

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 944, L.D. 1366, Bill, "An Act to Amend the Uniform Rights of the Terminally Ill Act"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 18-A MRSA §5-701, as enacted by PL 1989, c. 830, §1, is repealed and the following enacted in its place:

§5-701. Short title and definitions

(a) This Part may be cited as the "Uniform Rights of the Terminally Ill Act" and must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Part among states enacting this Act.

(b) As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a writing executed in accordance with the requirements of section 5-702, subsection (a).

(3) "Health-care provider" means 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.

2 (4) "Life-sustaining treatment" means any medical procedure  
3 or intervention that, when administered to a qualified  
4 patient, will serve only to prolong the process of dying.  
5 "Life-sustaining treatment" may include artificially  
6 administered nutrition and hydration, which is the provision  
7 of nutrients and liquids through the use of tubes,  
8 intravenous procedures or similar medical interventions.

9 (5) "Person" means an individual, corporation, business  
10 trust, estate, trust, partnership, association, joint  
11 venture, government, governmental subdivision or agency, or  
12 any other legal or commercial entity.

13 (6) "Physician" means an individual licensed as a physician  
14 under Title 32, chapter 48 or an osteopathic physician under  
15 Title 32, chapter 36.

16 (7) "Qualified patient" means a patient 18 or more years of  
17 age who has executed a declaration and who has been  
18 determined by the attending physician to be in a terminal  
19 condition or a persistent vegetative state.

20 (8) "State" means a state of the United States, the  
21 District of Columbia, the Commonwealth of Puerto Rico, or a  
22 territory or insular possession subject to the jurisdiction  
23 of the United States.

24 (9) "Terminal condition" means an incurable and  
25 irreversible condition that, without the administration of  
26 life-sustaining treatment, will, in the opinion of the  
27 attending physician, result in death within a relatively  
28 short time.

29 (10) "Persistent vegetative state" means a state that  
30 occurs after coma in which the individual totally lacks  
31 higher cortical and cognitive function, but maintains  
32 vegetative brainstem processes, with no realistic  
33 possibility of recovery, as diagnosed in accordance with  
34 accepted medical standards. Vegetative brainstem processes  
35 may include one or more of the following: cycles of  
36 sleeping and waking, spontaneous eye opening and movements,  
37 some motor activity, vocalization, blood pressure,  
38 respiration and heart beat.

39 **Sec. 2. 18-A MRSA §5-702, sub-§§(b) and (c), as amended by PL**  
40 **1991, c. 191, are repealed and the following enacted in their**  
41 **place:**

42 (b) A declaration directing a physician to withhold or  
43 withdraw life-sustaining treatment may, but need not, be in the  
44 following form.

DECLARATION

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If I am determined by my attending physician to be in a terminal condition or a persistent vegetative state, and I am no longer able to make or communicate decisions regarding my medical treatment, then I direct my attending physician to withhold or withdraw all life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

Optional: If I am in a terminal condition or a persistent vegetative state, I want to receive nutrients and liquids provided through the use of tubes, intravenous procedures or similar medical interventions, even though other life-sustaining treatment is withheld or withdrawn.

Signature .....

NOTE: This optional provision must be signed to be effective. Otherwise, artificially administered nutrition and hydration may be withheld or withdrawn.

Signed this ..... day of .....

Signature .....

Address .....

Date of birth or social security number .....

The declarant voluntarily signed this writing in my presence.

Witness .....

Address .....

Witness .....

Address .....

NOTE: Maine law (18-A MRSA §5-701) contains the following definitions of terms used in this declaration.

"Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

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"Terminal condition" means 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.

"Persistent vegetative state" means a state that occurs after coma in which the individual totally lacks higher cortical and cognitive function, but maintains vegetative brainstem processes, with no realistic possibility of recovery, as diagnosed in accordance with accepted medical standards. Vegetative brainstem processes may include one or more of the following: cycles of sleeping and waking, spontaneous eye opening and movements, some motor activity, vocalization, blood pressure, respiration and heart beat.

If you have questions about the meaning of this form, you are encouraged to seek the advice of a doctor or lawyer.

(c) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form.

DECLARATION

If I am determined by my attending physician to be in a terminal condition or a persistent vegetative state, and I am no longer able to make or communicate decisions regarding my medical treatment, then I appoint ..... or if he or she is not reasonably available or is unwilling to serve, then ..... to make decisions on my behalf regarding the withholding or withdrawal of life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

Optional: If no individual I have so appointed is reasonably available and willing to serve, I direct my attending physician to withhold or withdraw life-sustaining treatment that is not necessary for my comfort or to alleviate pain.

Signature .....

NOTE: This optional provision must be signed to be effective.

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Optional: If I am in a terminal condition or a persistent vegetative state, I want to receive nutrients and liquids provided through the use of tubes, intravenous procedures or similar medical interventions, even though other life-sustaining treatment is withheld or withdrawn.

Signature .....

NOTE: This optional provision must be signed to be effective. Otherwise, artificially administered nutrition and hydration may be withheld or withdrawn.

Signed this ..... day of ....., .....

Signature .....

Address .....

Date of birth or social security number .....

