

No. 2006-169

AN ACT

SB 628

Amending Titles 18 (Crimes and Offenses) and 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for the offenses of neglect of care-dependent person and for living wills and health care powers of attorney; further providing for implementation of out-of-hospital nonresuscitation; making conforming amendments; and repealing provisions of 20 Pa.C.S. Chs. 54 and 54A.

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

Section 1. Section 2713(e) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2713. Neglect of care-dependent person.

* * *

(e) Treatment in conformance with care-dependent person's right to accept or refuse services.—A caretaker or any other individual or facility may offer an affirmative defense to charges filed pursuant to this section if the caretaker, individual or facility can demonstrate through a preponderance of the evidence that the alleged violations result directly from:

(1) the caretaker's, individual's or facility's lawful compliance with a care-dependent person's [**advance directive for health care**] *living will* as provided in 20 Pa.C.S. Ch. 54 (relating to [**advance directive for**] health care);

(2) the caretaker's, individual's or facility's lawful compliance with the care-dependent person's written, signed and witnessed instructions, [**composed**] *executed* when the care-dependent person is competent as to the treatment he wishes to receive;

(3) the caretaker's, individual's or facility's lawful compliance with the direction of the care-dependent person's:

(i) [**attorney-in-fact**] *agent* acting pursuant to a lawful durable power of attorney under 20 Pa.C.S. Ch. 56 (relating to powers of attorney), within the scope of that power; or

(ii) *health care agent acting pursuant to a health care power of attorney under 20 Pa.C.S. Ch. 54 Subch. C (relating to health care agents and representatives), within the scope of that power;*

(4) the caretaker's, individual's or facility's lawful compliance with a "Do Not Resuscitate" order written and signed by the care-dependent person's attending physician[.]; or

(5) *the caretaker's, individual's or facility's lawful compliance with the direction of the care-dependent person's health care representative under 20 Pa.C.S. § 5461 (relating to decisions by health care*

representative), provided the care-dependent person has an end-stage medical condition or is permanently unconscious as these terms are defined in 20 Pa.C.S. § 5422 (relating to definitions) as determined and documented in the person's medical record by the person's attending physician.

* * *

Section 2. Section 711(22) of Title 20 is amended to read:

§ 711. Mandatory exercise of jurisdiction through orphans' court division in general.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

* * *

(22) Agents.—All matters pertaining to the exercise of powers by agents acting under powers of attorney as provided in *Subchapter C of Chapter 54 (relating to health care agents and representatives) or in Chapter 56 (relating to powers of attorney).*

Section 3. Chapter 54 of Title 20 is amended to read:

**[CHAPTER 54
ADVANCE DIRECTIVE FOR HEALTH CARE**

Sec.

- 5401. Short title of chapter.
- 5402. Legislative findings and intent.
- 5403. Definitions.
- 5404. Declaration.
- 5405. When declaration becomes operative.
- 5406. Revocation.
- 5407. Liability.
- 5408. Duty of physician to confirm terminal condition.
- 5409. Unwillingness to comply; transfer of declarant.
- 5410. Effect on suicide and life insurance.
- 5411. Declaration optional.
- 5412. Preservation of existing rights.
- 5413. Emergency medical services.
- 5414. Pregnancy.
- 5415. Penalties.
- 5416. Severability.

§ 5401. Short title of chapter.

This chapter shall be known and may be cited as the Advance Directive for Health Care Act.

§ 5402. Legislative findings and intent.

(a) **Findings.**—The General Assembly finds that all competent adults have a qualified right to control decisions relating to their own medical care. This right is subject to certain interests of society, such as the maintenance of ethical standards in the medical profession and the preservation and protection of human life. Modern medical technological procedures make possible the prolongation of human life beyond natural limits. The application of some procedures to an individual suffering a difficult and uncomfortable process of dying may cause loss of patient dignity and secure only continuation of a precarious and burdensome prolongation of life.

(b) **Intent.**—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. Furthermore, this chapter shall create no presumption concerning the intent of any person who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition or a state of permanent unconsciousness.

§ 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:

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

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

“Declaration.” A written document voluntarily executed by the declarant in accordance with this chapter.

“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.

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

“Life-sustaining treatment.” Any medical procedure or intervention that, when administered to a qualified 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 declaration of the qualified 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.

“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.

“Qualified patient.” A person who has executed a declaration and who has been determined to be in a terminal condition or to be permanently unconscious.

“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.

§ 5404. Declaration.

(a) Execution.—An individual of sound mind who is 18 years of age or older or who has graduated from high school or has married may execute at any time a declaration governing the initiation, continuation, withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or by another on behalf of and at the direction of the declarant, and must be witnessed by two individuals each of whom is 18 years of age or older. A witness shall not be the person who signed the declaration on behalf of and at the direction of the declarant.

(b) Form.—A declaration may but need not be in the following form and may include other specific directions, including, but not limited to, designation of another person to make the treatment decision for the declarant if the declarant is incompetent and is determined to be in a terminal condition or to be permanently unconscious.

DECLARATION

I, _____, being of sound mind, willfully and voluntarily make this declaration to be followed if I become incompetent. This declaration reflects my firm and settled commitment to refuse life-sustaining treatment under the circumstances indicated below.

I direct my attending physician to withhold or withdraw life-sustaining treatment that serves only to prolong the process of my dying, if I should be in a terminal condition or in a state of permanent unconsciousness.

I direct that treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing life-sustaining treatment.

In addition, if I am in the condition described above, I feel especially strong about the following forms of treatment:

I () do () do not want cardiac resuscitation.

I () do () do not want mechanical respiration.

I () do () do not want tube feeding or any other artificial or invasive form of nutrition (food) or hydration (water).

I () do () do not want blood or blood products.

I () do () do not want any form of surgery or invasive diagnostic tests.

I () do () do not want kidney dialysis.

I () do () do not want antibiotics.

I realize that if I do not specifically indicate my preference regarding any of the forms of treatment listed above, I may receive that form of treatment.

Other instructions:

I () do () do not want to designate another person as my surrogate to make medical treatment decisions for me if I should be incompetent and in a terminal condition or in a state of permanent unconsciousness. Name and address of surrogate (if applicable):

Name and address of substitute surrogate (if surrogate designated above is unable to serve):

I () do () do not want to make an anatomical gift of all or part of my body, subject to the following limitations, if any:

I made this declaration on the day of (month, year).

Declarant's signature:

Declarant's address:

The declarant or the person on behalf of and at the direction of the declarant knowingly and voluntarily signed this writing by signature or mark in my presence.

Witness's signature:

Witness's address:

Witness's signature:

Witness's address:

(c) Invalidity of specific direction.—Should any specific direction in the declaration be held to be invalid, the invalidity shall not offset other directions of the declaration which can be effected without the invalid direction.

(d) Medical record.—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, promptly so advise the declarant.

§ 5405. When declaration becomes operative.

A declaration becomes operative when:

(1) a copy is provided to the attending physician; and

(2) the declarant is determined by the attending physician to be incompetent and in a terminal condition or in a state of permanent unconsciousness.

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 provisions of section 5409 (relating to unwillingness to comply; transfer of declarant).

§ 5406. Revocation.

(a) **General rule.**—A declaration may be revoked at any time and in any manner by the declarant without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

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

§ 5407. Liability.

(a) **General rule.**—No physician or other health care provider who, consistent with this chapter, causes or participates in the initiating, continuing, withholding or withdrawal of life-sustaining treatment from a qualified patient who is incompetent shall, as a result thereof, be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct if the attending physician has followed the declarant's wishes as expressed earlier by the declarant in the form of a declaration executed pursuant to this chapter.

(b) **Absence of declaration.**—The absence of a declaration 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.

§ 5408. Duty of physician to confirm terminal condition.

For purposes of section 5405 (relating to when declaration becomes operative), an attending physician shall, without delay after the diagnosis that the declarant is in a terminal condition or in a state of permanent unconsciousness, certify in writing that the declarant is in a terminal condition or in a state of permanent unconsciousness and arrange for the physical examination and confirmation of the terminal condition or state of permanent unconsciousness of the declarant by a second physician.

§ 5409. Unwillingness to comply; transfer of declarant.

