

No. 2002-59

AN ACT

HB 96

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for advance directives for health care, for definitions and for emergency medical services; and providing for out-of-hospital nonresuscitation.

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

Section 1. The definition of "declarant" in section 5403 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5403. Definitions.

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

* * *

"Declarant." A person who makes a declaration in accordance with this chapter. *The term includes an emancipated minor.*

* * *

Section 2. Section 5413 of Title 20 is amended to read:

§ 5413. Emergency medical services.

(a) Care given prior to declaration taking effect.—Nothing in this chapter shall be construed to make the provisions of a declaration apply to care given to a patient by emergency medical services personnel prior to the declaration's becoming operative under sections 5405 (relating to when declaration becomes operative) and 5408 (relating to duty of physician to confirm terminal condition).

(b) Care given after declaration takes effect.—The provisions of a declaration shall apply to care given to a patient by emergency medical services personnel after the declaration becomes operative under sections 5405 and 5408 only if:

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

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

(c) Uncertainty regarding validity of declaration.—Emergency medical services personnel confronted with any conflicting information regarding the patient's wishes for life-sustaining treatment shall act

according to the accepted treatment protocols and standards appropriate to their level of certification.]

(a) General rule.—An emergency medical services provider shall, in the course of providing care to a declarant, at all times comply with the instructions of an authorized medical command physician to withhold or discontinue cardiopulmonary resuscitation for a declarant whose advance directive has become operative under section 5405 (relating to when declaration becomes operative).

(b) Applicability.—This section is applicable only in those instances where an out-of-hospital DNR order is not in effect under section 54A04(a) (relating to orders, bracelets and necklaces).

Section 3. Title 20 is amended by adding a chapter to read:

CHAPTER 54A
OUT-OF-HOSPITAL NONRESUSCITATION

Sec.

- 54A01. Short title of chapter.
- 54A02. Legislative findings and intent.
- 54A03. Definitions.
- 54A04. Orders, bracelets and necklaces.
- 54A05. Revocation.
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- 54A07. Effect on suicide and life insurance.
- 54A08. Order optional.
- 54A09. Preservation of existing rights.
- 54A10. Emergency medical services.
- 54A11. Pregnancy.
- 54A12. Penalties.
- 54A13. Severability.

§ 54A01. Short title of chapter.

This chapter shall be known and may be cited as the Do-Not-Resuscitate Act.

§ 54A02. Legislative findings and intent.

The General Assembly finds and declares as follows:

(1) Although cardiopulmonary resuscitation has saved the lives of individuals about to experience sudden, unexpected death, present medical data indicates that cardiopulmonary resuscitation rarely leads to prolonged survival in individuals with terminal illnesses in whom death is expected.

(2) In many circumstances, the performance of cardiopulmonary resuscitation may cause infliction of unwanted and unnecessary pain and suffering.

(3) Existing emergency medical services protocols may require emergency medical services personnel to proceed to cardiopulmonary resuscitation when an individual is found in a cardiac or respiratory

arrest even if the individual has completed a living will or advance directive indicating that the individual does not wish to receive cardiopulmonary resuscitation.

(4) The administration of cardiopulmonary resuscitation by emergency medical services personnel to an individual with an out-of-hospital do-not-resuscitate order offends the dignity of the individual and conflicts with standards of accepted medical practice.

(5) This chapter provides clear direction to emergency medical services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.

(6) Nothing in this chapter is intended to condone, authorize or approve mercy killing, euthanasia or aided suicide or to permit any affirmative or deliberate act or omission to end life other than as defined in this chapter.

§ 54A03. Definitions.

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

“Attending physician.” The physician who has primary responsibility for the treatment and care of the patient.

“Bracelet.” An out-of-hospital do-not-resuscitate bracelet.

“Cardiopulmonary resuscitation.” Cardiac compression, invasive airway techniques, artificial ventilation, defibrillation and other related procedures.

“Declarant.” As defined in section 5403 (relating to definitions).

“Declaration.” As defined in section 5403 (relating to definitions).

“Department.” The Department of Health of the Commonwealth.

“DNR.” Do not resuscitate.

“Emergency medical services provider.” A health care provider recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act. The term includes those individuals recognized under 42 Pa.C.S. § 8331.2 (relating to good Samaritan civil immunity for use of automated external defibrillator).

