13 faith has authority to act as the principal's health care
14 agent or health care representative so long as, in the case
15 of a health care agent, the direction or decision is not
16 clearly contrary to the terms of the health care power of
17 attorney;

18 (2) declining to comply with a direction or decision of
19 an individual based on a good faith belief that the
20 individual lacks authority to act as the principal's health
21 care agent or health care representative;

22 (3) complying with a health care power of attorney under
23 the assumption that it was valid when made and has not been
24 amended or revoked; or

25 (4) disclosing health care information to another person
26 based upon a good faith belief that the disclosure would be
27 authorized, permitted or required by this subchapter.

28 Any attending physician, health care provider, health care
29 institution and other person so acting is protected and released
30 to the same extent as if dealing directly with a competent

1 principal.

2 (b) Health care agent.--No health care agent who in good
3 faith acts for the principal and in accordance with the terms of
4 a health care power of attorney, or who fails to act, shall be
5 subject to civil or criminal liability for the action or
6 inaction.

7 (c) Health care representative.--No health care
8 representative who in good faith acts for the principal, or who
9 fails to act, shall be subject to civil or criminal liability
10 for the action or inaction.

11 (d) Death not suicide or homicide.--Death resulting from the
12 withholding or withdrawal of life-sustaining treatment in
13 accordance with the provisions of this subchapter shall not for
14 any purpose constitute suicide or homicide.

15 § 5431. Unwillingness to comply and transfer of principal.

16 (a) Attending physician or health care provider.--If an
17 attending physician or health care provider cannot in good
18 conscience comply with a health care decision of a health care
19 agent or health care representative or if the policies of the
20 health care institution preclude compliance with the health care
21 decision, the attending physician or health care provider shall
22 so inform the health care agent or health care representative.
23 The attending physician or health care provider shall make every
24 reasonable effort to assist in the transfer of the principal to
25 another physician or health care provider who will comply with
26 the health care decision of the health care agent or health care
27 representative.

28 (b) Employee or staff member of health care provider.--An
29 employee or staff member of a health care provider shall not be
30 required to comply with a health care decision of a health care

1 agent or health care representative if the employee's or staff
2 member's good conscience dictates otherwise. It shall be
3 unlawful for an employer to discharge or in any other manner to
4 discriminate against the employee or staff member who informs
5 the employer of an unwillingness to comply based upon good
6 conscience. The employer may require the employee or staff
7 member to express the unwillingness in writing.

8 (c) Liability.--If transfer under subsection (a) is not
9 possible, the provision of life-sustaining treatment to a
10 principal shall not subject an attending physician, health care
11 provider or health care institution to criminal or civil
12 liability or administrative sanctions for failure to carry out
13 the health care decision.

14 § 5432. Effect on life insurance.

15 The making of or failure to make a health care power of
16 attorney or a designation of a health care representative in
17 accordance with this subchapter shall not affect in any manner
18 the sale, procurement or issuance of any policy of life
19 insurance nor shall it be deemed to modify the terms of an
20 existing policy of life insurance. No policy of life insurance
21 shall be legally impaired or invalidated in any manner by the
22 withholding or withdrawal of life-sustaining treatment from an
23 insured principal, notwithstanding any term of the policy to the
24 contrary.

25 § 5433. Conditioning services or action.

26 No person may require or prevent the execution of a health
27 care power of attorney or the designation of a health care
28 representative as a condition of insuring or providing any type
29 of health care service.

30 § 5434. Criminal penalties.

1 (a) Tampering with a health care power of attorney.--Any
2 person who, without the consent of the principal, willfully
3 conceals, cancels, alters, defaces, obliterates or damages a
4 health care power of attorney or any amendment or revocation or
5 who falsifies or forges a health care power of attorney, its
6 amendment or revocation, and, as a result of that act, directly
7 changes the health care provided to the principal commits a
8 felony of the third degree.