(a) **Attending physician or health care provider.**—If an attending physician or other health care provider cannot in good conscience comply with a declaration or if the policies of the health care provider preclude compliance with a declaration, the attending physician or health care provider shall so inform the declarant, or, if the declarant is incompetent, shall so inform the declarant's surrogate, or, if a surrogate is not named in the declaration, shall so inform the family, guardian or other representative of the declarant. The attending physician or health care provider shall make every reasonable effort to assist in the transfer

of the declarant to another physician or health care provider who will comply with the declaration.

(b) **Employee or staff member of health care provider.**—An employee or staff member of a health care provider shall not be required to participate in the withholding or withdrawal of life-sustaining treatment. It shall be unlawful for an employer to discharge or in any other manner to discriminate against an employee or staff member who informs the employer that he does not wish to participate in the withholding or withdrawal of life-sustaining treatment. The employer may require the employee or staff member to express his wishes in writing.

(c) **Liability.**—If transfer under subsection (a) is not possible, the provision of life-sustaining treatment to a declarant shall not subject a health care provider to criminal or civil liability or administrative sanction for failure to carry out the provisions of a declaration.

§ 5410. Effect on suicide and life insurance.

(a) **Criminal effect.**—The withholding or withdrawal of life-sustaining treatment from a qualified 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 a declaration 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.

§ 5411. Declaration 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 shall:

(1) require any person to execute a declaration 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 a declaration.

§ 5412. Preservation of existing rights.

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

§ 5413. Emergency medical services.

(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).

§ 5414. Pregnancy.

(a) **General rule.**—Notwithstanding the existence of a declaration or direction to the contrary, life-sustaining treatment, nutrition and hydration must be provided to a pregnant woman who is incompetent and has a terminal condition or who is permanently unconscious 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 woman 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 woman; or
- (3) would cause pain to the pregnant woman 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 woman may be pregnant.

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

(1) In the event that treatment, nutrition and hydration are provided to a pregnant woman who is incompetent and has a terminal condition or who is permanently unconscious, notwithstanding the existence of a declaration or direction to the contrary, the Commonwealth shall pay all usual, customary and reasonable expenses directly and indirectly incurred by the pregnant woman 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 woman.

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

§ 5415. Penalties.

Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without the consent of the declarant commits a felony of the third degree. Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in section 5406 (relating to revocation), with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarant 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 willfully, by undue influence, fraud or duress, causes a person to execute a declaration pursuant to this chapter commits a felony of the third degree.

§ 5416. Severability.

The provisions of this chapter are severable, and, if any word, phrase, clause, sentence, section or provision of the 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. Title 20 is amended by adding a chapter to read:

CHAPTER 54
HEALTH CARE

Subchapter

- A. General Provisions
- B. Living Wills
- C. Health Care Agents and Representatives
- D. Combined Form
- E. Out-of-Hospital Nonresuscitation

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 5421. Applicability.
- 5422. Definitions.
- 5423. Legislative findings and intent.
- 5424. Compliance.
- 5425. Conflicting advance health care directives.
- 5426. Death not suicide or homicide.
- 5427. Life insurance.
- 5428. Health care instruments optional.
- 5429. Pregnancy.
- 5430. Effect of divorce.
- 5431. Liability.
- 5432. Criminal penalties.
- 5433. Forms.
- 5434. Construction.

§ 5421. Applicability.

(a) General rule.—This chapter applies to advance health care directives and out-of-hospital nonresuscitation orders.

(b) Preservation of existing rights.—The provisions of this chapter shall not impair or supersede any existing rights or responsibilities not addressed in this chapter.

§ 5422. 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:

“Advance health care directive.” A health care power of attorney, living will or a written combination of a health care power of attorney and living will.

“Attending physician.” The physician who has primary responsibility for the health care of a principal or patient.

“Bracelet.” An out-of-hospital do-not-resuscitate bracelet as defined under section 5483 (relating to definitions).

“Cardiopulmonary resuscitation.” Any of the following procedures:

- (1) Cardiac compression.
- (2) Invasive airway technique.
- (3) Artificial ventilation.
- (4) Defibrillation.
- (5) Any other procedure related to those set forth in paragraphs (1) through (4).

“Competent.” A condition in which an individual, when provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to do all of the following:

- (1) Understand the potential material benefits, risks and alternatives involved in a specific proposed health care decision.
- (2) Make that health care decision on his own behalf.
- (3) Communicate that health care decision to any other person.

This term is intended to permit individuals to be found competent to make some health care decisions, but incompetent to make others.

“DNR.” Do not resuscitate.

“Emergency medical services provider.” As defined under section 5483 (relating to definitions):

“End-stage medical condition.” An incurable and irreversible medical condition in an advanced state caused by injury, disease or physical illness that will, in the opinion of the attending physician to a reasonable degree of medical certainty, result in death, despite the introduction or continuation of medical treatment. Except as specifically set forth in an advance health care directive, the term is not intended to preclude treatment of a disease, illness or physical, mental, cognitive or intellectual condition, even if incurable and irreversible and regardless of severity, if both of the following apply:

- (1) The patient would benefit from the medical treatment, including palliative care.
- (2) Such treatment would not merely prolong the process of dying.

“Health care.” Any care, treatment, service or procedure to maintain, diagnose, treat or provide for physical or mental health, custodial or personal care, including any medication program, therapeutical and surgical procedure and life-sustaining treatment.

“Health care agent.” An individual designated by a principal in an advance health care directive.

“Health care decision.” A decision regarding an individual’s health care, including, but not limited to, the following:

- (1) Selection and discharge of a health care provider.
- (2) Approval or disapproval of a diagnostic test, surgical procedure or program of medication.
- (3) Directions to initiate, continue, withhold or withdraw all forms of life-sustaining treatment, including instructions not to resuscitate.

“Health care power of attorney.” A writing made by a principal designating an individual to make health care decisions for the principal.

“Health care provider.” A person who is licensed, certified or otherwise authorized by the laws of this Commonwealth to administer or provide 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.

“Health care representative.” An individual authorized under section 5461 (relating to decisions by health care representative) to make health care decisions for a principal.

“Incompetent.” A condition in which an individual, despite being provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to be:

- (1) unable to understand the potential material benefits, risks and alternatives involved in a specific proposed health care decision;
- (2) unable to make that health care decision on his own behalf; or
- (3) unable to communicate that health care decision to any other person.

The term is intended to permit individuals to be found incompetent to make some health care decisions, but competent to make others.

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

“Life-sustaining treatment.” Any medical procedure or intervention that, when administered to a patient or principal who has an end-stage medical condition or is permanently unconscious, will serve only to prolong the process of dying or maintain the individual in a state of permanent unconsciousness. In the case of an individual with an advance health care directive or order, the term includes nutrition and hydration administered by gastric tube or intravenously or any other artificial or invasive means if the advance health care directive or order so specifically provides.

“Living will.” A writing made in accordance with this chapter that expresses a principal’s wishes and instructions for health care and health care

directions when the principal is determined to be incompetent and has an end-stage medical condition or is permanently unconscious.

“Medical command physician.” A licensed physician who is authorized to give a 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 as defined under section 5483 (relating to definitions).

“Order.” An out-of-hospital do-not-resuscitate order as defined under section 5483 (relating to definitions).

“Patient.” An out-of-hospital do-not-resuscitate patient as defined under section 5483 (relating to definitions).

“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, an irreversible vegetative state or irreversible coma.

“Person.” Any individual, corporation, partnership, association or other similar entity, or any Federal, State or local government or governmental agency.

“Principal.” An individual who executes an advance health care directive, designates an individual to act or disqualifies an individual from acting as a health care representative or an individual for whom a health care representative acts in accordance with this chapter.

“Reasonably available.” Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual’s health care needs.

§ 5423. Legislative findings and intent.

(a) Intent.—This chapter provides a statutory means for competent adults to control their health care through instructions written in advance or by health care agents or health care representatives and requested orders. Nothing in this chapter is intended to:

(1) affect or supersede the holdings of *In re Fiori* 543 Pa. 592, 673 A.2d 905 (1996);

(2) condone, authorize or approve mercy killing, euthanasia or aided suicide; or

(3) permit any affirmative or deliberate act or omission to end life other than as defined in this chapter.

