

D.C. LAW 4-69

NATURAL DEATH ACT OF 1981

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 1982

To provide an adult with the choice of executing a directive that would allow life-sustaining procedures to be withheld or withdrawn in instances of a terminal condition.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Natural Death Act of 1981".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.
- (2) "Declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of section 3.
- (3) "Life-sustaining procedure" means any medical procedure or intervention, which, when applied to a qualified patient, would serve only to artificially prolong the dying process and where, in the judgment of the attending physician and a second physician, death will occur whether or not such procedure or intervention is utilized. The term "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.
- (4) "Physician" means a person authorized to practice medicine in the District of Columbia.
- (5) "Qualified patient" means a patient who has executed a declaration in accordance with this act and who has been diagnosed and certified in writing to be afflicted with a terminal condition by two (2) physicians who have personally examined the patient, one (1) of whom shall be the attending physician.
- (6) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which regardless of the application of life-sustaining procedures, would, within reasonable medical judgment,

produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient.

Sec. 3. Executing a Declaration.

(a) Any persons eighteen (18) years of age or older may execute a declaration directing the withholding or withdrawal of life-sustaining procedures from themselves should they be in a terminal condition. The declaration made pursuant to this act shall be: (1) in writing; (2) signed by the person making the declaration or by another person in the declarant's presence at the declarant's express direction; (3) dated; and (4) signed in the presence of two (2) or more witnesses at least eighteen (18) years of age. In addition, a witness shall not be:

(1) The person who signed the declaration on behalf of and at the direction of the declarant;

(2) Related to the declarant by blood or marriage;

(3) Entitled to any portion of the estate of the declarant according to the laws of intestate succession of the District of Columbia or under any will of the declarant or codicil thereto;

(4) Directly financially responsible for declarant's medical care;

or

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

(b) It shall be the responsibility of the declarant to provide for notification to his or her attending physician of the existence of the declaration. An attending physician, when presented with the declaration, shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(c) The declaration shall be substantially in the following form, but in addition may include other specific directions not inconsistent with other provisions of this act. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

"DECLARATION

"Declaration made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, do declare:

"If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two (2) physicians who have personally examined me, one (1) of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

"In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

"I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

"Signed _____

"Address _____

"I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am at least eighteen (18) years of age and am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of the District of Columbia or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care. I am not the declarant's attending physician, an employee of the attending physician, or an employee of the health facility in which the declarant is a patient.

"Witness _____

"Witness _____".

Sec. 4. Restrictions.

A declaration shall have no effect if the declarant is a patient in an intermediate care or skilled care facility as defined in the Health Care Facilities Regulation, enacted June 14, 1974 (Reg. 74-15; 20 DCR 1423) at the time the declaration is executed unless one (1) of the two (2) witnesses to the directive is a patient advocate or ombudsman. The patient advocate or ombudsman shall have the same qualifications as a witness under section 3.

Sec. 5. Revocation.

(a) A declaration may be revoked at any time only by the declarant or at the express direction of the declarant, without regard to the declarant's mental state by any of the following methods:

(1) By being obliterated, burnt, torn, or otherwise destroyed or defaced by the declarant or by some person in the declarant's presence and at his or her direction;

(2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant. Such revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expression of the intent to revoke the declaration, in the presence of a witness eighteen (18) years or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record, in the patient's medical record, the time, date, and place of when he or she receives notification of the revocation.

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

Sec. 6. Physician's Duty to Confirm Terminal Condition.

(a) An attending physician who has been notified of the existence of a declaration executed under this act, without delay after the diagnosis of a terminal condition of the declarant, shall take the necessary steps to provide for written certification and confirmation of the declarant's terminal condition, so that the declarant may be deemed to be a qualified patient under this act.

(b) Once written certification and confirmation of the declarant's terminal condition is made a person becomes a qualified patient under this act only if the attending physician verbally or in writing informs the patient of his or her terminal condition and documents such communication in the patient's medical record. If the patient is diagnosed as unable to comprehend verbal or written communications, such patient shall become a qualified patient as defined in section 2, immediately upon written certification and confirmation of his or her terminal condition by the attending physician.

(c) An attending physician who does not comply with this section shall be considered to have committed an act of unprofessional conduct under section 27 of the Healing Arts Practice Act, District of Columbia, 1928, effective April 6, 1977 (D.C. Law 1-106; D.C. Code, sec. 2-1236).

Sec. 7. Competency and Intent of Declarant.

(a) The desires of a qualified patient shall at all times supersede the effect of the declaration.

(b) If the qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with section 3 is presumed to be valid. For the purpose of this act, a physician or health facility may presume in the absence of actual notice to the contrary that an individual who executed a declaration was of sound mind when it was executed. The fact of an individual's having executed a declaration shall not be considered as an indication of a declarant's mental incompetency.

Sec. 8. Liability and Protection of Declaration; Penalties.

(a) No physician, licensed health care professional, health facility, or employee thereof who in good faith and pursuant to reasonable medical standards

causes or participates in the withholding or withdrawing of life-sustaining procedures from a qualified patient pursuant to a declaration made in accordance with this act shall, as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct.

(b) An attending physician who cannot comply with the declaration of a qualified patient pursuant to this act shall, in conjunction with the next of kin of the patient or other responsible individual, effect the transfer of the qualified patient to another physician who will honor the declaration of the qualified patient. Transfer under these circumstances shall not constitute abandonment. Failure of an attending physician to effect the transfer of the qualified patient according to this section, in the event he or she cannot comply with the directive, shall constitute unprofessional conduct as defined in section 27 of the Healing Arts Practice Act, 1928, effective April 6, 1977 (D.C. Law 1-106; D.C. Code, sec. 2-1236).

(c) Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another shall commit an offense, and upon conviction shall be fined an amount not to exceed five thousand dollars (\$5,000) or be imprisoned for a period not to exceed three (3) years, or both.

(d) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures, contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be subject to prosecution for unlawful homicide pursuant to section 798 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Code, sec. 22-2401).

Sec. 9. Insurance.

(a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this act shall not, for any purpose, constitute a suicide and shall not constitute the crime of assisting suicide.

(b) The making of a declaration pursuant to section 3 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, or mutual nonprofit hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

Sec. 10. Preservation of Existing Rights.

(a) Nothing in this act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this act are cumulative.

(b) This act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition.

Sec. 11. Prohibition.

Nothing in this act shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act or omission to end a human life other than to permit the natural process of dying as provided in this act.

Sec. 12. Miscellaneous Amendment.

Section 27 of the Healing Arts Practice Act, 1928, approved February 27, 1929 (45 Stat. 1337; D.C. Code, sec. 2-123) is amended by adding two (2) new paragraphs at the end of that subsection to read as follows:

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- "(16) Failing to effect the transfer of a qualified patient in the event he or she cannot comply with the patient's declaration, as provided in section 8(b) of the Natural Death Act of 1981; or
- "(17) Failing to comply with section 6 of the Natural Death Act of 1981."

Sec. 13. Effective Date.

This act shall take effect after a thirty (30)-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-147(c)(1)).

Source

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 4-204 on first and second readings, September 29, 1981 and October 13, 1981, respectively. Following the signature of the Mayor on November 9, 1981, this legislation was assigned Act No. 4-115, published in the November 27, 1981 edition of the D.C. Register, (Vol. 28 page 5047) and transmitted to Congress on November 30, 1981 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 4-89, effective February 25, 1982.

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