

THE GENERAL ASSEMBLY OF PENNSYLVANIA
SENATE BILL

No. 628 Session of 2005

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AS AMENDED ON THIRD CONSIDERATION, OCTOBER 3, 2006

[Note: The first three sections have been omitted]

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.
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- 5429. Pregnancy.
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- 5431. Liability.
- 5432. Criminal penalties.
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§ 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.

14 "Bracelet." An out-of-hospital Do-Not-
15 Resuscitate bracelet as defined under Section 5483 (relating to
16 definitions).

17 "Cardiopulmonary resuscitation." Any of the following
18 procedures:

19 (1) Cardiac compression.

20 (2) Invasive airway technique.

21 (3) Artificial ventilation.

22 (4) Defibrillation.

23 (5) Any other procedure related to those set forth in
24 paragraphs (1) through (4).

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

29 (1) Understand the potential material
30 benefits, risks and alternatives involved in a specific

1 proposed health care decision.

2 (2) Make that health care decision on his

3 own behalf.

4 (3) Communicate that health care
5 decision to any other person.

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

9 "DNR." Do not resuscitate.

16 "Emergency Medical Services Provider." As Defined Under
17 Section 5483 (relating to definitions).

18 "End-Stage Medical Condition" An incurable and irreversible
19 medical condition in an advanced state caused by injury, disease
20 or physical illness that will, in the opinion of the attending
21 physician to a reasonable degree of medical certainty, result in
22 death, despite the introduction or continuation of medical
23 treatment. Except as specifically set forth in an advance health
24 care directive, the term is not intended to preclude treatment
25 of a disease, illness or physical, mental, cognitive or
26 intellectual condition, even if incurable and irreversible and
27 regardless of severity, if both of the following apply:

28 (1) the patient would benefit from the
29 treatment, including palliative care.

30 (2) such treatment would not merely prolong the process of

1 of dying.

2 "Health care." Any care, treatment, service or procedure to
3 maintain, diagnose, treat or provide for physical or mental

4 health, custodial or personal care, including any medication
5 program, therapeutical and surgical procedure and life-
6 sustaining treatment.

7 "Health care agent." An individual designated by a principal
8 in an advance health care directive.

9 "Health care decision." A decision regarding an individual's
10 health care, including, but not limited to, the following:

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

17 "Health care power of attorney." A writing made by a
18 principal designating an individual to make health care
19 decisions for the principal.

20 "Health care provider." A person who is licensed, certified
21 or otherwise authorized by the laws of this Commonwealth to
22 administer or provide health care in the ordinary course of
23 business or practice of a profession. The term includes
24 personnel recognized under the act of July 3, 1985 (P.L.164,
25 No.45), known as the Emergency Medical Services Act.

26 "Health care representative." An individual authorized under
27 section 5461 (relating to decisions by health care
28 representative) to make health care decisions for a principal.

29 "Incompetent." A condition in which an individual despite
30 being provided appropriate medical information, communication

1 supports and technical assistance, is documented by a health
2 care provider to be:

3 (1) unable to understand the potential material
4 benefits, risks and alternatives involved in a specific

5 proposed health care decision;
6 (2) unable to make that health care decision on his own
7 behalf; or
8 (3) unable to communicate that health care decision to
9 any other person.
10 The term is intended to permit individuals to be found
11 incompetent to make some health care decisions, but competent to
12 make others.
13 "Invasive airway technique." Any advanced airway technique,
14 including endotracheal intubation.
15 "Life-sustaining treatment." Any medical procedure or
16 intervention that, when administered to a patient or principal
17 who has an end-stage medical condition or is permanently
18 unconscious, will serve only to prolong the process of dying or
19 maintain the individual in a state of permanent unconsciousness.
20 In the case of an individual with an advance health care
21 directive or order, the term includes nutrition and hydration
22 administered by gastric tube or intravenously or any other
23 artificial or invasive means if the advance health care
24 directive or order so specifically provides.
25 "Living will." A writing made in accordance with this
26 chapter that expresses a principal's wishes and instructions for
27 health care and health care directions when the principal is
28 determined to be incompetent and has an end-stage medical
29 condition or is permanently unconscious.
30 "Medical command physician." A licensed physician who is

1 authorized to give medical command under the act of July 3, 1985
2 (P.L.164, No.45), known as the Emergency Medical Services Act.
3 "Necklace." An out-of-hospital do-not-resuscitate necklace
4 as defined under Section 5483 defined under Section (relating to definitions)
5 "Order." An out-of-hospital do-not-resuscitate order as

6 defined under Section 5483 (relating to definitions).