(b) Presumption not created.—This chapter does not create any presumption regarding the intent of an individual who has not executed an advance health care directive to consent to the use or withholding of life-sustaining treatment in the event of an end-stage medical condition or in the event the individual is permanently unconscious.

(c) Findings in general.—The General Assembly finds that:

(1) Individuals have a qualified right to make decisions relating to their own health care.

(2) This right is subject to certain interests of society, such as the maintenance of ethical standards in the medical profession and the preservation and protection of human life.

(3) Modern medical technological procedures make possible the prolongation of human life beyond natural limits.

(4) The application of some procedures to an individual suffering a difficult and uncomfortable process of dying may cause loss of dignity and secure only continuation of a precarious and burdensome prolongation of life.

(5) It is in the best interest of individuals under the care of health care providers if health care providers initiate discussions with them regarding living wills and health care powers of attorney during initial consultations, annual examinations, at diagnosis of a chronic illness or when an individual under their care transfers from one health care setting to another so that the individuals under their care may make known their wishes to receive, continue, discontinue or refuse medical treatment in the event that they are diagnosed with an end-stage medical condition or become permanently unconscious.

(6) Health care providers should initiate such discussions, including discussion of out-of-hospital do-not-resuscitate orders, with individuals under their care at the time of determination of an end-stage medical condition and should document such discussion in the individual's medical record.

§ 5424. Compliance.

(a) Notification by attending physician or health care provider.—If an attending physician or other health care provider cannot in good conscience comply with a living will or health care decision of a health care agent or health care representative or if the policies of a health care provider preclude compliance with a living will or health care decision of a health care agent or health care representative, the attending physician or health care provider shall so inform the principal if the principal is competent or the principal's health care agent or health care representative if the principal is incompetent.

(b) Transfer.—The attending physician or health care provider under subsection (a) shall make every reasonable effort to assist in the transfer of the principal to another physician or health care provider who will comply with the living will or health care decision of the health care agent or health care representative.

(c) Employee or staff member of health care provider.—

(1) An employee or a staff member of a health care provider may not be required to participate in the withholding or withdrawal of life-sustaining treatment.

(2) A health care provider that is an employer may not discharge or in any other manner discriminate against its employee or staff member as a result of informing the employer of the employee's choice not to participate in the withholding or withdrawal of life-sustaining treatment.

(3) A health care provider that is an employer may require its employee or staff member to express in writing the wishes or unwillingness of the employee or staff member as set forth in this subsection.

(d) Liability.—If transfer under subsection (b) is impossible, the provision of life-sustaining treatment to a principal may not subject an attending physician or a health care provider to criminal or civil liability or administrative sanction for failure to carry out either the provisions of a living will or a health care decision of a health care agent or health care representative.

§ 5425. Conflicting advance health care directives.

If a provision of an advance health care directive conflicts with a provision of another advance health care directive, the provision of the instrument latest in date of execution shall prevail to the extent of the conflict unless the instruments expressly provide otherwise.

§ 5426. Death not suicide or homicide.

The withholding or withdrawal of life-sustaining treatment from a principal or patient resulting in death, in accordance with the provisions of this chapter, shall not, for any purpose, constitute suicide or homicide.

§ 5427. Life insurance.

The making of or failure to make an advance health care directive, to request an order or to designate or disqualify a health care representative in accordance with this chapter shall not affect in any manner the sale, procurement or issuance of a 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 individual, notwithstanding a term of the policy to the contrary.

§ 5428. Health care instruments optional.

A health care provider, a health care service plan, a health maintenance organization, an insurer issuing disability insurance, a self-insured employee welfare benefit plan, a nonprofit hospital plan and a Federal, State or local government sponsored or operated program may not:

(1) Require an individual to execute an advance health care directive or order or to designate or disqualify a health care representative as a condition for being insured for or receiving health care services.

(2) Charge an individual a different rate or fee whether or not the individual executes or has executed an advance health care directive or order or designated or disqualified a health care representative.

§ 5429. Pregnancy.

(a) Living wills and health care decisions.—Notwithstanding the existence of a living will, a health care decision by a health care representative or health care agent or any other direction to the contrary, life-sustaining treatment, nutrition and hydration shall be provided to a pregnant woman who is incompetent and has an end-stage medical condition or who is

permanently unconscious unless, to a reasonable degree of medical certainty as certified on the pregnant woman's medical record by the pregnant woman's attending physician and an obstetrician who has examined the pregnant woman, life-sustaining treatment, nutrition and hydration:

- (1) will not maintain the pregnant woman 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 woman; or
- (3) will cause pain to the pregnant woman that cannot be alleviated by medication.

(b) Rule for orders.—Notwithstanding the existence of an order or direction to the contrary, life-sustaining treatment, cardiopulmonary resuscitation, nutrition and hydration shall be provided to a pregnant patient unless, to a reasonable degree of medical certainty as certified on the pregnant patient's medical record by the attending physician and an obstetrician who has examined the pregnant 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 that cannot be alleviated by medication.

(c) Pregnancy test.—Nothing in this chapter shall require a physician to perform a pregnancy test unless the physician has reason to believe that the woman may be pregnant.

(d) Payment of expenses by Commonwealth.—

(1) In the event that treatment, cardiopulmonary resuscitation, nutrition and hydration are provided to a pregnant woman, notwithstanding the existence of a living will, health care decision by a health care representative or health care agent, order or direction to the contrary, the Commonwealth shall pay all usual, customary and reasonable expenses directly, indirectly and actually incurred by the pregnant woman to whom such treatment, cardiopulmonary resuscitation, 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 woman.

(3) The expenditures incurred on behalf of the pregnant woman constitute a grant, and a lien may not be placed upon the property of the pregnant woman, her estate or her heirs.

§ 5430. Effect of divorce.

(a) General rule.—If the spouse of a principal is designated as the principal's health care agent and thereafter either spouse files an action in divorce, the designation of the spouse as health care agent shall be revoked as of the time the action is filed unless it clearly appears from the advance

health care directive that the designation was intended to continue to be effective notwithstanding the filing of an action in divorce by either spouse.

(b) Construction.—A revocation under this section shall not be construed to invalidate an advance health care directive unless its terms expressly direct otherwise.

§ 5431. Liability.

(a) General rule.—A health care provider or another person may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed an act of unprofessional conduct as a result of any of the following:

(1) Causing or participating in the initiating, continuing, withholding or withdrawal of life-sustaining treatment or cardiopulmonary resuscitation from a patient or principal, if the health care provider believes in good faith that he has followed the patient's or principal's wishes as expressed in a living will, order or revocation made under this chapter.

(2) Complying with a direction or decision of an individual who the health care provider believes in good faith has authority to act as a principal's health care agent or health care representative so long as the direction or decision is not clearly contrary to the terms of an advance health care directive that has been delivered to the provider.

(3) Refusing to comply with a direction or decision of an individual based on a good faith belief that the individual lacks authority to act as a principal's health care agent or health care representative or is not acting in accordance with section 5456(c) (relating to authority of health care agent) or 5461(c) (relating to decisions by health care representative).

(4) Complying with an advance health care directive under the assumption that it was valid when made and the health care provider believes in good faith that it has not been amended or revoked.

(5) Disclosing health care information to another person based upon a good faith belief that the disclosure is authorized, permitted or required by this chapter.

(6) Refusing to comply with a direction or decision of an individual based on a good faith belief that compliance with the direction or decision would be unethical or, to a reasonable degree of medical certainty, would result in medical care having no medical basis in addressing any medical need or condition of the individual, provided that the health care provider complies in good faith with sections 5424 (relating to compliance) and 5462(c) (relating to duties of attending physician and health care provider).

(b) Same effect as if dealing with principal.—Any health care provider and other person acting under subsection (a) is protected and released to the same extent as if dealing directly with a competent principal.

(c) Health care agent.—No health care agent acting according to the terms of a health care power of attorney shall be subject to civil or criminal

liability for acting in good faith for a principal or failing in good faith to act for a principal.

