

LEGISLATIVE BILL 671

Approved by the Governor February 12, 1992

Introduced by Landis, 46; Ashford, 6;
Bernard-Stevens, 42; Beutler, 28;
Nelson, 35

AN ACT relating to public health and welfare; to adopt the Rights of the Terminally Ill Act; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 16 of this act shall be known and may be cited as the Rights of the Terminally Ill Act.

Sec. 2. (1) The Legislature recognizes the common-law right and a constitutionally protected liberty interest for people to direct their medical treatment. The exercise of such right and liberty interest is subject to certain state interests in preserving life, preventing homicide and suicide, protecting dependent third parties, and maintaining the integrity of the medical profession. The Legislature adopts the Rights of the Terminally Ill Act to provide one means, by use of the declaration described in the act, for people to exercise their rights. Unjustifiable violation of a patient's direction shall be a civil cause of action maintainable by the patient or the patient's next of kin. Remedy in law and equity may be granted by a court of competent jurisdiction.

(2) It is the public policy of this state that no existing right be terminated or restricted by the Rights of the Terminally Ill Act.

Sec. 3. For purposes of the Rights of the Terminally Ill Act, unless the context otherwise requires:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician who has primary responsibility for the treatment and care of the patient;

(3) Declaration shall mean a writing executed in accordance with the requirements of subsection (1) of section 4 of this act;

(4) Health care provider shall mean a person who is licensed, certified, or otherwise authorized by

the law of this state to administer health care in the ordinary course of business or practice of a profession;

(5) Life-sustaining treatment shall mean any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or maintain the qualified patient in a persistent vegetative state;

(6) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(7) Person shall mean an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity;

(8) Physician shall mean an individual licensed to practice medicine in this state;

(9) Qualified patient shall mean an adult who has executed a declaration and who has been determined by the attending physician to be in a terminal condition or a persistent vegetative state;

(10) State shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States; and

(11) Terminal condition shall mean an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

Sec. 4. (1) An adult of sound mind may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant or another person at the declarant's direction and witnessed by two adults or a notary public. No more than one witness to a declaration shall be an administrator or employee of a health care provider who is caring for or treating the declarant, and no witness shall be an employee of a life or health insurance provider for the declarant. The restrictions upon who may witness the signing shall not apply to a notary public.

(2) A declaration directing a physician to withhold or withdraw life-sustaining treatment may, but

need not, be in the form provided in this subsection.

DECLARATION

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life sustaining treatment that is not necessary for my comfort or to alleviate pain.

Signed this _____ day of _____.

Signature _____

Address _____

The declarant voluntarily signed this writing in my presence.

Witness _____

Address _____

Witness _____

Address _____

Or

The declarant voluntarily signed this writing in my presence.

Notary Public

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

Sec. 5. A declaration shall become operative when (1) it is communicated to the attending physician, (2) the declarant is determined by the attending physician to be in a terminal condition or in a persistent vegetative state, (3) the declarant is determined by the attending physician to be unable to make decisions regarding administration of life-sustaining treatment, and (4) the attending physician has notified a reasonably available member of the declarant's immediate family or guardian, if any, of his or her diagnosis and of the intent to invoke the patient's declaration. When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer requirements of section 9 of this act.

Sec. 6. (1) A declarant may revoke a declaration at any time and in any manner without regard to the declarant's mental or physical condition. A revocation shall be effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(2) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

Sec. 7. When the attending physician has knowledge of a declaration and, after personal examination, has determined that a declarant is in a terminal condition or in a persistent vegetative state, the attending physician shall record the diagnosis, determination, and the terms of the declaration, in writing, in the declarant's medical record.

Sec. 8. (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) The Rights of the Terminally Ill Act shall not affect the responsibility of the attending physician or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment shall not be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

Sec. 9. An attending physician or other health care provider who is unwilling to comply with the Rights of the Terminally Ill Act shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

Sec. 10. (1) A physician or other health care provider shall not be subject to civil or criminal liability or discipline for unprofessional conduct for giving effect to a declaration in the absence of knowledge of the revocation of a declaration.

(2) A physician or other health care provider whose action under the Rights of the Terminally Ill Act is in accord with reasonable medical standards shall not be subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that action.

Sec. 11. (1) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with section 9 of this act shall

be guilty of a Class I misdemeanor.

(2) A physician who willfully fails to record a determination of terminal condition or persistent vegetative state or the terms of a declaration in accordance with section 7 of this act shall be guilty of a Class I misdemeanor.

(3) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another individual without the declarant's consent or who falsifies or forges a revocation of the declaration of another individual shall be guilty of a Class I misdemeanor.

(4) An individual who falsifies or forges the declaration of another individual or willfully conceals or withholds personal knowledge of a revocation under section 6 of this act shall be guilty of a Class I misdemeanor.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services shall be guilty of a Class I misdemeanor.

(6) A person who coerces or fraudulently induces an individual to execute a declaration shall be guilty of a Class I misdemeanor.

(7) The penalties provided in this section shall not displace any sanction applicable under other law.

Sec. 12. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with the Rights of the Terminally Ill Act shall not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to section 4 of this act shall not affect the sale, procurement, or issuance of a policy of life insurance or annuity or affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity shall not be legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term to the contrary.

(3) No person shall prohibit or require the execution of a declaration as a condition to being insured for or receiving health care services. No insurance company or health care provider shall charge a higher or lower rate for signers of declarations under the act as opposed to nonsigners.

(4) The act shall create no presumption concerning the intention of an individual who has

revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) The act shall not affect the right of a patient to make decisions regarding use of life-sustaining treatment so long as the patient is able to do so or impair or supersede a right or responsibility that a person has to effect the withholding or withdrawal of medical care.

(6) The act shall not require a physician or other health care provider to take action contrary to reasonable medical standards.

(7) The act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing laws concerning homicide, suicide, or assisted suicide. Nothing in the act shall be construed to condone, authorize, or approve homicide, suicide, or assisted suicide.

Sec. 13. In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with the Rights of the Terminally Ill Act and is valid.

Sec. 14. A declaration executed in another state in compliance with the law of that state or of this state shall be valid for purposes of the Rights of the Terminally Ill Act.

Sec. 15. An instrument executed anywhere before the effective date of this act which substantially complies with subsection (1) of section 4 of this act shall be effective under the Rights of the Terminally Ill Act.

Sec. 16. The Rights of the Terminally Ill Act shall be applied and liberally construed so as to effectuate its general purposes.

Sec. 17. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.