“EMS.” Emergency medical services.

“Health care provider.” A person who is licensed or certified by the laws of this Commonwealth to administer health care in the ordinary course of business or practice of a profession. The term includes personnel recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act. The term includes those individuals recognized under 42 Pa.C.S. § 8331.2 (relating to good Samaritan civil immunity for use of automated external defibrillator).

“Incompetent.” The lack of sufficient capacity for a person to make or communicate decisions concerning himself.

“Invasive airway technique.” Any advanced airway technique, including endotracheal intubation.

“Life-sustaining treatment.” Any medical procedure or intervention that, when administered to a patient, will serve only to prolong the process of dying or to maintain the patient in a state of permanent unconsciousness. **“Life-sustaining treatment”** shall include nutrition and hydration administered by gastric tube or intravenously or any other artificial or invasive means if the order of the patient so specifically provides.

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

“Necklace.” An out-of-hospital do-not-resuscitate necklace.

“Order.” An out-of-hospital do-not-resuscitate order.

“Out-of-hospital do-not-resuscitate bracelet.” A bracelet in the standard format set forth in section 54A04 (relating to orders, bracelets and necklaces), supplied by the department and issued by the attending physician, which may be worn at the patient’s option to notify emergency medical services providers of the presence of an order.

“Out-of-hospital do-not-resuscitate necklace.” A necklace in the standard format set forth in section 54A04 (relating to orders, bracelets and necklaces), supplied by the department and issued by the attending physician, which may be worn at the patient’s option to notify emergency medical services providers of the presence of an order.

“Out-of-hospital do-not-resuscitate order.” An order in the standard format set forth in section 54A04 (relating to orders, bracelets and necklaces), supplied by the department and issued by the attending physician, directing emergency medical services providers to withhold cardiopulmonary resuscitation from the patient in the event of respiratory or cardiac arrest.

“Out-of-hospital do-not-resuscitate patient.” Any of the following:

(1) An individual:

(i) who is in a terminal condition; and

(ii) who, pursuant to section 54A04(a) (relating to orders, bracelets and necklaces), possesses and in any manner displays or causes to be displayed for emergency medical services providers an apparently valid order, bracelet or necklace.

(2) A declarant:

(i) whose declaration has become operative under section 5405(2) (relating to when declaration becomes operative); and

(ii) who, pursuant to section 54A04(a), possesses and in any manner displays or causes to be displayed for emergency medical services providers an apparently valid order, bracelet or necklace.

“Patient.” An out-of-hospital do-not-resuscitate patient.

“Permanently unconscious.” A medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term

includes, without limitation, a persistent vegetative state or irreversible coma.

“Person.” An individual, corporation, partnership, association or Federal, State or local government or governmental agency.

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

§ 54A04. Orders, bracelets and necklaces.

(a) Issuance.—An attending physician, upon the request of a patient who is at least 18 years of age, has graduated from high school or has married, or the patient’s surrogate if the surrogate is so authorized, shall issue to the patient an order and may issue at the request of the patient or the patient’s surrogate a bracelet or necklace supplied by the department. The patient may, at the patient’s option, wear the bracelet or display the order or necklace to notify emergency medical services providers of the patient’s do-not-resuscitate status.

(b) Format of order.—The department shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available within 180 days of the effective date of this subsection standard orders for issuance to patients by attending physicians of this Commonwealth. The form of the order shall contain, but not be limited to, the following:

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

Patient’s full legal name:

I, the undersigned, state that I am the attending physician of the patient named above. The above-named patient has requested this order, and I have made the determination that this patient is in a terminal condition and eligible for an order.

I direct any and all emergency medical services personnel, commencing on the effective date of this order, to withhold cardiopulmonary resuscitation (cardiac compression, invasive airway techniques, artificial ventilation, defibrillation and other related procedures) from the patient in the event of the patient’s respiratory or cardiac arrest. I further direct such personnel to provide to the patient other medical interventions, such as intravenous fluids, oxygen or other therapies necessary to provide comfort care or to alleviate pain, unless directed otherwise by the patient or the emergency medical services provider’s authorized medical command physician.