(d) Health care representative.—No health care representative who in good faith acts or fails in good faith to act for the principal shall be subject to civil or criminal liability for the action or failure to act.

§ 5432. Criminal penalties.

(a) Criminal homicide.—A person shall be subject to prosecution for criminal homicide as provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide) if the person intends to cause the withholding or withdrawal of life-sustaining treatment contrary to the wishes of the principal or patient and, because of that action, directly causes life-sustaining treatment to be withheld or withdrawn and death to be hastened and:

(1) falsifies or forges the advance health care directive, order, bracelet or necklace of that principal or patient; or

(2) willfully conceals or withholds personal knowledge of a revocation of an advance health care directive or DNR status.

(b) Interference with health care directive.—A person commits a felony of the third degree if that person willfully:

(1) conceals, cancels, alters, defaces, obliterates or damages an advance health care directive, order, bracelet or necklace without the consent of the principal or patient;

(2) causes a person to execute an advance health care directive or order or wear a bracelet or necklace by undue influence, fraud or duress; or

(3) falsifies or forges an advance health care directive, order, bracelet or necklace or any amendment or revocation thereof, the result of which is a direct change in the health care provided to the principal or patient.

§ 5433. Forms.

(a) Substance of forms.—

(1) An advance health care directive may be in the form provided under Subchapter D (relating to combined form) or in any other written form that contains the information required under Subchapters B (relating to living wills) and C (relating to health care agents and representatives).

(2) A Commonwealth agency that licenses health care providers or regulates health care may not prescribe a mandatory form of an advance health care directive.

(b) Combining forms.—A living will and health care power of attorney may be combined into one document.

§ 5434. Construction.

Nothing in this chapter shall be construed as requiring a health care provider to maintain copies of medical records beyond the requirements otherwise imposed by applicable law and regulation.

SUBCHAPTER B
LIVING WILLS

Sec.

5441. Short title of subchapter.

5442. Execution.

5443. When living will operative.

5444. Revocation.

5445. Emergency medical services.

5446. Validity.

5447. Form.

§ 5441. Short title of subchapter.

This subchapter shall be known and may be cited as the Living Will Act.

§ 5442. Execution.

(a) Who may make.—An individual of sound mind may make a living will governing the initiation, continuation, withholding or withdrawal of life-sustaining treatment if the individual:

- (1) is 18 years of age or older;
- (2) has graduated from high school;
- (3) has married; or
- (4) is an emancipated minor.

(b) Requirements.—A living will shall be:

(1) dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal if the principal is unable to sign but specifically directs another individual to sign the living will; and

(2) witnessed by two individuals, each of whom is 18 years of age or older.

(c) Witnesses.—

(1) An individual who signs a living will on behalf of and at the direction of a principal may not witness the living will.

(2) A health care provider and its agent may not sign a living will on behalf of and at the direction of a principal if the health care provider or agent provides health care services to the principal.

§ 5443. When living will operative.

(a) When operative.—A living will becomes operative when:

- (1) a copy is provided to the attending physician; and
- (2) the principal is determined by the attending physician to be incompetent and to have an end-stage medical condition or to be permanently unconscious.

(b) Compliance.—When a living will becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer provisions of section 5424 (relating to compliance).

(c) Invalidity of specific direction.—If a specific direction in a living will is held to be invalid, the invalidity does not negate other directions in the living will that can be effected without the invalid direction.

(d) Medical record.—Any health care provider to whom a copy of a living will is furnished shall make it a part of the medical record of the principal and, if unwilling to comply with the living will, promptly so advise the principal or the principal's health care agent or representative.

(e) Duration.—Unless a living will states a time of termination, it is valid until revoked by the principal, notwithstanding the lapse of time since its execution.

(f) Absence of living will.—If an individual does not make a living will, a presumption does not arise regarding the intent of the individual to consent to or to refuse the initiation, continuation, withholding or withdrawal of life-sustaining treatment.

(g) Duty of physician to certify end-stage medical condition.—Promptly after a determination that the principal has an end-stage medical condition or is permanently unconscious, the attending physician shall certify in writing that the principal has an end-stage medical condition or is permanently unconscious.

§ 5444. Revocation.

(a) When living will may be revoked.—A living will may be revoked at any time and in any manner by the principal regardless of the mental or physical condition of the principal.

(b) Effect of revocation.—A revocation is effective upon communication to the attending physician or other health care provider by the principal or a witness to the revocation.

(c) Medical record.—The attending physician or other health care provider shall make the revocation part of the medical record of the principal.

§ 5445. Emergency medical services.

(a) General rule.—An emergency medical services provider shall, in the course of providing care to a principal, at all times comply with the instructions of an authorized medical command physician to withhold or discontinue cardiopulmonary resuscitation for a principal whose living will has become operative under section 5443(a) (relating to when living will operative).

(b) Applicability.—This section is applicable only in those instances where an out-of-hospital DNR order is not in effect under section 5484 (relating to orders, bracelets and necklaces).

§ 5446. Validity.

(a) Living will executed prior to effective date of subchapter.—This subchapter does not limit the validity of a living will executed prior to the effective date of this subchapter.

(b) Living will executed in another state or jurisdiction.—A living will executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth,

except to the extent that the living will executed in another state or jurisdiction would allow a principal to direct procedures inconsistent with the laws of this Commonwealth.

§ 5447. Form.

A living will may be in any written form expressing the wishes of a principal regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment and may include other specific directions, including, but not limited to, designation of a health care agent to make health care decisions for the principal if the principal is determined to be incompetent and to have an end-stage medical condition or is permanently unconscious. An example of a living will appears in the combined form set forth in Subchapter D (relating to combined form).

SUBCHAPTER C HEALTH CARE AGENTS AND REPRESENTATIVES

Sec.

- 5451. Short title of subchapter.
- 5452. Execution.
- 5453. Requirements and options.
- 5454. When health care power of attorney operative.
- 5455. Appointment of health care agents.
- 5456. Authority of health care agent.
- 5457. Countermand.
- 5458. Amendment.
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- 5460. Relation of health care agent to court-appointed guardian and other agents.
- 5461. Decisions by health care representative.
- 5462. Duties of attending physician and health care provider.
- 5463. Effect on other State law.
- 5464. Validity.
- 5465. Form.

§ 5451. Short title of subchapter.

This subchapter shall be known and may be cited as the Health Care Agents and Representatives Act.

§ 5452. Execution.

(a) Who may make.—An individual of sound mind may make a health care power of attorney if the individual:

- (1) is 18 years of age or older;
- (2) has graduated from high school;
- (3) has married; or
- (4) is an emancipated minor.

(b) Requirements.—A health care power of attorney must be:

- (1) dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal if the

principal is unable to sign but specifically directs another individual to sign the health care power of attorney; and

(2) witnessed by two individuals, each of whom is 18 years of age or older.

(c) Witnesses.—

(1) An individual who signs a health care power of attorney on behalf of and at the direction of a principal may not witness the health care power of attorney.

(2) A health care provider and its agent may not sign a health care power of attorney on behalf of and at the direction of a principal if the health care provider or agent provides health care services to the principal.

§ 5453. Requirements and options.

(a) General rule.—A health care power of attorney shall:

(1) Identify the principal and appoint the health care agent.

(2) Declare that the principal authorizes the health care agent to make health care decisions on behalf of the principal.

(b) Optional provisions.—A health care power of attorney may, but need not:

(1) Describe any limitations that the principal imposes upon the authority of the health care agent.

(2) Indicate the intent of the principal regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment.

(3) Indicate whether the principal wants tube feeding or any other artificial or invasive form of nutrition or hydration.

(4) Disqualify an individual from acting as a health care representative, prohibit the appointment of a health care representative or provide for an order of priority of appointment of a health care representative pursuant to section 5461(d) (relating to decisions by health care representative).

(5) Nominate a guardian of the person of the principal as provided in section 5460 (relating to relation of health care agent to court-appointed guardian and other agents).

(6) Contain other provisions as the principal may specify regarding the implementation of health care decisions and related actions by the health care agent or health care representative.

(7) Request that the health care agent or health care representative exercise his sole and absolute discretion to consult the principal's relative, cleric or physician should the health care agent or health care representative be uncertain of the principal's wishes or best interests.

