

HOUSE BILL NO. 506
INTRODUCED BY S. MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF A DECLARATION, ALSO KNOWN AS A LIVING WILL, TO REQUIRE THE PROVISION OF LIFE-SUSTAINING TREATMENT AS WELL AS THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT; PROVIDING CONDITIONS APPLICABLE TO A DIRECTION TO PROVIDE LIFE-SUSTAINING TREATMENT; PROVIDING FOR TRANSFER OF THE DECLARANT BETWEEN HEALTH CARE PROVIDERS OR VOLUNTEER GROUPS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO MAINTAIN A REGISTRY OF HEALTH CARE PROVIDERS AND REFERRAL GROUPS WILLING TO ACCEPT OR ASSIST IN THE TRANSFER OF A DECLARANT; CLARIFYING THAT IMMUNITIES DO NOT AUTHORIZE A VIOLATION OF LAW; AND AMENDING SECTIONS 50-9-102, 50-9-103, 50-9-202, 50-9-203, 50-9-204, AND 52-3-803, 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 who is 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.

(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.

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

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

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

(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.

(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.

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

(10) "Living will protocol" means a locally developed, communitywide 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.

(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.

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

(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.

(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.

(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.

(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 years of age or older may execute at any time a declaration governing the provision of life-sustaining treatment or the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 years of age or older to make decisions governing the provision of life-sustaining treatment or 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 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 provide 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 provide life-sustaining treatment.

Signed this day of,

Signature.....

City, County, and State of Residence.....

The declarant voluntarily signed this document in my presence.

Witness.....

Address.....

Witness.....

Address.....

(2)(3) 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 life-sustaining 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)(4) 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~~ that individual is not reasonably available or is unwilling to serve, _____, to make decisions on my behalf regarding the provision of life-sustaining treatment or the withholding or withdrawal of life-sustaining 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 life-sustaining 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)(5) 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 provision of

life-sustaining treatment or 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)~~(6) A 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, shall advise the declarant and any individual designated to act for the declarant promptly."

Section 3. 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.

(4) In the case of a declaration containing a direction to provide life-sustaining treatment, an attending physician, attending advanced practice registered nurse, or other health care provider responsible for the treatment of the declarant who is not transferred pursuant to 50-9-203 shall provide the requested life-sustaining treatment if:

(a) its denial would in reasonable medical judgment be likely to result in the death of the declarant;

(b) the health care provider is physically and legally able to do so; and

(c) its provision would not require the denial of the life-sustaining treatment to another person."

Section 4. Section 50-9-203, MCA, is amended to read:

"50-9-203. Transfer of patients declarants. (1) 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. In the case of a declaration containing a direction to provide treatment, nutrition, or hydration, the treatment, nutrition, or hydration must be provided until the transfer is completed.

(2) Upon deciding to transfer a declarant who has made a declaration containing a direction to provide life-sustaining treatment, the physician, advanced practice registered nurse, or other health care provider shall provide the declarant, if the declarant is able to make decisions regarding administration of life-sustaining treatment, or the declarant's appointee pursuant to 50-9-103(4) with a copy of this section and a list of health care providers and referral groups that have volunteered to accept or assist in the transfer of the declarant or to locate a health care provider that is willing to accept or assist in the transfer of the declarant.

(3) The department shall maintain a registry of the identity and contact information for health care providers and referral groups located within and outside of Montana that have notified the department that they will consider accepting or assisting in the transfer of a declarant or locating a health care provider that will accept or assist in the transfer of the declarant in accordance with law. Listing of a provider in the registry does not obligate the provider to accept or assist in a transfer. The department shall post the registry in an easily accessible and easily understood format on its website. The registry must list separately those health care providers and other persons who have indicated a willingness to accept transfer of or assist in transferring declarants who are being transferred pursuant to a direction to provide life-sustaining treatment, those who are not, and those who have indicated a willingness to accept or assist in transfer of both types of declarants."

Section 5. 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 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. However, this section does not authorize a violation of 50-9-203.

(3) A 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 6. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 to withhold or withdraw life-sustaining treatment, as defined in 50-9-102, constitutes lawful authority.

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

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,

fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

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