Signature of attending physician:

Printed name of attending physician:

Dated:

Attending physician's emergency telephone number:

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

I, the undersigned, hereby direct that in the event of my cardiac and/or respiratory arrest efforts at cardiopulmonary resuscitation not be initiated. I understand that I may revoke these directions at any time by giving verbal instructions to the emergency medical services providers, by physical cancellation or destruction of this form or my bracelet or necklace or by simply not displaying this form or the bracelet or necklace for my EMS caregivers.

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

I, the undersigned, hereby certify that I am authorized to execute this order on the patient's behalf by virtue of having been designated as the patient's surrogate and/or by virtue of my relationship to the patient (specify relationship: _____). I hereby direct that in the event of the patient's cardiac and/or respiratory arrest efforts at cardiopulmonary resuscitation not be initiated.

(c) Format of bracelet.—The department shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available within 180 days of the effective date of this subsection standard bracelets for issuance to patients by attending physicians. The bracelets shall be uniform in design and shall, at a minimum, on the face clearly indicate OUT-OF-HOSPITAL DNR and the name of the patient and attending physician as well as the dated signature of the attending physician.

(d) Format of necklace.—The department shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available within 180 days of the effective date of this subsection standard necklaces for issuance to patients by attending physicians. The necklaces shall be uniform in design and shall, at a minimum, on the face clearly indicate OUT-OF-HOSPITAL DNR and the name of the patient and attending physician as well as the dated signature of the attending physician.

§ 54A05. Revocation.

(a) Patient.—If a patient has obtained an order, only the patient may revoke the patient's DNR status.

(b) Surrogate.—If a surrogate has obtained an order, the patient or the surrogate may revoke the patient's status.

(c) Manner.—Revocation under this section may be done at any time without regard to the patient's physical or mental condition and in any manner, including verbally or by destroying or not displaying the order, bracelet or necklace.

§ 54A06. Liability.

(a) General rule.—No physician, emergency medical services provider or other health care provider who, consistent with this chapter, causes or

participates in the initiating, continuing, withholding or withdrawal of life-sustaining treatment or cardiopulmonary resuscitation from a patient shall, as a result of such action, be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct if the attending physician, health care provider or emergency medical services provider has followed the patient's expressed wishes in the form of a declaration, order or revocation executed pursuant to this chapter.

(b) Absence of order, bracelet or necklace.—The absence of an order, bracelet or necklace by a patient shall not give rise to any presumption as to the intent of the patient to consent to or to refuse the initiation, continuation or termination of life-sustaining treatment.

§ 54A07. Effect on suicide and life insurance.

(a) Criminal effect.—The withholding or withdrawal of life-sustaining treatment from a patient in accordance with the provisions of this chapter shall not, for any purpose, constitute suicide or homicide.

(b) Life insurance.—The making of or failure to make an order in accordance with this chapter 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 treatment from an insured patient, notwithstanding any term of the policy to the contrary.

§ 54A08. Order optional.

No physician 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 hospital plan or Federal, State or local government-sponsored or -operated program may:

- (1) require any person to execute an order as a condition for being insured for or receiving health care services; or
- (2) charge any person a different rate or fee whether or not the person executes or has executed an order.

§ 54A09. Preservation of existing rights.

The provisions of this chapter shall not impair or supersede any existing rights or responsibilities not addressed in this chapter.

§ 54A10. Emergency medical services.

(a) Medical command instructions.—Notwithstanding the absence of an order, bracelet or necklace pursuant to this section, emergency medical services providers shall at all times comply with the instructions of an authorized medical command physician to withhold or discontinue resuscitation.

(b) Effect of order, bracelet or necklace.—

- (1) Emergency medical services providers are authorized to and shall comply with an order if made aware of the order by examining a bracelet, a necklace or the order itself.

(2) Emergency medical services providers shall provide other medical interventions necessary and appropriate to provide comfort and alleviate pain, including intravenous fluids, medications, oxygen and any other intervention appropriate to the level of the certification of the provider, unless otherwise directed by the patient or the emergency medical services provider's authorized medical command physician.

(3) As used in this subsection, the term "comply" means:

(i) to withhold cardiopulmonary resuscitation from the patient in the event of respiratory or cardiac arrest; or

(ii) to discontinue and cease cardiopulmonary resuscitation in the event the emergency medical services provider is presented with an order or discovers a necklace or bracelet after initiating cardiopulmonary resuscitation.