7 "Patient." An out-of-hospital do-not-resuscitate patient as
8 defined under Section 5483 (relating to definitions).

9 "Permanently unconscious." A medical condition that has been
10 diagnosed in accordance with currently accepted medical
11 standards and with reasonable medical certainty as total and
12 irreversible loss of consciousness and capacity for interaction
13 with the environment. The term includes, without limitation, an
14 irreversible vegetative state or irreversible coma.

15 "Person." Any individual, corporation, partnership,
16 association or other similar entity, or any Federal, State or
17 local government or governmental agency.

18 "Principal." An individual who executes an advance health
19 care directive, designates an individual to act or disqualifies
20 an individual from acting as a health care representative or an
21 individual for whom a health care representative acts in
22 accordance with this chapter.

23 "Reasonably available." Readily able to be contacted without
24 undue effort and willing and able to act in a timely manner
25 considering the urgency of the individual's health care needs.

26 § 5423. Legislative findings and intent.

27 (a) Intent.--This chapter provides a statutory means for
28 competent adults to control their health care through
29 instructions written in advance or by health care agents or
30 health care representatives and requested orders. Nothing in

1 this chapter is intended to:

2 (1) Affect or supersede the holdings of in re Fiori 543
3 PA. 592, 673 A.2D 905 (1996);

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

6 (3) permit any affirmative or deliberate act or

7 omission to end life other than as defined in this chapter.

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

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

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

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

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

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

28 (5) It is in the best interest of individuals under the
29 care of health care providers if health care providers
30 initiate discussions with them regarding living wills and

1 health care powers of attorney during initial consultations,
2 annual examinations, at diagnosis of a chronic illness or
3 when an individual under their care transfers from one health
4 care setting to another, so that the individuals under their
5 care may make known their wishes to receive, continue,
6 discontinue or refuse medical treatment in the event that
7 they are diagnosed with an end-stage medical condition or

8 become permanently unconscious.

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

15 § 5424. Compliance.

16 (a) Notification by attending physician or health care
17 provider.--If an attending physician or other health care
18 provider cannot in good conscience comply with a living will or
19 health care decision of a health care agent or health care
20 representative or if the policies of a health care provider
21 preclude compliance with a living will or health care decision
22 of a health care agent or health care representative, the
23 attending physician or health care provider shall so inform the principal, if the

1 Principal is competent,, or the principal's health care agent
2 Or health care representative, if the principal is
3 incompetent..

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

9 representative.

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

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

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

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

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

30 § 5425. Conflicting advance health care directives.

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

6 § 5426. Death not suicide or homicide.

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

10 constitute suicide or homicide.

11 § 5427. Life insurance.

12 The making of or failure to make an advance health care
13 directive, to request an order or to designate or disqualify a
14 health care representative in accordance with this chapter shall
15 not affect in any manner the sale, procurement or issuance of a
16 policy of life insurance nor shall it be deemed to modify the
17 terms of an existing policy of life insurance. No policy of life
18 insurance shall be legally impaired or invalidated in any manner
19 by the withholding or withdrawal of life-sustaining treatment
20 from an insured individual, notwithstanding a term of the policy
21 to the contrary.

22 § 5428. Health care instruments optional.

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

28 (1) Require an individual to execute an advance health
29 care directive or order or to designate or disqualify a
30 health care representative as a condition for being insured

1 for or receiving health care services.

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

6 § 5429. Pregnancy.

7 (a) Living wills and health care decisions.--Notwithstanding
8 the existence of a living will, a health care decision by a
9 health care representative or health care agent or any other
10 direction to the contrary, life-sustaining treatment, nutrition

11 and hydration shall be provided to a pregnant woman who is
12 incompetent and has an end-stage medical condition or who is
13 permanently unconscious unless, to a reasonable degree of
14 medical certainty as certified on the pregnant woman's medical
15 record by the pregnant woman's attending physician and an
16 obstetrician who has examined the pregnant woman, life-
17 sustaining treatment, nutrition and hydration:

18 (1) will not maintain the pregnant woman in such a way
19 as to permit the continuing development and live birth of the
20 unborn child;

21 (2) will be physically harmful to the pregnant woman; or

22 (3) will cause pain to the pregnant woman that cannot be
23 alleviated by medication.