9 (b) Tampering resulting in death.--A person who falsifies or
10 forges a health care power of attorney or willfully conceals or
11 withholds personal knowledge of an amendment or revocation of a
12 health care power of attorney with the intent to cause a
13 withholding or withdrawal of life-sustaining treatment contrary
14 to the intent of the principal and, as a result of that act,
15 directly causes life-sustaining treatment to be withheld or
16 withdrawn and death to the principal to be hastened shall be
17 subject to prosecution for criminal homicide as provided in 18
18 Pa.C.S. Ch. 25 (relating to criminal homicide).

19 § 5435. Effect on other State law.

20 (a) Mental health.--This subchapter shall not affect the
21 requirements of any other laws of this Commonwealth concerning
22 consent to observation, diagnosis, treatment or hospitalization
23 for a mental illness.

24 (b) Prohibited care.--This subchapter shall not authorize a
25 health care agent or health care representative to consent to
26 any health care prohibited by the laws of this Commonwealth.

27 (c) Consent.--This subchapter shall not affect the laws of
28 this Commonwealth concerning:

29 (1) the standard of care of a health care provider
30 required in the administration of health care;

1 (2) when consent is required for health care;

2 (3) informed consent for health care; or

3 (4) consent to health care in an emergency.

4 (d) Preservation of religious rights.--This subchapter shall
5 not prevent a health care agent or health care representative
6 from consenting to health care administered in good faith
7 pursuant to religious tenets of the principal or from
8 withholding consent to health care which is contrary to
9 religious tenets of the principal.

10 (e) Individual's rights.--This subchapter shall not affect
11 the right of an individual to make health care decisions.

12 (f) Disclosure.--The disclosure requirements of section
13 5425(f) (relating to operation of health care power of attorney)
14 shall supersede any provision in any other State statute or
15 regulation which requires the principal to consent to disclosure
16 or which otherwise conflicts with section 5425(f), including,
17 but not limited to:

18 (1) Section 8 of the act of April 14, 1972 (P.L.221,
19 No.63), known as the Pennsylvania Drug and Alcohol Abuse
20 Control Act.

21 (2) Section 111 of the act of July 9, 1976 (P.L.817,
22 No.143), known as the Mental Health Procedures Act.

23 (3) Section 15 of the act of October 5, 1978 (P.L.1109,
24 No.261), known as the Osteopathic Medical Practice Act.

25 (4) Section 41 of the act of December 20, 1985 (P.L.457,
26 No.112), known as the Medical Practice Act of 1985.

27 (5) Section 7 of the act of November 29, 1990 (P.L.585,
28 No.148), known as the Confidentiality of HIV-Related
29 Information Act.

30 The disclosure requirements under section 5425(f) shall not

1 apply to the extent that the disclosure would be prohibited by
2 Federal laws and implementing regulations.

3 § 5436. Conflicting health care powers of attorney.

4 If a provision of a health care power of attorney conflicts
5 with another provision of a health care power of attorney or
6 with a provision of a declaration under Subchapter B (relating
7 to advance directive for health care), the provision of the
8 instrument latest in date of execution shall prevail to the
9 extent of the conflict.

10 § 5437. Validity.

11 This subchapter shall not limit the validity of a health care
12 power of attorney executed prior to the effective date of this
13 subchapter. A health care power of attorney executed in another
14 state or jurisdiction and in conformity with the laws of that
15 state or jurisdiction shall be considered valid in this
16 Commonwealth, except to the extent that the health care power of
17 attorney executed in another state or jurisdiction would allow a
18 health care agent to make a health care decision inconsistent
19 with the laws of this Commonwealth.

20 Section 8. Sections 5602(a)(8) and (9) and 5603(h) of Title
21 20 are repealed.

22 Section 9. The amendment of the form of declaration in 20
23 Pa.C.S. § 5404(b) shall not affect the validity of any
24 declaration executed pursuant to that form before, on or after
25 the effective date of the amendment of that subsection.

26 Section 10. This act shall take effect as follows:

27 (1) The addition of 20 Pa.C.S. § 5413.1 shall take
28 effect immediately.

29 (2) The addition of 20 Pa.C.S. §§ 5413(d) and 5413.2
30 shall take effect in 180 days.

1 (3) This section shall take effect immediately.

2 (4) The remainder of this act shall take effect in 60

3 days.