

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 458, L.D. 660)
2 (New Title)
3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 1448

9 H.P. 1004

House of Representatives, May 1, 1985

10 Reported by Representative MacBride from the Committee on Judiciary
11 and printed under Joint Rule 2. Original bill sponsored by Representative
12 Murray of Bangor. Cosponsored by Representative Mitchell of Freeport,
Senator Gill of Cumberland and Representative Smith of Island Falls.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-FIVE
18

19 AN ACT Concerning Living Wills.
20

21 Be it enacted by the People of the State of Maine as
22 follows:

23 22 MRSA c. 710-A is enacted to read:

24 CHAPTER 710-A

25 LIVING WILLS

26 §2921. Definitions

27 As used in this chapter, unless the context oth-
28 erwise indicates, the following terms have the fol-
29 lowing meanings.

30 1. Attending physician. "Attending physician"
31 means the physician who has primary responsibility
32 for the treatment and care of the patient.

1 2. Declaration. "Declaration" means a document
2 executed in accordance with the requirements of section
3 2922.

4 3. Health care provider. "Health care provider"
5 means a person who is licensed, certified or other-
6 wise authorized by the law of this State to adminis-
7 ter health care in the ordinary course of business or
8 practice of a profession.

9 4. Life-sustaining procedure. "Life-sustaining
10 procedure" means any medical procedure or interven-
11 tion that, when administered to a qualified patient,
12 will serve only to prolong the dying process and
13 shall not include nutrition and hydration.

14 5. Person. "Person" means an individual, corpo-
15 ration, business trust, estate, trust, partnership,
16 association, government, government subdivision or
17 agency or any other legal entity.

18 6. Physician. "Physician" means an individual
19 licensed to practice medicine in this State.

20 7. Qualified patient. "Qualified patient" means
21 a patient who has executed a declaration in accord-
22 ance with this chapter.

23 8. Terminal condition. "Terminal condition"
24 means an incurable or irreversible condition that,
25 without the administration of life-sustaining pro-
26 cedures, will, in the opinion of the attending physi-
27 cian, result in death within a short time.

28 §2922. Declaration relating to use of
29 life-sustaining procedures

30 1. Declaration; execution. A competent individ-
31 ual 18 years of age or older may execute a declara-
32 tion at any time directing that life-sustaining pro-
33 cedures be withheld or withdrawn. The declaration
34 must be signed by the declarant, or another at the
35 declarant's direction, in the presence of 2 subscrib-
36 ing witnesses.

37 2. Incorporation in medical record. A physician
38 or other health care provider who is provided a copy

1 of the declaration shall make it a part of the
2 declarant's medical record.

3 3. Operative effect. A declaration has opera-
4 tive effect only when:

5 A. The declaration is communicated to the at-
6 tending physician;

7 B. The declarant is determined by the attending
8 physician to be in a terminal condition; and

9 C. The declarant is unable to make treatment de-
10 isions.

11 4. Suggested form. A declaration may, but need
12 not, be in the following form:

13 DECLARATION

14 If I should have an incurable or irreversible
15 condition that will cause my death within a short
16 time, and if I am unable to participate in decisions
17 regarding my medical treatment, I direct my attending
18 physician to withhold or withdraw procedures that
19 merely prolong the dying process and are not neces-
20 sary to my comfort or freedom from pain.

21 Signed this _____ day of _____
22 _____ date _____ month _____ year _____

23 Signature _____

24 City, County and

25 State of Residence _____
26 _____ city _____ county _____ state _____

27 The declarant is known to me and voluntarily signed
28 this document in my presence.

29 Witness _____
30 Address _____

31 _____
32 Witness _____
33 Address _____

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§2923. Revocation of declaration

1. Revocation; communication. A declaration may be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician or any health care provider upon communication to the physician by the declarant or by another who witnessed the communication of the intent to revoke.

