

HOUSE BILL NO. 585
INTRODUCED BY E. FRANKLIN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ADVANCED PRACTICE REGISTERED NURSING; PROVIDING FOR ATTENDING ADVANCED PRACTICE REGISTERED NURSES TO BE RECOGNIZED AS HEALTH CARE PROVIDERS WITH THE AUTHORITY TO FOLLOW A LIVING WILL PROTOCOL AND A DO NOT RESUSCITATE PROTOCOL; AND AMENDING SECTIONS 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, 50-9-206, 50-10-101, 50-10-102, 50-10-103, 50-10-104, AND 50-10-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(2) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

~~(1)~~(3) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

~~(2)~~(4) "Board" means the Montana state board of medical examiners.

~~(3)~~(5) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

~~(4)~~(6) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~(7) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

~~(6)~~(8) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

~~(7)~~(9) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, serves only to prolong the dying process.

~~(8)~~(10) "Living will protocol" means a locally developed, community-wide method or a standardized, statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

~~(9)~~(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~(10)~~(12) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

~~(11)~~(13) "Qualified patient" means a patient 18 years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition.

~~(12)~~(14) "Reliable documentation" means a standardized, statewide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

~~(13)~~(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

~~(14)~~(16) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician or attending advanced practice registered nurse, result in death within a relatively short time."

Section 2. Section 50-9-103, MCA, is amended to read:

"50-9-103. Declaration relating to use of life-sustaining treatment -- designee. (1) An individual of sound mind and 18 ~~or more~~ years of age or older may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 ~~or more~~ years of age or older to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant; or another at the declarant's direction; and must be witnessed by two individuals. A ~~physician or~~ health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician or advanced practice registered nurse to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this day of,

Signature

City, County, and State of Residence

The declarant voluntarily signed this document in my presence.

Witness.

Address

Witness.

Address

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint or, if he or she is not reasonably available or is unwilling to serve,, to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this day of,

Signature

City, County, and State of Residence

The declarant voluntarily signed this document in my presence.

Witness

Address

Witness

Address

Name and address of designee.

Name

Address

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) 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~~ shall advise the declarant and any individual designated to act for the declarant promptly."

Section 3. Section 50-9-104, MCA, is amended to read:

"50-9-104. Revocation of declaration. (1) A declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. A revocation is effective upon its communication to the attending physician, attending advanced practice registered nurse, or other health care provider by the declarant or a witness to the revocation. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician or attending advanced practice registered nurse at the earliest opportunity. A revocation communicated to a person other than the attending physician, attending advanced practice registered nurse, emergency medical services personnel, or a health care provider is not effective unless the attending physician or attending advanced practice registered nurse is informed of it before the qualified patient is in need of life-sustaining treatment.

(2) The attending physician, attending advanced practice registered nurse, or other health care provider shall make the revocation a part of the declarant's medical record."

Section 4. Section 50-9-105, MCA, is amended to read:

"50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician or attending advanced practice registered nurse; and
(b) the declarant is determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) When the declaration becomes operative, the attending physician or attending advanced practice registered nurse and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203."

Section 5. Section 50-9-106, MCA, is amended to read:

"50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician or attending advanced practice registered nurse, the attending physician or attending advanced practice registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division

in a class does not authorize the next class to decide.

(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(5) A decision of the attending physician or attending advanced practice registered nurse acting in good faith that a consent is valid or invalid is conclusive.

(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 6. Section 50-9-107, MCA, is amended to read:

"50-9-107. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a ~~physician or other~~ health care provider may assume that a declaration complies with this chapter and is valid."

Section 7. Section 50-9-201, MCA, is amended to read:

"50-9-201. Recording determination of terminal condition and content of declaration. Upon determining that a declarant is in a terminal condition, the attending physician or attending advanced practice registered nurse who knows of a declaration shall record that determination and the terms of the declaration in the declarant's medical record."

Section 8. Section 50-9-202, MCA, is amended to read:

"50-9-202. Treatment of qualified patients. (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) This chapter does not affect the responsibility of the attending physician, attending advanced practice registered nurse, or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 9. Section 50-9-203, MCA, is amended to read:

"50-9-203. Transfer of patients. An attending physician, attending advanced practice registered nurse, or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician, advanced practice registered nurse, or health care provider who is willing to do so. If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out."

Section 10. Section 50-9-204, MCA, is amended to read:

"50-9-204. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician or advanced practice registered nurse who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician or advanced practice registered nurse;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician or advanced practice registered nurse or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A ~~physician or other~~ health care provider whose action under this chapter is in accord with reasonable medical standards is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision.

(3) A ~~physician or other~~ health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(1) or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision."

Section 11. Section 50-9-205, MCA, is amended to read:

"50-9-205. Effect on insurance -- patient's decision. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

(3) A person may not prohibit or require the execution of a declaration as a condition for being insured for or receiving health care services.

(4) This chapter ~~creates no~~ does not create a presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that any person has to effect the withholding or withdrawal of medical care.

(6) This chapter does not require a ~~physician or other~~ health care provider to take action contrary to reasonable medical standards.

(7) This chapter does not condone, authorize, or approve mercy killing or euthanasia."

Section 12. Section 50-9-206, MCA, is amended to read:

"50-9-206. Penalties. (1) A ~~physician or other~~ health care provider who willfully fails to transfer the care of a patient in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician or advanced practice registered nurse who willfully fails to record the determination of terminal condition or the terms of a declaration in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) An individual who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) An individual who falsifies or forges the declaration of another individual or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for or receiving health care service is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(7) The penalties provided in this section do not displace any sanction applicable under other law."

Section 13. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(2) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

~~(1)~~(3) "Attending physician" has the meaning provided in 50-9-102.

~~(2)~~(4) "Board" means the state board of medical examiners.

~~(3)~~(5) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(4)~~(6) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician or attending advanced practice registered nurse has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

~~(5)~~(7) "Do not resuscitate order" means a directive from a licensed physician or advanced practice registered nurse that emergency life-sustaining procedures should not be administered to a particular person.

~~(6)~~(8) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians, advanced practice registered nurses, and emergency medical services personnel.

~~(7)~~(9) "Emergency medical services personnel" has the meaning provided in 50-9-102.

~~(8)~~(10) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

~~(9)~~(11) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

~~(10)~~(12) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 14. Section 50-10-102, MCA, is amended to read:

"50-10-102. Immunities. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:

(a) a physician or advanced practice registered nurse who causes the withholding or withdrawal of life-sustaining procedures from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician or an advanced practice registered nurse;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, advanced practice registered nurses, persons under the direction or authorization of a physician or an advanced practice registered nurse, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician or advanced practice registered nurse are not subject to civil or criminal liability and are not guilty of unprofessional conduct."

Section 15. Section 50-10-103, MCA, is amended to read:

"50-10-103. Adherence to do not resuscitate protocol -- transfer of patients. (1) Emergency medical services personnel, other than physicians or advanced practice registered nurses, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician or an advanced practice registered nurse, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician, an attending advanced practice registered nurse, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or advanced practice registered nurse or to a health care facility in which the do not resuscitate protocol will be followed."

Section 16. Section 50-10-104, MCA, is amended to read:

"50-10-104. Effect on insurance -- patient's decision. (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with this part is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to this part does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, advanced practice registered nurse, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) This part does not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) This part does not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor does this part impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this part are cumulative.

(6) This part does not authorize or approve mercy killing."

Section 17. Section 50-10-106, MCA, is amended to read:

"50-10-106. Penalties. (1) A physician or advanced practice registered nurse who willfully fails to transfer a patient in accordance with 50-10-103 is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both."

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