24 (b) Rule for orders.--Notwithstanding the existence of an
25 order or direction to the contrary, life-sustaining treatment,
26 cardiopulmonary resuscitation, nutrition and hydration shall be
27 provided to a pregnant patient unless, to a reasonable degree of
28 medical certainty as certified on the pregnant patient's medical
29 record by the attending physician and an obstetrician who has
30 examined the pregnant patient, life-sustaining treatment,

1 nutrition and hydration:

2 (1) will not maintain the pregnant patient in such a way
3 as to permit the continuing development and live birth of the
4 unborn child;

5 (2) will be physically harmful to the pregnant patient;

6 or

7 (3) would cause pain to the pregnant patient that cannot
8 be alleviated by medication.

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

12 (d) Payment of expenses by Commonwealth.--
13 (1) In the event that treatment, cardiopulmonary
14 resuscitation, nutrition and hydration are provided to a
15 pregnant woman, notwithstanding the existence of a living
16 will, health care decision by a health care representative or
17 health care agent, order or direction to the contrary, the
18 Commonwealth shall pay all usual, customary and reasonable
19 expenses directly, indirectly and actually incurred by the
20 pregnant woman to whom such treatment, cardiopulmonary
21 resuscitation, nutrition and hydration are provided.
22 (2) The Commonwealth shall have the right of subrogation
23 against all moneys paid by any third-party health insurer on
24 behalf of the pregnant woman.
25 (3) The expenditures incurred on behalf of the pregnant
26 woman constitute a grant, and a lien may not be placed upon
27 the property of the pregnant woman, her estate or her heirs.
28 § 5430. Effect of divorce.
29 (a) General rule.--If the spouse of a principal is
30 designated as the principal's health care agent and thereafter

1 either spouse files an action in divorce, the designation of the
2 spouse as health care agent shall be revoked as of the time the
3 action is filed unless it clearly appears from the advance
4 health care directive that the designation was intended to
5 continue to be effective notwithstanding the filing of an action
6 in divorce by either spouse.

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

10 § 5431. Liability.

11 (a) General rule.--A health care provider or another person
12 may not be subject to criminal or civil liability, discipline for

14 unprofessional conduct or administrative sanctions and may not
15 be found to have committed an act of unprofessional conduct as a
16 result of any of the following:

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

23 (2) Complying with a direction or decision of an
24 individual who the health care provider believes in good
25 faith has authority to act as a principal's health care agent
26 or health care representative so long as the direction or
27 decision is not clearly contrary to the terms of an advance health care
28 Directive that has been delivered to the provider.
29

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

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

13 (5) Disclosing health care information to another person

14 based upon a good faith belief that the disclosure is
15 authorized, permitted or required by this chapter.
16 (6) Refusing to comply with a direction or decision of
17 an individual based on a good faith belief that compliance
18 with the direction or decision would be unethical or, to a
19 reasonable degree of medical certainty, would result in
20 medical care having no medical basis in addressing any
21 medical need or condition of the individual,
22 Provided that the health care provider complies in good faith
23 With Sections 5424 (relating to compliance) and 5462(C)
24 (Relating to duties of attending physician and health care
25 provider).
26 (b) Same effect as if dealing with principal.--Any health
27 care provider and other person acting under subsection (a) is
28 protected and released to the same extent as if dealing directly
29 with a competent principal.
30 (c) Health care agent.--No health care agent acting

1 according to the terms of a health care power of attorney shall
2 be subject to civil or criminal liability for acting in good
3 faith for a principal or failing in good faith to act for a
4 principal.
5 (d) Health care representative.--No health care
6 representative who in good faith acts or fails in good faith to
7 act for the principal shall be subject to civil or criminal
8 liability for the action or failure to act.
9 § 5432. Criminal penalties.
10 (a) Criminal homicide.--A person shall be subject to
11 prosecution for criminal homicide as provided in 18 Pa.C.S. Ch.
12 25 (relating to criminal homicide), if the person intends to
13 cause the withholding or withdrawal of life-sustaining treatment
14 contrary to the wishes of the principal or patient and, because

15 of that action, directly causes life-sustaining treatment to be
16 withheld or withdrawn and death to be hastened and:

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

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

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

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

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

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

5 § 5433. Forms.