The declarant voluntarily signed this writing in my presence.

Witness .....  
Address .....

Witness .....  
Address .....

Name and address of designees

Name .....  
Address .....

Name .....  
Address .....

NOTE: Maine law (18-A MRSA §5-701) contains the following definitions of terms used in this declaration.

"Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

2 "Terminal condition" means an incurable and irreversible  
3 condition that, without the administration of  
4 life-sustaining treatment, will, in the opinion of the  
5 attending physician, result in death within a relatively  
6 short time.

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8 "Persistent vegetative state" means a state that occurs  
9 after coma in which the individual totally lacks higher  
10 cortical and cognitive function, but maintains vegetative  
11 brainstem processes, with no realistic possibility of  
12 recovery, as diagnosed in accordance with accepted medical  
13 standards. Vegetative brainstem processes may include one  
14 or more of the following: cycles of sleeping and waking,  
15 spontaneous eye opening and movements, some motor activity,  
16 vocalization, blood pressure, respiration and heart beat.

17 If you have questions about the meaning of this form, you  
18 are encouraged to seek the advice of a doctor or lawyer.

19  
20 **Sec. 3. 18-A MRSA §5-707, sub-§(a), ¶(1), as enacted by PL 1989,**  
21 **c. 830, §1, is amended to read:**

22  
23 (1) Has been determined by the attending physician to be in  
24 a terminal condition or a persistent vegetative state and no  
25 longer able to make or communicate decisions regarding  
26 administration of life-sustaining treatment; and

27  
28 **Maine Comment - 1991**

29  
30 The definition of "life-sustaining treatment" in section  
31 5-701, subsection (b), paragraph (4), has been altered to provide  
32 that life-sustaining treatment may include artificially  
33 administered nutrition and hydration without requiring a specific  
34 election by the declarant. This change eliminates the anomaly  
35 under prior Maine law that the definition of life-sustaining  
36 treatment depended on the patient's subjective desire concerning  
37 artificially administered nutrition and hydration. Under the  
38 revised definition, the definition of life-sustaining treatment  
39 envisions an objective medical determination, and then the  
40 decision on whether or not artificially administered nutrition  
41 and hydration is to be provided depends on the patient's living  
42 will declaration or the patient's proxy decision maker in the  
43 absence of a declaration.  
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45 The definition of "qualified patient" in section 5-701,  
46 subsection (b), paragraph (7), has been altered to include a  
47 patient in a persistent vegetative state, which is defined in new  
48 section 5-701, subsection (b), paragraph (10). Under this  
49 formulation, a persistent vegetative state is treated as a  
50 separate condition other than a terminal condition, rather than  
51 as one type of terminal condition as discussed in Maine Comment -  
52 1990.  
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Maine Comment - 1991

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The sample forms in section 5-702, subsections (b) and (c) have been altered to be simpler and easier to understand. Also, the "optional" boxes relating to artificially administered nutrition and hydration reflect the revised definition of "life-sustaining treatment" in section 5-701, subsection (b), paragraph (4). If artificially administered nutrition and hydration serves only to prolong the process of dying it is considered life-sustaining treatment, but the patient may designate that he or she wants to receive artificially administered nutrition and hydration even though other life-sustaining treatment is withheld or withdrawn.

The statutory definitions of life-sustaining treatment, terminal condition and persistent vegetative state were added to the bottom of the sample forms as a reference for persons who might have questions as to the meaning of those terms.

Sample forms also include a line for the declarant's date of birth or social security number. As the forms are only examples of valid declarations, declarants are not obliged to provide this information.'

STATEMENT OF FACT

This amendment replaces the bill. It changes the laws regarding living wills to more accurately reflect the expectations of persons signing living wills. This amendment repeals and replaces the definition section to make numbering consistent with the Probate Code.

The amendment retains the purpose of the bill, which is to make living wills apply to persons in a persistent vegetative state. The definition of "terminal condition" is not amended to include persistent vegetative state. A separate definition of persistent vegetative state is enacted. It must be diagnosed in accordance with accepted medical standards. The rest of the Uniform Rights of the Terminally Ill Act is amended to apply to persons in a persistent vegetative state in the same manner as it applies to persons in a terminal condition.

The definition of "life-sustaining treatment" is simplified by including artificially administered nutrition and hydration as a form of life-sustaining treatment. Any person who wants to continue receiving nutrients and liquids but wants other forms of life-sustaining treatment withheld or withdrawn can make those wishes known by stating them in the living will. The sample form in the statute contains an optional section which must be signed by the person to have the artificially administered nutrition and hydration continued when other forms of life-sustaining treatment are withheld or withdrawn.



COMMITTEE AMENDMENT "A" to H.P. 944, L.D. 1366

2 The sample forms, known as "declarations," are amended to  
reflect the change in the definition of artificially administered  
4 nutrition and hydration and to be more readable and  
understandable. Definitions of terms used in the forms are  
6 included on the form to help persons understand what their  
signature on the living will declaration means and a statement is  
8 included encouraging persons who have questions to seek the  
advice of a doctor or lawyer.

Reported by the Committee on Judiciary  
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