§ 5454. When health care power of attorney operative.

(a) When operative.—Unless otherwise specified in the health care power of attorney, a health care power of attorney becomes operative when:

(1) a copy is provided to the attending physician; and

(2) the attending physician determines that the principal is incompetent.

(b) When inoperative.—Unless otherwise specified in the health care power of attorney, a health care power of attorney becomes inoperative during such time as, in the determination of the attending physician, the principal is competent.

(c) Invalidity of specific direction.—If a specific direction in the health care power of attorney is held to be invalid, the invalidity does not negate other directions in the health care power of attorney that can be effected without the invalid direction.

(d) Duration.—Unless the health care power of attorney states a time of termination, it is valid until revoked by the principal or the principal's guardian of the person, notwithstanding the lapse of time since its execution.

(e) Court approval unnecessary.—A health care decision made by a health care agent for a principal is effective without court approval.

§ 5455. Appointment of health care agents.

(a) Multiple and successor health care agents.—A principal may appoint the following in a health care power of attorney:

(1) More than one health care agent who shall act jointly unless the health care power of attorney expressly provides otherwise.

(2) One or more successor agents who shall serve in the order named in the health care power of attorney unless the principal expressly directs to the contrary.

(b) Who may not be appointed health care agent.—Unless related to the principal by blood, marriage or adoption, a health care agent of the principal may not be any of the following:

(1) The principal's attending physician or other health care provider.

(2) An owner, operator or employee of a health care provider in which the principal is receiving care.

§ 5456. Authority of health care agent.

(a) Extent of authority.—Except as expressly provided otherwise in a health care power of attorney and subject to subsection (b) and section 5460 (relating to relation of health care agent to court-appointed guardian and other agents), a health care agent shall have the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised. The health care agent's authority may extend beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies.

(b) Life-sustaining treatment decisions.—A life-sustaining treatment decision made by a health care agent is subject to this section and sections 5429 (relating to pregnancy), 5454 (relating to when health care power of attorney operative) and 5462(a) (relating to duties of attending physician and health care provider).

(c) Health care decisions.—

(1) The health care agent shall gather information on the principal's prognosis and acceptable medical alternatives regarding diagnosis, treatments and supportive care.

(2) In the case of procedures for which informed consent is required under section 504 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, the information shall include the information required to be disclosed under that act.

(3) In the case of health care decisions regarding end of life of a patient with an end-stage medical condition, the information shall distinguish between curative alternatives, palliative alternatives and alternatives which will merely serve to prolong the process of dying. The information shall also distinguish between the principal's end-stage medical condition and any other concurrent disease, illness or physical, mental, cognitive or intellectual condition that predated the principal's end-stage medical condition.

(4) After consultation with health care providers and consideration of the information obtained in accordance with paragraphs (1), (2) and (3), the health care agent shall make health care decisions in accordance with the health care agent's understanding and interpretation of the instructions given by the principal at a time when the principal had the capacity to understand, make and communicate health care decisions. Instructions include an advance health care directive made by the principal and any clear written or verbal directions that cover the situation presented.

(5) (i) In the absence of instruction, the health care agent shall make health care decisions that conform to the health care agent's assessment of the principal's preferences and values, including religious and moral beliefs.

(ii) If the health care agent does not know enough about the principal's instructions, preferences and values to decide accordingly, the health care agent shall take into account what the agent knows of the principal's instructions, preferences and values, including religious and moral beliefs, and the health care agent's assessment of the principal's best interests, taking into consideration the following goals and considerations:

(A) The preservation of life.

(B) The relief from suffering.

(C) The preservation or restoration of functioning, taking into account any concurrent disease, illness or physical, mental, cognitive or intellectual condition that may have predated the principal's end-stage medical condition.

(iii) (A) In the absence of a specific, written authorization or direction by a principal to withhold or withdraw nutrition and hydration administered by gastric tube or intravenously or by other artificial or invasive means, a health care agent shall presume that

the principal would not want nutrition and hydration withheld or withdrawn.

(B) The presumption may be overcome by previously clearly expressed wishes of the principal to the contrary. In the absence of such clearly expressed wishes, the presumption may be overcome if the health care agent considers the values and preferences of the principal and assesses the factors set forth in subparagraphs (i) and (ii) and determines it is clear that the principal would not wish for artificial nutrition and hydration to be initiated or continued.

(6) The Department of Health shall ensure as part of the licensure process that health care providers under its jurisdiction have policies and procedures in place to implement this subsection.

(d) Health care information.—

(1) Unless specifically provided otherwise in a health care power of attorney, a health care agent has the same rights and limitations as the principal to request, examine, copy and consent or refuse to consent to the disclosure of medical or other health care information.

(2) Disclosure of medical or other health care information to a health care agent does not constitute a waiver of any evidentiary privilege or of a right to assert confidentiality. A health care provider that discloses such information to a health care agent in good faith shall not be liable for the disclosure. A health care agent may not disclose health care information regarding the principal except as is reasonably necessary to perform the agent's obligations to the principal or as otherwise required by law.

§ 5457. Countermand.

(a) Competent principal.—A principal of sound mind may countermand any health care decision made by the principal's health care agent at any time and in any manner by personally informing the attending physician or health care provider.

(b) Incompetent principal.—Regardless of the principal's mental or physical capacity, a principal may countermand a health care decision made by the principal's health care agent that would withhold or withdraw life-sustaining treatment at any time and in any manner by personally informing the attending physician.

(c) Attending physician.—The attending physician or health care provider shall make reasonable efforts to promptly inform the health care agent of a countermand under this section.

(d) Health care agent.—A countermand exercised under this section shall not affect the authority of a health care agent to make other health care decisions in accordance with the health care power of attorney.

§ 5458. Amendment.

While of sound mind, a principal may amend a health care power of attorney by a writing executed in accordance with the provisions of section 5452 (relating to execution). An amendment may include the revocation in

part of the health care power of attorney or the designation of new or additional health care agents.

§ 5459. Revocation.

(a) When health care power of attorney may be revoked.—While of sound mind, a principal may revoke a health care power of attorney by a writing executed in accordance with the provisions of section 5452 (relating to execution) or by personally informing the attending physician, health care provider or health care agent that the health care power of attorney is revoked.

(b) Reliance on health care power of attorney.—A health care provider may rely on the effectiveness of a health care power of attorney unless notified of its revocation.

(c) Subsequent action by agent.—A health care agent, knowing of the revocation of the health care power of attorney, may not make or attempt to make health care decisions for the principal.

§ 5460. Relation of health care agent to court-appointed guardian and other agents.

(a) Accountability of health care agent.—If a principal who has executed a health care power of attorney is later adjudicated an incapacitated person and a guardian of the person to make health care decisions is appointed by a court, the health care agent is accountable to the guardian as well as to the principal. The guardian shall have the same power to revoke or amend the appointment of a health care agent that the principal would have if the principal were not incapacitated but may not revoke or amend other instructions in an advance health directive absent judicial authorization.

(b) Nomination of guardian of person.—In a health care power of attorney, a principal may nominate a guardian of the person for the principal for consideration by a court if incapacity proceedings for the principal's person are thereafter commenced. If a court determines that the appointment of a guardian is necessary, the court shall appoint a guardian in accordance with the principal's most recent nomination except for good cause or disqualification.

(c) Reasonable expenses.—In fulfilling the health care needs for a principal, a health care agent may incur reasonable expenses, including the purchase of health care insurance, to the extent the expenses are not otherwise covered by insurance or other similar benefits. Payment for the expenses or reimbursement to the health care agent for the expenses from the principal's funds shall be made by either of the following:

(1) A guardian of the estate of the principal.

(2) An agent acting on behalf of the principal under a power of attorney if the agent has the power to disburse the funds of the principal.

§ 5461. Decisions by health care representative.

(a) General rule.—A health care representative may make a health care decision for an individual whose attending physician has determined that the individual is incompetent if:

- (1) the individual is at least 18 years of age, has graduated from high school, has married or is an emancipated minor;
- (2) (i) the individual does not have a health care power of attorney; or
(ii) the individual's health care agent is not reasonably available or has indicated an unwillingness to act and no alternate health care agent is reasonably available; and
- (3) a guardian of the person to make health care decisions has not been appointed for the individual.