6 (a) Substance of forms.--

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

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

15 (b) Combining forms.--A living will and health care power of

16 attorney may be combined into one document.
17 § 5434. CONSTRUCTION.
18 Nothing in this chapter shall be construed as requiring a
19 health care provider to maintain copies of medical records
20 beyond the requirements otherwise imposed by applicable law and regulation.

SUBCHAPTER B

23 LIVING WILLS

24 Sec.

25 5441. Short title of subchapter.

26 5442. Execution.

27 5443. When living will operative.

28 5444. Revocation.

29 5445. Emergency medical services.

30 5446. Validity.

1 5447. Form.

2 § 5441. Short title of subchapter.

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

5 § 5442. Execution.

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

9 (1) is 18 years of age or older;

10 (2) has graduated from high school;

11 (3) has married; or

12 (4) is an emancipated minor.

13 (b) Requirements.--A living will shall be:

14 (1) dated and signed by the principal by signature or

15 mark or by another individual on behalf of and at the

16 direction of the principal if the principal is unable to

17 sign, but specifically directs another individual to sign the
18 living will; and
19 (2) witnessed by two individuals, each of whom is 18
20 years of age or older.
21 (c) Witnesses.--
22 (1) An individual who signs a living will on behalf of
23 and at the direction of a principal may not witness the
24 living will.
25 (2) A health care provider and its agent may not sign a
26 living will on behalf of and at the direction of a principal
27 if the health care provider or agent provides health care
28 services to the principal.
29 § 5443. When living will operative.
30 (a) When operative.--A living will becomes operative when:

1 (1) a copy is provided to the attending physician; and
2 (2) the principal is determined by the attending
3 physician to be incompetent and to have an end-stage medical
4 condition or to be permanently unconscious.
7 (b) Compliance.--When a living will becomes operative, the
8 attending physician and other health care providers shall act in
9 accordance with its provisions or comply with the transfer
10 provisions of section 5424 (relating to compliance).
11 (c) Invalidity of specific direction.--If a specific
12 direction in a living will is held to be invalid, the invalidity
13 does not negate other directions in the living will that can be
14 effected without the invalid direction.
15 (d) Medical record.--Any health care provider to whom a copy
16 of a living will is furnished shall make it a part of the
17 medical record of the principal and, if unwilling to comply with
18 the living will, promptly so advise the principal, or the
19 principal's health care agent or representative.

20 (e) Duration.--Unless a living will states a time of
21 termination, it is valid until revoked by the principal,
22 notwithstanding the lapse of time since its execution.
23 (f) Absence of living will.--If an individual does not make
24 a living will, a presumption does not arise regarding the intent
25 of the individual to consent to or to refuse the initiation,
26 continuation, withholding or withdrawal of life-sustaining
27 treatment.
28 (g) Duty of physician to certify end-stage medical
29 condition. Promptly after a
30 determination that the principal has an end-stage medical

1 condition or is permanently unconscious, the attending physician
2 shall certify in writing that the principal has an end-stage
3 medical condition or is permanently unconscious.

4 § 5444. Revocation.

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

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

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

14 § 5445. Emergency medical services.

15 (a) General rule.--An emergency medical services provider
16 shall, in the course of providing care to a principal, at all
17 times comply with the instructions of an authorized medical
18 command physician to withhold or discontinue cardiopulmonary

19 resuscitation for a principal whose living will has become
20 operative under section 5443(a) (relating to when living will
21 operative).

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

26 § 5446. Validity.

27 (a) Living will executed prior to effective date of
28 subchapter.--This subchapter does not limit the validity of a
29 living will executed prior to the effective date of this
30 subchapter.

1 (b) Living will executed in another state or jurisdiction.--
2 A living will executed in another state or jurisdiction and in
3 conformity with the laws of that state or jurisdiction shall be
4 considered valid in this Commonwealth, except to the extent that
5 the living will executed in another state or jurisdiction would
6 allow a principal to direct procedures inconsistent with the
7 laws of this Commonwealth.

8 § 5447. Form.

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

19 SUBCHAPTER C

20 HEALTH CARE AGENTS AND REPRESENTATIVES

21 Sec.

22 5451. Short title of subchapter.

23 5452. Execution.

24 5453. Requirements and options.

25 5454. When health care power of attorney operative.

