

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 790

Short Title: Living Wills Clarified.

(Public)

Sponsors: Representatives Gamble; and G. Miller.

Referred to: Judiciary I.

April 10, 1995

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY AND SIMPLIFY THE DECLARATION OF A RIGHT TO A
2 NATURAL DEATH.
3

Whereas, 20 years ago, the North Carolina General Assembly passed legislation authorizing a "living will", to enable people to decide before they became terminally ill that they did not want to have life prolonged if they became terminally ill and to make this decision known to health care providers; and

Whereas, recent legislation has modified the living will to allow consideration of persistent vegetative state as well as of terminal illness in using a living will; and

Whereas, Congress has now mandated the availability of living wills or advance directives in hospitals; and

Whereas, although the public's use of living wills is still very limited, the North Carolina General Assembly has enacted legislation permitting the use of a durable power of attorney for health care, which use depends on very complicated legal forms and analysis and does not help to encourage the public use of advance directives or living wills; and

Whereas, simplifying and clarifying the living will process will greatly help the public use living wills or advance directives; Now, therefore;

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 90-321 reads as rewritten:

6 "**§ 90-321. Right to a natural death.**

1 (a) As used in this Article the term:

2 (1) 'Declarant' means a person who has signed a declaration in accordance
3 with subsection (c);

4 (2) 'Extraordinary means' is defined as any medical procedure or
5 ~~intervention~~ intervention, including any short-term therapy or support
6 such as oxygen or fluid therapy, which in the judgment of the attending
7 physician would serve only to postpone artificially the moment of death
8 by sustaining, restoring, or supplanting a vital function;

9 (3) 'Physician' means any person licensed to practice medicine under
10 Article 1 of Chapter 90 of the laws of the State of North Carolina;

11 (4) 'Persistent vegetative state' is a medical condition whereby in the
12 judgment of the attending physician the patient suffers from a sustained
13 complete loss of self-aware cognition and, without the use of
14 extraordinary means or artificial nutrition or hydration, will succumb to
15 death within a short period of ~~time~~ time;

16 (5) 'Terminal condition' means an incurable or irrevocable condition that,
17 without the administration of extraordinary means, will, in the opinion
18 of the attending physician, result in death within a relatively short time.

19 (b) If a person has declared, in accordance with subsection (c) below, a desire that
20 ~~his~~ life not be prolonged by extraordinary means or by artificial nutrition or hydration,
21 regardless of whether administered through an invasive medical procedure, and the
22 declaration has not been revoked in accordance with subsection (e); and

23 (1) It is determined by the attending physician that the declarant's present
24 condition is

25 a. ~~Terminal and incurable;~~ Terminal; or

26 b. Repealed by Session Laws 1993, c. 553, s. 28.

27 c. Diagnosed as a persistent vegetative state; and

28 (2) There is confirmation of the declarant's present condition as set out
29 above in subdivision (b)(1) by a physician other than the attending
30 physician;

31 then extraordinary means or artificial nutrition or hydration, regardless of whether
32 administered through an invasive medical procedure, as specified by the declarant, may
33 be withheld or discontinued upon the direction and under the supervision of the attending
34 physician.

35 (c) The attending physician may rely upon a (i) signed, ~~witnessed, dated and proved~~
36 witnessed or proved, and dated or (ii) holographic and dated declaration:

37 (1) Which expresses a desire of the declarant that extraordinary means or
38 artificial nutrition or ~~hydration~~ hydration, regardless of whether
39 administered through an invasive medical procedure, not be used to
40 prolong ~~his~~ life if ~~his~~ the declarant's condition is determined to be
41 ~~terminal and incurable,~~ terminal, or if the declarant is diagnosed as being
42 in a persistent vegetative state; and

- 1 (2) Which states that the declarant is aware that the declaration authorizes a
- 2 physician to withhold or discontinue the extraordinary means or
- 3 artificial nutrition or ~~hydration~~; hydration, regardless of whether
- 4 administered through an invasive medical procedure; and
- 5 (3) Which has been signed by the declarant in the presence of two witnesses
- 6 who believe the declarant to be of sound mind and who state that they
- 7 (i) are not related within the third degree to the declarant or to the
- 8 declarant's spouse, (ii) do not know or have a reasonable expectation
- 9 that they would be entitled to any portion of the estate of the declarant
- 10 upon ~~his~~ the declarant's death under any will of the declarant or codicil
- 11 thereto then existing or under the Intestate Succession Act as it then
- 12 provides, (iii) are not the attending physician, ~~or an employee of the~~
- 13 ~~attending physician, or an employee of a health facility in which the declarant~~
- 14 ~~is a patient, or an employee of a nursing home or any group care home in~~
- 15 ~~which the declarant resides,~~ and (iv) do not have a claim against any
- 16 portion of the estate of the declarant at the time of the declaration; and
- 17 (4) Which has been proved before a clerk or assistant clerk of superior
- 18 court, or a notary public who certifies substantially as set out in
- 19 subsection (d) below.