(b) Application.—This section applies to decisions regarding treatment, care, goods or services that a caretaker is obligated to provide to a care-dependent person who has an end-stage medical condition or is permanently unconscious as permitted under 18 Pa.C.S. § 2713(e)(5) (relating to neglect of care-dependent person).

(c) Extent of authority of health care representative.—Except as set forth in section 5462(c)(1) (relating to duties of attending physician and health care provider), the authority and the decision-making process of a health care representative shall be the same as provided for a health care agent in section 5456 (relating to authority of health care agent) and 5460(c) (relating to relation of health care agent to court-appointed guardian and other agents).

(d) Who may act as health care representative.—

(1) An individual of sound mind may, by a signed writing or by personally informing the attending physician or the health care provider, designate one or more individuals to act as health care representative. In the absence of a designation or if no designee is reasonably available, any member of the following classes, in descending order of priority, who is reasonably available may act as health care representative:

(i) The spouse, unless an action for divorce is pending, and the adult children of the principal who are not the children of the spouse.

(ii) An adult child.

(iii) A parent.

(iv) An adult brother or sister.

(v) An adult grandchild.

(vi) An adult who has knowledge of the principal's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the principal would make health care decisions.

(2) An individual may by signed writing, including a health care power of attorney, provide for a different order of priority.

(3) An individual with a higher priority who is willing to act as a health care representative may assume the authority to act notwithstanding the fact that another individual has previously assumed that authority.

(e) Disqualification.—An individual of sound mind may disqualify one or more individuals from acting as health care representative in the same manner as specified under subsection (d) for the designation of a health care representative. An individual may also disqualify one or more individuals

from acting as health care representative by a health care power of attorney. Upon the petition of any member of the classes set forth in subsection (d), the court may disqualify for cause shown an individual otherwise eligible to serve as a health care representative.

(f) Limitation on designation of health care representative.—Unless related by blood, marriage or adoption, a health care representative may not be the principal's attending physician or other health care provider nor an owner, operator or employee of a health care provider in which the principal receives care.

(g) Decision of health care representative.—

(1) If more than one member of a class assumes authority to act as a health care representative, the members do not agree on a health care decision and the attending physician or health care provider is so informed, the attending physician or health care provider may rely on the decision of a majority of the members of that class who have communicated their views to the attending physician or health care provider.

(2) If the members of the class of health care representatives are evenly divided concerning the health care decision and the attending physician or health care provider is so informed, an individual having a lower priority may not act as a health care representative. So long as the class remains evenly divided, no decision shall be deemed made until such time as the parties resolve their disagreement. Notwithstanding such disagreement, nothing in this subsection shall be construed to preclude the administration of health care treatment in accordance with accepted standards of medical practice.

(h) Duty of health care representative.—Promptly upon assuming authority to act, a health care representative shall communicate the assumption of authority to the members of the principal's family specified in subsection (d) who can be readily contacted.

(i) Countermand of health care decision.—

(1) A principal of sound mind may countermand any health care decision made by the principal's health care representative at any time and in any manner by personally informing the attending physician or health care provider.

(2) Regardless of the principal's mental or physical capacity, a principal may countermand a health care decision made by the principal's health care representative that would withhold or withdraw life-sustaining treatment at any time and in any manner by personally informing the attending physician.

(3) The attending physician or health care provider shall make reasonable efforts to promptly inform the health care representative of a countermand exercised under this section.

(4) A countermand exercised under this section shall not affect the authority of the health care representative to make other health care decisions.

(j) Court approval unnecessary.—A health care decision made by a health care representative for a principal shall be effective without court approval.

(k) Written declaration of health care representative.—An attending physician or health care provider may require a person claiming the right to act as health care representative for a principal to provide a written declaration made under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

§ 5462. Duties of attending physician and health care provider.

(a) Duty to certify end-stage medical condition.—Promptly after a determination that a principal has an end-stage medical condition or is permanently unconscious, the attending physician shall certify in writing that the principal has an end-stage medical condition or is permanently unconscious.

(b) Communication of health care decision.—Whenever possible before implementing a health care decision made by a health care representative or health care agent, an attending physician or health care provider shall promptly communicate to the principal the decision and the identity of the person making the decision.

(c) Compliance with decisions of health care agent and health care representative.—

(1) Health care necessary to preserve life shall be provided to an individual who has neither an end-stage medical condition nor is permanently unconscious, except if the individual is competent and objects to such care or a health care agent objects on behalf of the principal if authorized to do so by the health care power of attorney or living will. In every other case, subject to any limitation specified in the health care power of attorney, an attending physician or health care provider shall comply with a health care decision made by a health care agent or health care representative to the same extent as if the decision had been made by the principal.

(2) In all circumstances this subsection shall be construed so as to be consistent with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327).

(d) Medical record.—

(1) An attending physician or health care provider who is given a health care power of attorney shall arrange for the health care power of attorney or a copy to be placed in the medical record of the principal.

(2) An attending physician or health care provider to whom an amendment or revocation of a health care power of attorney is communicated shall promptly enter the information in the medical record of the principal and maintain a copy if one is furnished.

(e) Record of determination.—An attending physician who determines that a principal is incompetent or has become competent or makes a determination that affects the authority of a health care agent shall enter the determination in the medical record of the principal and, if possible, promptly inform the principal and any health care agent of the determination. § 5463. Effect on other State law.

(a) Mental health.—This subchapter does not affect the requirements of other laws of this Commonwealth regarding consent to observation, diagnosis, treatment or hospitalization for a mental illness.

(b) Prohibited care.—This subchapter does not authorize a health care agent or health care representative to consent to any health care prohibited by the laws of this Commonwealth.

(c) Consent.—This subchapter does not affect the laws of this Commonwealth regarding any of the following:

(1) The standard of care of a health care provider required in the administration of health care.

(2) When consent is required for health care.

(3) Informed consent for health care.

(4) Consent to health care in an emergency.

(d) Preservation of religious rights.—This subchapter does not prevent a health care agent or health care representative from consenting to health care administered in good faith pursuant to religious beliefs of the principal or from withholding consent to health care that is contrary to religious beliefs of the principal.

(e) Rights of individuals.—This subchapter does not affect the right of an individual to make health care decisions.

(f) Disclosure.—The disclosure requirements of section 5456(d) (relating to authority of health care agent) supersede any provision in any other State statute or regulation that requires the principal to consent to disclosure or which otherwise conflicts with section 5456(d), including, but not limited to, the following:

(1) Section 8 of the act of April 14, 1972 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol Abuse Control Act.

(2) Section 111 of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.

(3) Section 15 of the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.

(4) Section 41 of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985.

(5) Section 7 of the act of November 29, 1990 (P.L.585, No.148), known as the Confidentiality of HIV-Related Information Act.

§ 5464. Validity.

This subchapter does not limit the validity of a power of attorney executed prior to the effective date of this subchapter. A health care power of attorney executed in another state or jurisdiction and in conformity with the

laws of that state or jurisdiction shall be considered valid in this Commonwealth, except to the extent that the health care power of attorney executed in another state or jurisdiction would allow a health care agent to make a health care decision inconsistent with the laws of this Commonwealth.

§ 5465. Form.

A health care power of attorney may be in any written form identifying the principal, appointing a health care agent and declaring that the principal authorizes the health care agent to make health care decisions on behalf of the principal. An example of a health care power of attorney appears in the combined form set forth in Subchapter D (relating to combined form).

SUBCHAPTER D COMBINED FORM

Sec.

5471. Example.

§ 5471. Example.

The following is an example of a document that combines a living will and health care power of attorney:

DURABLE HEALTH CARE POWER OF ATTORNEY AND HEALTH CARE TREATMENT INSTRUCTIONS (LIVING WILL)

PART I

INTRODUCTORY REMARKS ON HEALTH CARE DECISION MAKING

You have the right to decide the type of health care you want.

Should you become unable to understand, make or communicate decisions about medical care, your wishes for medical treatment are most likely to be followed if you express those wishes in advance by:

- (1) naming a health care agent to decide treatment for you; and
- (2) giving health care treatment instructions to your health care agent or health care provider.