26 5455. Appointment of health care agents.

27 5456. Authority of health care agent.

28 5457. Countermand.

29 5458. Amendment.

30 5459. Revocation.

1 5460. Relation of health care agent to court-appointed

2 guardian and other agents.

3 5461. Decisions by health care representative.

4 5462. Duties of attending physician and health care provider.

5 5463. Effect on other State law.

6 5464. Validity.

7 5465. Form.

8 § 5451. Short title of subchapter.

9 This subchapter shall be known and may be cited as the Health

10 Care Agents and Representatives Act.

11 § 5452. Execution.

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

14 (1) is 18 years of age or older;

15 (2) has graduated from high school;

16 (3) has married; or

17 (4) is an emancipated minor.

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

19 (1) dated and signed by the principal by signature or

20 mark or by another individual on behalf of and at the
21 direction of the principal if the principal is unable to
22 sign, but specifically directs another individual to sign the
23 health care power of attorney; and

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

26 (c) Witnesses.--

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

30 (2) A health care provider and its agent may not sign a

1 health care power of attorney on behalf of and at the
2 direction of a principal if the health care provider or agent
3 provides health care services to the principal.

4 § 5453. Requirements and options.

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

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

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

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

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

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

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

- 21 (4) Disqualify an individual from acting as a health
22 care representative, prohibit the appointment of a health
23 care representative or provide for an order of priority of
24 appointment of a health care representative pursuant to
25 section 5461(d) (relating to decisions by health care
26 representative).
- 27 (5) Nominate a guardian of the person of the principal
28 as provided in section 5460 (relating to relation of health
29 care agent to court-appointed guardian and other agents).
- 30 (6) Contain other provisions as the principal may

1 specify regarding the implementation of health care decisions
2 and related actions by the health care agent or health care
3 representative.

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

9 § 5454. When health care power of attorney operative.

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

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

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

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

20 (c) Invalidity of specific direction.--If a specific
21 direction in the health care power of attorney is held to be

22 invalid, the invalidity does not negate other directions in the
23 health care power of attorney that can be effected without the
24 invalid direction.

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

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

1 court approval.

2 § 5455. Appointment of health care agents.

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

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

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

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

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

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

19 § 5456. Authority of health care agent.

20 (a) Extent of authority.--Except as expressly provided
21 otherwise in a health care power of attorney and subject to
22 subsection (b) and section 5460 (relating to relation of health

23 care agent to court-appointed guardian and other agents), a
24 health care agent shall have the authority to make any health
25 care decision and to exercise any right and power regarding the
26 principal's care, custody and health care treatment that the
27 principal could have made and exercised. The health care agent's
28 authority may extend beyond the principal's death to make
29 anatomical gifts, dispose of the remains and consent to
30 autopsies.

1 (b) Life-sustaining treatment decisions.--A life-sustaining
2 treatment decision made by a health care agent is subject to
3 this section and sections 5429 (relating to pregnancy), 5454
4 (relating to when health care power of attorney operative) and
5 5462(a) (relating to duties of attending physician and health
6 care provider).

(C) Health Care Decisions.--

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

17 (2) In the case for procedures for which informed consent
18 is required under Section 504 of the Act of MARCH 20, 2002
19 (P.L.154, NO.13), known as the medical care availability and
20 reduction of error (MCARE) Act, the information shall include
21 The information required to be disclosed under that Act.

22 (3) In the case of health care decisions regarding end
23 of life of a patient with an end-stage medical condition, the
24 information shall distinguish between curative alternatives,
25 palliative alternatives and alternatives which will merely
26 serve to prolong the process of dying. The information shall
27 also distinguish between the principal's end- stage medical
28 condition and any other concurrent disease, illness or

29 physical, mental, cognitive or intellectual condition that
30 predated the principal's end-stage medical condition.

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

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

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

24 (A) The preservation of life.

25 (B) The relief from suffering..
26 (C) The preservation or restoration of
27 functioning, taking into account any concurrent
28 disease, illness or physical, mental, cognitive or
29 intellectual condition that may have predated the
30 Principal's end-stage medical condition.

1 (III) (A) In the absence of a specific, written
2 authorization or direction by a principal to withhold
3 or withdraw nutrition and hydration administered by
4 gastric tube or intravenously or by other artificial
5 or invasive means, a health care agent shall presume
6 that the principal would not want nutrition and
7 hydration withheld or withdrawn.

