



HOUSE BILL No. 4736

April 25, 1995, Introduced by Reps. Willard, Anthony, Freeman, Gire, LaForge, Dalman, DeMars, Martinez, Brewer, Gubow, Wetters and Hanley and referred to the Committee on Health Policy.

A bill to clarify the validity and enforceability of a written declaration directing personal medical treatment; to prescribe the manner of executing a medical treatment declaration; to provide that certain actions be taken and certain actions not be taken with respect to a declaration; to provide for the revocation of a declaration; to prohibit certain persons and organizations from requiring the execution of such a declaration as a condition of receiving coverage, benefits, or services; to prohibit certain actions by certain insurers; and to exempt certain persons from penalties and liabilities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "medical treatment declaration act".

3 Sec. 2. As used in this act:

1 (a) "Attending physician" means the physician selected by,
2 or assigned to, a declarant who has primary responsibility for
3 the treatment of the declarant.

4 (b) "Declarant" means an individual who has executed a
5 declaration.

6 (c) "Declaration" means a document directing personal medi-
7 cal treatment that is executed in compliance with this act.

8 (d) "Health facility" means a health facility or agency as
9 defined in section 20106 of the public health code, Act No. 368
10 of the Public Acts of 1978, being section 333.20106 of the
11 Michigan Compiled Laws.

12 (e) "Medical treatment" means medicine, a procedure, or a
13 device that a physician is not prohibited by law from prescrib-
14 ing, administering, performing, or authorizing.

15 (f) "Permanently unconscious" means a state in which all
16 awareness of self or environment beyond simple reflex or reaction
17 to noxious stimuli is absent, which state is expected to last
18 indefinitely without improvement.

19 (g) "Physician" means a person licensed in this state to
20 engage in the practice of medicine or osteopathic medicine and
21 surgery.

22 (h) "Terminally ill" means a state in which an incurable,
23 irreversible, and uncontrollable disease or condition will likely
24 result in death within 1 year.

25 Sec. 3. An individual 18 years of age or older who is of
26 sound mind may execute a declaration that directs his or her own
27 personal medical treatment in the event the declarant becomes

1 permanently unconscious or terminally ill as provided in section
2 4. A declaration is valid and enforceable under this act if the
3 declaration is all of the following:

4 (a) Written, dated, and executed voluntarily.

5 (b) Signed by the declarant or signed in the declarant's
6 presence at his or her direction.

7 (c) Signed by 2 individuals 18 years of age or older who
8 witness the signing of the declaration and at least 1 of whom is
9 not the declarant's spouse, parent, child, sibling, or devisee.

10 Sec. 4. (1) Medical treatment as described in a declaration
11 shall be conformed to as closely as possible after all of the
12 following occur:

13 (a) The attending physician knows the declaration exists.

14 (b) The declarant has been determined in the opinion of his
15 or her attending physician and at least 1 other physician to be
16 terminally ill or permanently unconscious.

17 (c) In the opinion of the attending physician, the declarant
18 is unable to participate in medical treatment decisions.

19 (d) The attending physician has no knowledge that the decla-
20 ration has been revoked.

21 (2) A medical care declaration may be in substantially the
22 following form and a medical care declaration that is in substan-
23 tially the following form is valid and enforceable under this
24 act:

"MEDICAL TREATMENT DECLARATION

1
2 I, _____, am of sound mind, and I voluntarily
3 make this declaration.

4 If I become terminally ill or permanently unconscious as
5 determined by my doctor and at least one other doctor, and if I
6 am unable to participate in decisions regarding my medical care,
7 I intend this declaration to be honored as the expression of my
8 legal right to consent to or refuse medical treatment.

9 My desires concerning medical treatment are: _____
10 _____
11 _____

12 * * *

13 My family, the medical facility, and any doctors, nurses,
14 and other medical personnel involved in my care shall have no
15 civil or criminal liability for following my wishes as expressed
16 in this declaration.

17 I may change my mind at any time by communicating in any
18 manner that this declaration does not reflect my wishes.

19 Photostatic copies of this document, after it is signed and
20 witnessed, shall have the same legal force as the original
21 document.

22 I sign this document after careful consideration. I under-
23 stand its meaning and I accept its consequences.

24 Dated: _____ Signed: _____

25 Address: _____

26 _____

1 This declaration was signed in our presence. The declarant
2 appears to be of sound mind, and to be making this designation
3 voluntarily, without duress, fraud, or undue influence.

4 Signed by witness: _____
5 _____

6 Address: _____
7 _____

8
9 Signed by witness: _____

10 _____
11 Address: _____

12 _____ " "

13 Sec. 5. (1) A declarant may revoke a declaration at any
14 time and in any manner by which he or she is able to communicate
15 an intent to revoke the declaration. If the revocation is not in
16 writing, an individual who observes a revocation of a declaration
17 shall describe the circumstances of the revocation in writing and
18 sign the writing.

19 (2) A revocation of a declaration is binding upon a physi-
20 cian or a health facility upon actual notice of the revocation.

21 Sec. 6. (1) A physician or health facility that is provided
22 a copy of a declaration shall immediately make the declaration
23 part of the declarant's medical record. A physician or health
24 facility that has notice of a revocation of a declaration shall
25 immediately make the revocation part of the declarant's medical
26 record and note the revocation on the declaration.

1 (2) Upon determining that a declarant is terminally ill, an
2 attending physician who has notice of a declaration shall record
3 in the declarant's medical record that the declarant is termi-
4 nally ill and shall attempt to communicate that determination to
5 the declarant. Upon determining that a declarant is permanently
6 unconscious, an attending physician who has notice of a declara-
7 tion shall record in the declarant's medical record that the
8 declarant is permanently unconscious.

9 (3) Upon determining that a declarant is terminally ill and
10 unable to participate in medical treatment decisions, an attend-
11 ing physician who has notice of a declaration shall record in the
12 declarant's medical record that the declarant is unable to par-
13 ticipate in medical treatment decisions, and shall attempt to
14 communicate to the declarant that the declaration is about to
15 take effect.

16 Sec. 7. (1) An attending physician shall implement a decla-
17 ration as provided in section 4, or shall take all reasonable
18 steps to transfer the treatment of the declarant to another phy-
19 sician or health facility willing to conform to the terms of the
20 declaration.

21 (2) A declarant or a declarant's spouse, parent, child, or
22 friend may bring an action for injunctive relief to ensure con-
23 formity to the terms of a declaration.

24 Sec. 8. A person or health facility is not subject to civil
25 or criminal liability for causing, or participating in, the pro-
26 vision of medical treatment to, or the withholding or withdrawal

1 of medical treatment from, a declarant in conformance with the
2 declarant's declaration and with this act.

3 Sec. 9. (1) An individual shall not be required to execute
4 a declaration as a condition for insurance coverage, for health
5 care benefits or services, or for any other reason.

6 (2) A health facility shall not deny admission to an indi-
7 vidual because he or she executes a declaration.

8 (3) A life insurer shall not do any of the following because
9 of the execution or implementation of a declaration:

10 (a) Refuse to provide or continue coverage to the
11 declarant.

12 (b) Charge a declarant higher premiums.

13 (c) Offer a declarant different policy terms.

14 (d) Consider the terms of an existing policy to have been
15 breached or modified.

16 (e) Invoke a suicide or intentional death exemption.

17 Sec. 10. (1) If a declaration executed prior to the effec-
18 tive date of this act satisfies the requirements of this act,
19 that declaration is valid and enforceable under this act.

20 (2) The provisions of this act are cumulative and do not
21 impair or supersede a legal right that a person has to consent to
22 or refuse medical treatment.