An advance health care directive is a written set of instructions expressing your wishes for medical treatment. It may contain a health care power of attorney, where you name a person called a "health care agent" to decide treatment for you, and a living will, where you tell your health care agent and health care providers your choices regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment and other specific directions.

You may limit your health care agent's involvement in deciding your medical treatment so that your health care agent will speak for you only when you are unable to speak for yourself or you may give your health care agent the power to speak for you immediately. This combined form gives your health care agent the power to speak for you only when you are unable to speak for yourself. A living will cannot be followed unless

your attending physician determines that you lack the ability to understand, make or communicate health care decisions for yourself and you are either permanently unconscious or you have an end-stage medical condition, which is a condition that will result in death despite the introduction or continuation of medical treatment. You, and not your health care agent, remain responsible for the cost of your medical care.

If you do not write down your wishes about your health care in advance, and if later you become unable to understand, make or communicate these decisions, those wishes may not be honored because they may remain unknown to others.

A health care provider who refuses to honor your wishes about health care must tell you of its refusal and help to transfer you to a health care provider who will honor your wishes.

You should give a copy of your advance health care directive (a living will, health care power of attorney or a document containing both) to your health care agent, your physicians, family members and others whom you expect would likely attend to your needs if you become unable to understand, make or communicate decisions about medical care. If your health care wishes change, tell your physician and write a new advance health care directive to replace your old one. It is important in selecting a health care agent that you choose a person you trust who is likely to be available in a medical situation where you cannot make decisions for yourself. You should inform that person that you have appointed him or her as your health care agent and discuss your beliefs and values with him or her so that your health care agent will understand your health care objectives.

You may wish to consult with knowledgeable, trusted individuals such as family members, your physician or clergy when considering an expression of your values and health care wishes. You are free to create your own advance health care directive to convey your wishes regarding medical treatment. The following form is an example of an advance health care directive that combines a health care power of attorney with a living will.

NOTES ABOUT THE USE OF THIS FORM

If you decide to use this form or create your own advance health care directive, you should consult with your physician and your attorney to make sure that your wishes are clearly expressed and comply with the law.

If you decide to use this form but disagree with any of its statements, you may cross out those statements.

You may add comments to this form or use your own form to help your physician or health care agent decide your medical care.

This form is designed to give your health care agent broad powers to make health care decisions for you whenever you cannot make them for yourself. It is also designed to express a desire to limit or authorize care if

you have an end-stage medical condition or are permanently unconscious. If you do not desire to give your health care agent broad powers, or you do not wish to limit your care if you have an end-stage medical condition or are permanently unconscious, you may wish to use a different form or create your own. YOU SHOULD ALSO USE A DIFFERENT FORM IF YOU WISH TO EXPRESS YOUR PREFERENCES IN MORE DETAIL THAN THIS FORM ALLOWS OR IF YOU WISH FOR YOUR HEALTH CARE AGENT TO BE ABLE TO SPEAK FOR YOU IMMEDIATELY. In these situations, it is particularly important that you consult with your attorney and physician to make sure that your wishes are clearly expressed.

This form allows you to tell your health care agent your goals if you have an end-stage medical condition or other extreme and irreversible medical condition, such as advanced Alzheimer's disease. Do you want medical care applied aggressively in these situations or would you consider such aggressive medical care burdensome and undesirable?

You may choose whether you want your health care agent to be bound by your instructions or whether you want your health care agent to be able to decide at the time what course of treatment the health care agent thinks most fully reflects your wishes and values.

If you are a woman and diagnosed as being pregnant at the time a health care decision would otherwise be made pursuant to this form, the laws of this Commonwealth prohibit implementation of that decision if it directs that life-sustaining treatment, including nutrition and hydration, be withheld or withdrawn from you, unless your attending physician and an obstetrician who have examined you certify in your medical record that the life-sustaining treatment:

- (1) will not maintain you in such a way as to permit the continuing development and live birth of the unborn child;
- (2) will be physically harmful to you; or
- (3) will cause pain to you that cannot be alleviated by medication.

A physician is not required to perform a pregnancy test on you unless the physician has reason to believe that you may be pregnant.

Pennsylvania law protects your health care agent and health care providers from any legal liability for following in good faith your wishes as expressed in the form or by your health care agent's direction. It does not otherwise change professional standards or excuse negligence in the way your wishes are carried out. If you have any questions about the law, consult an attorney for guidance.

This form and explanation is not intended to take the place of specific legal or medical advice for which you should rely upon your own attorney and physician.

PART II

DURABLE HEALTH CARE POWER OF ATTORNEY

I,....., of..... County, Pennsylvania, appoint the person named below to be my health care agent to make health and personal care decisions for me.

Effective immediately and continuously until my death or revocation by a writing signed by me or someone authorized to make health care treatment decisions for me, I authorize all health care providers or other covered entities to disclose to my health care agent, upon my agent's request, any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and what is otherwise private, privileged, protected or personal health information, such as health information as defined and described in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936), the regulations promulgated thereunder and any other State or local laws and rules. Information disclosed by a health care provider or other covered entity may be redisclosed and may no longer be subject to the privacy rules provided by 45 C.F.R. Pt. 164.

The remainder of this document will take effect when and only when I lack the ability to understand, make or communicate a choice regarding a health or personal care decision as verified by my attending physician. My health care agent may not delegate the authority to make decisions.

MY HEALTH CARE AGENT HAS ALL OF THE FOLLOWING POWERS SUBJECT TO THE HEALTH CARE TREATMENT INSTRUCTIONS THAT FOLLOW IN PART III (CROSS OUT ANY POWERS YOU DO NOT WANT TO GIVE YOUR HEALTH CARE AGENT):

- 1. To authorize, withhold or withdraw medical care and surgical procedures.
- 2. To authorize, withhold or withdraw nutrition (food) or hydration (water) medically supplied by tube through my nose, stomach, intestines, arteries or veins.
- 3. To authorize my admission to or discharge from a medical, nursing, residential or similar facility and to make agreements for my care and health insurance for my care, including hospice and/or palliative care.
- 4. To hire and fire medical, social service and other support personnel responsible for my care.
- 5. To take any legal action necessary to do what I have directed.
- 6. To request that a physician responsible for my care issue a do-not-resuscitate (DNR) order, including an out-of-hospital DNR order, and sign any required documents and consents.

APPOINTMENT OF HEALTH CARE AGENT

I appoint the following health care agent:

Health Care Agent:.....

(Name and relationship)

Address:.....
.....

Telephone Number: Home..... Work.....

E-mail:.....

IF YOU DO NOT NAME A HEALTH CARE AGENT, HEALTH CARE PROVIDERS WILL ASK YOUR FAMILY OR AN ADULT WHO KNOWS YOUR PREFERENCES AND VALUES FOR HELP IN DETERMINING YOUR WISHES FOR TREATMENT. NOTE THAT YOU MAY NOT APPOINT YOUR DOCTOR OR OTHER HEALTH CARE PROVIDER AS YOUR HEALTH CARE AGENT UNLESS RELATED TO YOU BY BLOOD, MARRIAGE OR ADOPTION.

If my health care agent is not readily available or if my health care agent is my spouse and an action for divorce is filed by either of us after the date of this document, I appoint the person or persons named below in the order named. (It is helpful, but not required, to name alternative health care agents.)

First Alternative Health Care Agent:.....

(Name and relationship)

Address:.....
.....

Telephone Number: Home..... Work.....

E-mail:.....

Second Alternative Health Care Agent:.....

(Name and relationship)

Address:.....
.....

Telephone Number: Home..... Work.....

E-mail:.....

GUIDANCE FOR HEALTH CARE AGENT (OPTIONAL)

GOALS

If I have an end-stage medical condition or other extreme irreversible medical condition, my goals in making medical decisions are as follows (insert your personal priorities such as comfort, care, preservation of mental function, etc.):.....
.....
.....