(c) Uncertainty regarding validity or applicability of order, bracelet or necklace.—

(1) Emergency medical services providers who in good faith are uncertain about the validity or applicability of an order, bracelet or necklace shall render care in accordance with their level of certification.

(2) Emergency medical services providers who act under paragraph (1) shall not be subject to civil or criminal liability or administrative sanction for failure to comply with an order under this section.

(d) Recognition of other states' orders.—Emergency medical services or out-of-hospital DNR orders, bracelets or necklaces valid in states other than this Commonwealth shall be recognized in this Commonwealth to the extent that these orders, bracelets or necklaces are consistent with the laws of this Commonwealth. Emergency medical services providers shall act in accordance with the provisions of this section when encountering a patient with an apparently valid EMS or out-of-hospital DNR form, bracelet or necklace issued by another state. Emergency medical services providers acting in good faith under this section shall be entitled to the same immunities and protections that would otherwise be applicable.

§ 54A11. Pregnancy.

(a) General rule.—Notwithstanding the existence of an order or direction to the contrary, life-sustaining treatment, cardiopulmonary resuscitation, nutrition and hydration must be provided to a pregnant patient unless, to a reasonable degree of medical certainty as certified on the patient's medical record by the attending physician and an obstetrician who has examined the patient, life-sustaining treatment, nutrition and hydration:

(1) will not maintain the pregnant patient in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to the pregnant patient; or

(3) would cause pain to the pregnant patient which cannot be alleviated by medication.

(b) **Pregnancy test.**—Nothing in this section shall require a physician to perform a pregnancy test unless the physician has reason to believe that the patient may be pregnant.

(c) **Payment of expenses by Commonwealth.**—

(1) In the event that treatment, cardiopulmonary resuscitation, nutrition or hydration are provided to a pregnant patient, notwithstanding the existence of an order or direction to the contrary, the Commonwealth shall pay all usual, customary and reasonable expenses directly and indirectly incurred by the pregnant patient to whom such treatment, nutrition and hydration are provided.

(2) The Commonwealth shall have the right of subrogation against all moneys paid by any third-party health insurer on behalf of the pregnant patient.

(3) The expenditures incurred on behalf of the pregnant patient shall constitute a grant, and no lien shall be placed upon the property of the pregnant patient, her estate or her heirs.

§ 54A12. Penalties.

Any person who intentionally conceals, cancels, defaces, obliterates or damages the order, bracelet or necklace of another without the consent of the patient commits a felony of the third degree. Any person who falsifies or forges the order, bracelet or necklace of another, or conceals or withholds personal knowledge of a revocation as provided in section 54A05 (relating to revocation), with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the patient and, because of such an act, directly causes life-sustaining treatment to be withheld or withdrawn and death to be hastened shall be subject to prosecution for criminal homicide as provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide). Any person who intentionally, by undue influence, fraud or duress, causes a person to execute an order pursuant to this chapter commits a felony of the third degree.

§ 54A13. Severability.

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

Section 4. The Department of Health shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, develop and make available to health care providers recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act, including those individuals recognized under 42 Pa.C.S. § 8331.2, within 180 days of the effective date of this act, educational materials relating to the

implementation of the provisions of this act. The department shall also cause the requirements of this act to be included as part of the curricula for health care providers recognized under the Emergency Medical Services Act.

Section 5. The Department of Health may contract with any public or private entity to facilitate all or part of its responsibilities under 20 Pa.C.S. Ch. 54 or 54A.

Section 6. The Department of Health, upon the conclusion of at least one public hearing, shall publish interim regulations regarding implementation of 20 Pa.C.S. Ch. 54A in the Pennsylvania Bulletin within 120 days of the effective date of this act. The interim regulations shall not be subject to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. The interim regulations shall expire 18 months following the effective date of this act or when final regulations are promulgated by the department, whichever occurs first. Final regulations shall be promulgated no later than 18 months following the effective date of this act.

Section 7. This act shall take effect in 60 days.

APPROVED—The 19th day of June, A.D. 2002.

MARK S. SCHWEIKER