20 (d) The following form is specifically determined to meet the requirements ~~above~~:

21 above. This form may be copied by the declarant and be a holographic declaration that,

22 when dated, will be a declaration upon which the attending physician may rely, when the

23 physician can determine that the holographic declaration is in the handwriting of the

24 declarant:

25

26 **'DECLARATION OF A DESIRE FOR A NATURAL DEATH'**

27

28 'I,, being of sound mind, desire that, as specified below, my life not be

29 prolonged by extraordinary means or by artificial nutrition or ~~hydration~~ hydration,

30 regardless of whether administered through an invasive medical procedure, if my

31 condition is determined to be terminal ~~and incurable~~ or if I am diagnosed as being in a

32 persistent vegetative state. I am aware and understand that this writing authorizes a

33 physician to withhold or discontinue extraordinary means or artificial nutrition or

34 hydration, regardless of whether administered through an invasive medical procedure, in

35 accordance with my specifications set forth below:

36 (Initial any of the following, as desired):

37

38 '..... If my condition is determined to be ~~terminal~~

39 ~~and incurable,~~ terminal, I authorize the following:

40

41 My physician may withhold or discontinue

42 extraordinary means only.

43

1 In addition to withholding or discontinuing
2 extraordinary means if such means are necessary, my
3 physician may withhold or discontinue either artificial
4 nutrition or hydration, regardless of whether
5 administered through an invasive medical procedure, or
6 both.

7
8 '..... If my physician determines that I am in a persistent
9 vegetative state, I authorize the following:

10 My physician may withhold or discontinue
11 extraordinary means only.

12 In addition to withholding or discontinuing extraordinary means if
13 such means are necessary, my physician may withhold or discontinue
14 either artificial nutrition or hydration, regardless of whether
15 administered through an invasive medical procedure, or both.

16
17
18
19 If I have executed a Health Care Power of Attorney pursuant to Article 3 of Chapter 32A
20 of the General Statutes in addition to making out this Declaration, I wish the

- 21 Declaration
- 22 Power of Attorney

23 to control in the event of any conflict.

24
25 'This theday of.....
26 Signature.....

27
28 If the Declaration is signed in the presence of two witnesses pursuant to subdivision (3)
29 of subsection (c) of this section, the following form shall be used:

30
31 'I hereby state that the declarant,....., being of sound mind signed the above
32 declaration in my presence and that I am not related to the declarant by blood or marriage
33 and that I do not know or have a reasonable expectation that I would be entitled to any
34 portion of the estate of the declarant under any existing will or codicil of the declarant or
35 as an heir under the Intestate Succession Act if the declarant died on this date without a
36 will. I also state that I am not the declarant's attending ~~physician-physician, or an employee~~
37 ~~of the declarant's attending physician, or an employee of a health facility in which the declarant~~
38 ~~is a patient or an employee of a nursing home or any group care home where the declarant~~
39 ~~resides.~~ I further state that I do not now have any claim against the declarant.

40 Witness
41 Witness'
42

1 The clerk or the assistant clerk, or a notary public may, upon proper proof, certify the
2 declaration as follows:

3
4 **"CERTIFICATE"**

5
6 "I,, Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as
7 appropriate) forCounty hereby certify that.....,
8 the declarant, appeared before me and swore to me and to the witnesses in my presence
9 that this instrument is his Declaration Of A Desire For A Natural Death, and that he had
10 willingly and voluntarily made and executed it as his free act and deed for the purposes
11 expressed in it.

12 "I further certify that and, witnesses, appeared before me and
13 swore that they witnessed, declarant, sign the attached declaration, believing him
14 to be of sound mind; and also swore that at the time they witnessed the declaration (i)
15 they were not related within the third degree to the declarant or to the
16 declarant's spouse, and (ii) they did not know or have a reasonable expectation that they
17 would be entitled to any portion of the estate of the declarant upon the declarant's death
18 under any will of the declarant or codicil thereto then existing or under the Intestate
19 Succession Act as it provides at that time, and (iii) they were not a physician attending
20 the declarant or an employee of an attending physician or an employee of a health facility
21 in which the declarant was a patient or an employee of a nursing home or any group care
22 home in which the declarant resided, and (iv) they did not have a claim against the
23 declarant. I further certify that I am satisfied as to the genuineness and due execution of
24 the declaration.