SEVERE BRAIN DAMAGE OR BRAIN DISEASE

If I should suffer from severe and irreversible brain damage or brain disease with no realistic hope of significant recovery, I would consider such a condition intolerable and the application of aggressive medical care to be burdensome. I therefore request that my health care agent respond to any intervening (other and separate) life-threatening conditions in the same manner as directed for an end-stage medical condition or state of permanent unconsciousness as I have indicated below.

Initials.....I agree

Initials.....I disagree

PART III

HEALTH CARE TREATMENT INSTRUCTIONS IN THE EVENT OF END-STAGE MEDICAL CONDITION OR PERMANENT UNCONSCIOUSNESS (LIVING WILL)

The following health care treatment instructions exercise my right to make my own health care decisions. These instructions are intended to provide clear and convincing evidence of my wishes to be followed when I lack the capacity to understand, make or communicate my treatment decisions:

IF I HAVE AN END-STAGE MEDICAL CONDITION (WHICH WILL RESULT IN MY DEATH, DESPITE THE INTRODUCTION OR CONTINUATION OF MEDICAL TREATMENT) OR AM PERMANENTLY UNCONSCIOUS SUCH AS AN IRREVERSIBLE COMA OR AN IRREVERSIBLE VEGETATIVE STATE AND THERE IS NO REALISTIC HOPE OF SIGNIFICANT RECOVERY, ALL OF THE FOLLOWING APPLY (CROSS OUT ANY TREATMENT INSTRUCTIONS WITH WHICH YOU DO NOT AGREE):

1. I direct that I be given health care treatment to relieve pain or provide comfort even if such treatment might shorten my life, suppress my appetite or my breathing, or be habit forming.

2. I direct that all life prolonging procedures be withheld or withdrawn.

3. I specifically do not want any of the following as life prolonging procedures: (If you wish to receive any of these treatments, write "I do want" after the treatment)

- heart-lung resuscitation (CPR).....
mechanical ventilator (breathing machine).....
dialysis (kidney machine).....
surgery.....
chemotherapy.....
radiation treatment
antibiotics.....

Please indicate whether you want nutrition (food) or hydration (water) medically supplied by a tube into your nose, stomach, intestine, arteries, or veins if you have an end-stage medical condition or are permanently unconscious and there is no realistic hope of significant recovery. (Initial only one statement.)

TUBE FEEDINGS

.....I want tube feedings to be given

OR

NO TUBE FEEDINGS

.....I do not want tube feedings to be given.

HEALTH CARE AGENT'S USE OF INSTRUCTIONS
(INITIAL ONE OPTION ONLY).

.....My health care agent must follow these instructions.

OR

.....These instructions are only guidance.

My health care agent shall have final say and may override any
of my instructions. (Indicate any exceptions).....

If I did not appoint a health care agent, these instructions shall be
followed.

LEGAL PROTECTION

Pennsylvania law protects my health care agent and health care
providers from any legal liability for their good faith actions in following
my wishes as expressed in this form or in complying with my health care
agent's direction. On behalf of myself, my executors and heirs, I further
hold my health care agent and my health care providers harmless and
indemnify them against any claim for their good faith actions in
recognizing my health care agent's authority or in following my treatment
instructions.

ORGAN DONATION (INITIAL ONE OPTION ONLY.)

.....I consent to donate my organs and tissues at the time of my death
for the purpose of transplant, medical study or education. (Insert
any limitations you desire on donation of specific organs or
tissues or uses for donation of organs and tissues.).....

OR

.....I do not consent to donate my organs or tissues at the time of my
death.

SIGNATURE

Having carefully read this document, I have signed it this.....day
of....., 20..., revoking all previous health care powers of attorney and
health care treatment instructions.

.....
(SIGN FULL NAME HERE FOR HEALTH CARE POWER OF
ATTORNEY AND HEALTH CARE TREATMENT INSTRUCTIONS)

WITNESS:.....

WITNESS:.....

Two witnesses at least 18 years of age are required by Pennsylvania
law and should witness your signature in each other's presence. A person
who signs this document on behalf of and at the direction of a principal
may not be a witness. (It is preferable if the witnesses are not your heirs,
nor your creditors, nor employed by any of your health care providers.)

NOTARIZATION (OPTIONAL)

(Notarization of document is not required by Pennsylvania law, but if the document is both witnessed and notarized, it is more likely to be honored by the laws of some other states.)

On this.....day of, 20...., before me personally appeared the aforesaid declarant and principal, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of....., State of..... the day and year first above written.

..... Notary Public My commission expires

SUBCHAPTER E
OUT-OF-HOSPITAL NONRESUSCITATION

Sec.

- 5481. Short title of subchapter.
5482. Legislative findings and intent.
5483. Definitions.
5484. Orders, bracelets and necklaces.
5485. Revocation.
5486. Absence of order, bracelet or necklace.
5487. Emergency medical services.
5488. Advisory committee.

§ 5481. Short title of subchapter.

This subchapter shall be known and may be cited as the Out-of-Hospital Nonresuscitation Act.

§ 5482. 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 inflict 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 an advance health care 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 subchapter provides clear direction to emergency medical services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.

§ 5483. Definitions.

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

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

“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, certified or otherwise authorized by the laws of this Commonwealth to administer or provide 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, and those individuals recognized under 42 Pa.C.S. § 8331.2 (relating to good Samaritan civil immunity for use of automated external defibrillator).

“Out-of-hospital do-not-resuscitate bracelet.” A bracelet in the standard format set forth in section 5484 (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 5484 (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 5484 (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.” An individual who:

- (1) Has an end-stage medical condition or is permanently unconscious.
- (2) Pursuant to section 5484(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.

“Surrogate.” A health care agent or a health care representative.

§ 5484. 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, has married or is an emancipated minor, 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 DNR 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 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 or the patient's surrogate has requested this order, and I have made the determination that the patient is eligible for an order and satisfies one of the following:

..... has an end-stage medical condition.

..... is permanently unconscious and has a living will directing that no cardiopulmonary resuscitation be provided to the patient in the event of the patient's cardiac or respiratory arrest.

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:

I, the undersigned, hereby direct that in the event of my cardiac and/or respiratory arrest efforts at cardiopulmonary resuscitation not be initiated and that they may be withdrawn if 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 patient (if capable 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 and be withdrawn if initiated.

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

(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 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 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.

§ 5485. 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 a 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.

§ 5486. Absence of order, bracelet or necklace.

If an order has not been issued by an attending physician, a presumption does not arise as to the intent of the individual to consent to or to refuse the initiation, continuation or termination of life-sustaining treatment.

§ 5487. 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 and the criteria for their issuance 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.

§ 5488. Advisory committee.

(a) Establishment.—Within 60 days of the effective date of this section, the department shall establish a committee to assist it in determining the advisability of using a standardized form containing orders by qualified physicians that detail the scope of medical treatment for patients' life-sustaining wishes.

(b) Membership.—The committee shall include representatives from the Pennsylvania Medical Society, the Hospital and Health System Association

of Pennsylvania, the Joint State Government Commission's Advisory Committee on Decedents' Estates Laws, the Pennsylvania Bar Association, the Department of Aging, the Department of Public Welfare and other interested persons at the department's discretion.

(c) Scope of review.—The committee's review shall include, but not be limited to, examination of the following:

- (1) The need to adopt this type of standardized form in view of the existing use of do-not-resuscitate orders.
- (2) The use and evaluation of use of such forms in other states.
- (3) Any other matters determined by the department to be relevant to its determination.

Section 5. Chapter 54A of Title 20 is amended to read:

[Chapter 54A. Out-of-Hospital Nonresuscitation

§ 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 6. The Department of Health shall adopt regulations, as necessary, to facilitate implementation of 20 Pa.C.S. Ch. 54 Subch. E. Regulations adopted under former 20 Pa.C.S. Ch. 54A shall remain effective unless they are inconsistent with 20 Pa.C.S. Ch. 54 or until they are superseded by regulations promulgated under this act.

Section 7. The repeal of 20 Pa.C.S. Ch. 54 shall not affect the validity of any declaration executed pursuant to the sample form provided in former 20 Pa.C.S. § 5404(b) before, on or after the effective date of this section.

Section 8. This act shall take effect in 60 days.

APPROVED—The 29th day of November, A.D. 2006.

EDWARD G. RENDELL