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

§2924. Recording determination of terminal condition and contents of declaration

Upon determining that the declarant is in a terminal condition, the attending physician who has been notified of the existence and contents of a declaration shall record the determination and the substance of the declaration in the declarant's medical record.

§2925. Treatment of qualified patients

1. Decisions regarding use of life-sustaining procedures. A qualified patient has the right to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so. If a qualified patient is not able to make those decisions, the declaration shall govern decisions regarding use of life-sustaining procedures.

2. Comfort care; alleviation of pain. This chapter does not prohibit any action considered necessary by the attending physician to provide for comfort care or the alleviation of pain.

§2926. Transfer of patients

An attending physician or health care provider who is unwilling to comply with this chapter shall take all reasonable steps to effect the transfer of

1 the declarant to another physician or health care
2 provider in order to comply with this chapter.

3 §2927. Immunities

4 1. Actions in the absence of actual notice of
5 revocation of declaration. In the absence of actual
6 notice of the revocation of a declaration, the fol-
7 lowing, while acting in accordance with the require-
8 ments of this chapter, are not subject to civil or
9 criminal liability or charges of unprofessional con-
10 duct:

11 A. A physician who causes the withholding or
12 withdrawal of life-sustaining procedures from a
13 qualified patient; and

14 B. A person who participates in the withholding
15 or withdrawal of life-sustaining procedures under
16 the direction or with the authorization of a phy-
17 sician.

18 §2928. Penalties

19 1. Willful failure to transfer. A physician or
20 health care provider who willfully fails to transfer
21 in accordance with section 2926 is guilty of a Class
22 E crime.

23 2. Failure to record determination of terminal
24 condition. A physician who willfully fails to record
25 the determination of a terminal condition in accord-
26 ance with section 2924 is guilty of a Class E crime.

27 3. Concealing, canceling, defacing or obliterated
28 declaration. Any person who willfully conceals,
29 cancel, defaces or obliterates the declaration of
30 another without the declarant's consent or who falsi-
31 fies or forges a revocation of the declaration of an-
32 other is guilty of a Class E crime.

33 4. Falsification or forgery of declaration. Any
34 person who falsifies or forges the declaration of an-
35 other or willfully conceals or withholds personal
36 knowledge of a revocation as provided in section
37 2923, with the intent to cause a withholding or with-
38 drawal of life-sustaining procedures, is guilty of a
39 Class B crime.

1 §2929. General provisions

2
3 1. Death not suicide or homicide. Death result-
4 ing from the withholding or withdrawal of
5 life-sustaining procedures pursuant to a declaration
6 and in accordance with this chapter does not, for any
7 purpose, constitute a suicide or homicide.

8 2. Declaration not to affect insurance. The
9 making of a declaration pursuant to section 2922 does
10 not affect in any manner the sale, procurement or is-
11 suance of any policy of life insurance, nor is it
12 deemed to modify the terms of an existing policy of
13 life insurance. A policy of life insurance is not
14 legally impaired or invalidated in any manner by the
15 withholding or withdrawal of life-sustaining proced-
16 ures from an insured qualified patient, notwith-
17 standing any term of the policy to the contrary.

18 3. Requirement of declaration as condition for
19 insurance or health care services. A person may not
20 prohibit or require the execution of a declaration by
21 any individual as a condition for being insured for
22 or receiving health-care services.

23 4. Presumption concerning life-sustaining proce-
24 dures. This chapter creates no presumption concerning
25 the intention of an individual who has not executed
26 or who has revoked a declaration with respect to the
27 use, withholding or withdrawal of life-sustaining
28 procedures in the event of a terminal condition.

29 5. Patient's right concerning withholding or
30 withdrawal of medical care. Nothing in this chapter
31 may be interpreted to increase or decrease the right
32 of a patient to make decisions regarding use of
33 life-sustaining procedures as long as the patient is
34 able to do so, or to impair or supersede any right or
35 responsibility that any person has to effect the
36 withholding or withdrawal of medical care in any law-
37 ful manner. In that respect, the provisions of this
38 chapter are cumulative.