25 "This the day of,"

26 Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as appropriate)
27 for the County of"

28
29 The above declaration may be proved by the clerk or the assistant clerk, or a notary
30 public in the following manner:

- 31 (1) Upon the testimony of the two witnesses; or
32 (2) If the testimony of only one witness is available, then
33 a. Upon the testimony of such witness, and
34 b. Upon proof of the handwriting of the witness who is dead or
35 whose testimony is otherwise unavailable, and
36 c. Upon proof of the handwriting of the declarant, unless he signed
37 by his mark; or upon proof of such other circumstances as will
38 satisfy the clerk or assistant clerk of the superior court, or a
39 notary public as to the genuineness and due execution of the
40 declaration.
41 (3) If the testimony of none of the witnesses is available, such declaration
42 may be proved by the clerk or assistant clerk, or a notary public

- 1 a: ~~Upon proof of the handwriting of the two witnesses whose~~
2 ~~testimony is unavailable, and~~
3 b: ~~Upon compliance with paragraph c of subdivision (2) above.~~

4 ~~Due execution may be established, where the evidence required above is unavoidably~~
5 ~~lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.~~

6 ~~The testimony of a witness is unavailable within the meaning of this subsection when~~
7 ~~the witness is dead, out of the State, not to be found within the State, insane or otherwise~~
8 ~~incompetent, physically unable to testify or refuses to testify.~~

9 ~~If the testimony of one or both of the witnesses is not available the clerk or the~~
10 ~~assistant clerk, or a notary public or superior court may, upon proper proof, certify the~~
11 ~~declaration as follows:~~

12 ~~The clerk or assistant clerk of superior court or a notary public may, upon the proper~~
13 ~~proof, certify the Declaration pursuant to subdivision (4) of subsection (c) of this section~~
14 ~~as follows:~~

15 **'CERTIFICATE'**

16
17 ~~I, Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public~~
18 ~~(circle one as appropriate) of..... County hereby certify that based upon the evidence~~
19 ~~before me I am satisfied as to the genuineness and due execution of the attached~~
20 ~~declaration by, declarant, and that the declarant's signature was witnessed by.....,~~
21 ~~and, who at the time of the declaration met the qualifications of G.S. 90-321(e)(3)-~~
22 ~~declarant.~~

23 ~~'This the day of,~~

24
25 Clerk (Assistant Clerk) of Superior Court or
26 Notary Public (circle one as appropriate) for
27 County.'

28 ~~The clerk, assistant clerk, or notary public may consider the Declaration proved upon~~
29 ~~proof of the handwriting of the declarant, or upon proof of the declarant's mark, or upon~~
30 ~~proof of any other circumstances as will satisfy the clerk, assistant clerk, or notary public~~
31 ~~as to the genuineness and due execution of the Declaration.~~

32 (e) The above declaration may be revoked by the declarant, in any manner by
33 which he is able to communicate his intent to revoke, without regard to his mental or
34 physical condition. Such revocation shall become effective only upon communication to
35 the attending physician by the declarant or by an individual acting on behalf of the
36 declarant.

37 (f) The execution and consummation of declarations made in accordance with
38 subsection (c) shall not constitute suicide for any purpose.

39 (g) No person shall be required to sign a declaration in accordance with subsection
40 (c) as a condition for becoming insured under any insurance contract or for receiving any
41 medical treatment.

42 (h) The withholding or discontinuance of extraordinary means and/or the
43 withholding or discontinuance of either artificial nutrition or hydration, regardless of

1 whether administered through an invasive medical procedure, or both in accordance with
2 this section shall not be considered the cause of death for any civil or criminal purposes
3 nor shall it be considered unprofessional conduct. Any person, institution or facility
4 against whom criminal or civil liability is asserted because of conduct in compliance with
5 this section may interpose this section as a defense.

6 (i) Any certificate in the form provided by this section prior to July 1, 1979, shall
7 continue to be valid.

8 (j) The form provided by this section may be combined with or incorporated into
9 a health care power of attorney form meeting the requirements of Article 3 of Chapter
10 32A of the General Statutes; provided, however, that the resulting form shall be signed,
11 witnessed, and proved in accordance with the provisions of this section. In the event that
12 the Declaration and the health care power of attorney conflict, the declarant's selection in
13 the Declaration on which should control shall be followed."

14 Sec. 2. The Medical Care Commission shall ensure that Declaration of a
15 Desire for a Natural Death forms are available in all doctors' offices, hospitals, nursing
16 homes, domiciliary care facilities, and in any other health care institutions that it
17 regulates. The Commission shall also ensure that all patients of these health care
18 providers have their rights to make a Declaration adequately explained to them and have
19 adequate aid in filling out the forms.

20 This act becomes effective July 1, 1995. Forms and procedures authorized
21 before the effective date of this act remain in full force and effect unless in conflict with
22 this act, in which case this act controls, or unless the Medical Care Commission makes
23 changes in rules in accordance with this act's mandate.