39 6. Mercy killing, euthanasia or suicide. This
40 chapter does not condone, authorize or approve mercy
41 killing, euthanasia or suicide.

1 The bill also provides a model form for a decla-
2 ration.

3 The Maine Revised Statutes, Title 22, section
4 2923 provides that a declaration may be revoked by
5 the declarant in any manner by which the declarant is
6 able to communicate an intent to revoke. The revoca-
7 tion is effective upon communication to the attending
8 physician by the declarant or another who witnessed
9 the communication of the intent to revoke.

10 A revocation is to be made part of the
11 declarant's medical record by the attending physician
12 or health care provider.

13 The Maine Revised Statutes, Title 22, section
14 2924 provides that when an attending physician who
15 has been notified of a declaration determines that
16 the declarant is in a terminal condition, that deter-
17 mination is to be recorded in the declarant's medical
18 record.

19 The Maine Revised Statutes, Title 22, section
20 2925 makes it clear that a patient has a right to
21 make treatment decisions as long as he is able to do
22 so. It also provides that nothing in the living will
23 law prohibits any action considered necessary by the
24 attending physician to provide for comfort care or
25 the alleviation of pain.

26 The Maine Revised Statutes, Title 22, section
27 2926 requires an attending physician or health care
28 provider who is unwilling to comply with the terms of
29 a living will to take all reasonable steps to trans-
30 fer the declarant to one who is willing to comply.

31 The Maine Revised Statutes, Title 22, section
32 2927 provides immunity from civil or criminal liabil-
33 ity or charges of unprofessional conduct for a physi-
34 cian who causes the withholding or withdrawal of
35 life-sustaining procedures pursuant to a declaration,
36 and for a person who participates in the withholding
37 or withdrawal under the direction or authorization of
38 a physician. The definition of "person" includes in
39 this immunity a health care facility where the with-
40 drawal or withholding occurs.

1 The Maine Revised Statutes, Title 22, section
2 2928 provides criminal penalties for physicians and
3 health care providers who willfully fail to transfer
4 a patient when they do not wish to comply with a dec-
5 laration, for a physician who willfully fails to
6 record a terminal condition determination and for any
7 person who conceals or defaces a declaration without
8 the declarant's consent or who falsifies or forges a
9 revocation. These are made Class E crimes, punish-
10 able by up to 6 months imprisonment, and a \$500 fine,
11 for a natural person, or a \$5,000 fine, for an orga-
12 nization. The falsification or forgery of a declara-
13 tion and the willfull concealment of a revocation,
14 with the intent to cause the withholding or withdraw-
15 al of life-sustaining procedures, is made a Class B
16 crime. A Class B crime is punishable by up to 10
17 years imprisonment and a \$10,000 fine, for a natural
18 person, or a \$20,000 fine, for an organization.

19 The Maine Revised Statutes, Title 22, section
20 2929 supplies general provisions concerning a
21 declaration's effect on insurance, concerning death
22 under the living will law not being viewed as suicide
23 or homicide, concerning the impact of the living will
24 law on persons who do not have a declaration, empha-
25 sizing the patient's right to make treatment deci-
26 sions as long as he is able, and disapproving mercy
27 killing, euthanasia or suicide.

28 The Maine Revised Statutes, Title 22, section
29 2930 provides for the recognition of declarations
30 validly executed in another state.

31 The Maine Revised Statutes, Title 22, section
32 2931 provides that a physician or health care
33 provider may presume a declaration to be validly exe-
34 cuted in the absence of actual notice to the con-
35 trary.

36 This new draft is patterned after the latest
37 draft version of a proposed Uniform Rights of the
38 Terminally Ill Act being considered by the National
39 Conference of Commissioners on Uniform State Laws.

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