8 (B) The presumption may be overcome by
9 previously clearly expressed wishes of the principal
10 to the contrary. In the absence of such clearly
11 expressed wishes, the presumption may be overcome if
12 the health care agent considers the values and
13 preferences of the principal and assesses the factors
14 set forth in subparagraphs (I) and (II) and
15 determines it is clear that the principal would not
16 wish for artificial nutrition and hydration to be
17 Initiated or continued.

18 (6) The department of health shall ensure as part of the
19 licensure process that health care providers under its
20 jurisdiction have policies and procedures in place to
21 IMPLEMENT THIS SUBSECTION.

22 (d) Health care information.--

23 (1) Unless specifically provided otherwise in a health
24 care power of attorney, a health care agent has the same
25 rights and limitations as the principal to request, examine,

26 copy and consent or refuse to consent to the disclosure of
27 medical or other health care information.

28 (2) Disclosure of medical or other health care
29 information to a health care agent does not constitute a
30 waiver of any evidentiary privilege or of a right to assert

1 confidentiality. A health care provider that discloses such
2 information to a health care agent in good faith shall not be
3 liable for the disclosure. A health care agent may not
4 disclose health care information regarding the principal
5 except as is reasonably necessary to perform the agent's
6 obligations to the principal or as otherwise required by law.
7 § 5457. Countermand.

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

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

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

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

25 § 5458. Amendment.

26 While of sound mind, a principal may amend a health care

27 power of attorney by a writing executed in accordance with the
28 provisions of section 5452 (relating to execution). An amendment
29 may include the revocation in part of the health care power of
30 attorney or the designation of new or additional health care

1 agents.

2 § 5459. Revocation.

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

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

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

17 § 5460. Relation of health care agent to court-appointed
18 guardian and other agents.

19 (a) Accountability of health care agent.--If a principal who
20 has executed a health care power of attorney is later
21 adjudicated an incapacitated person and a guardian of the person
22 to make health care decisions is appointed by a court, the
23 health care agent is accountable to the guardian as well as to
24 the principal. The guardian shall have the same power to revoke
25 or amend the appointment of a health care agent that the
26 principal would have if the principal were not incapacitated but
27 may not revoke or amend other instructions in an advance health

28 directive absent judicial authorization.
29 (b) Nomination of guardian of person.--In a health care
30 power of attorney, a principal may nominate a guardian of the

1 person for the principal for consideration by a court if
2 incapacity proceedings for the principal's person are thereafter
3 commenced. If a court determines that the appointment of a
4 guardian is necessary, the court shall appoint a guardian in
5 accordance with the principal's most recent nomination except
6 for good cause or disqualification.

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

- 14 (1) A guardian of the estate of the principal.
- 15 (2) An agent acting on behalf of the principal under a
16 power of attorney if the agent has the power to disburse the
17 funds of the principal.

18 § 5461. Decisions by health care representative.

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

- 22 (1) the individual is at least 18 years of age, has
23 graduated from high school, has married or is an emancipated
24 minor;
- 25 (2) (i) the individual does not have a health care
26 power of attorney; or
27 (ii) the individual's health care agent is not
28 reasonably available or has indicated an unwillingness to

29 act and no alternate health care agent is reasonably
30 available; and

1 (3) a guardian of the person to make health care
2 decisions has not been appointed for the individual.

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

9 (c) Extent of authority of health care representative. Except as set forth in Section
5462(C)(1) (relating to

11 duties of attending physician and health care provider), the
12 authority and the decision-making process of a health care
13 representative shall be the same as provided for a health care
14 agent in section 5456 (relating to authority of health care
15 agent) and 5460(c) (relating to relation of health care agent to
16 court-appointed guardian and other agents).

17 (d) Who may act as health care representative.--

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

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

29 (ii) An adult child.

(iii) A parent.

1 (iv) An adult brother or sister.

2 (v) An adult grandchild.

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

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

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

14 (e) Disqualification.--An individual of sound mind may
15 disqualify one or more individuals from acting as health care
16 representative in the same manner as specified under subsection
17 (d) for the designation of a health care representative. An
18 individual may also disqualify one or more individuals from
19 acting as health care representative by a health care power of
20 attorney. Upon the petition of any member of the classes set
21 forth in subsection (d), the court may disqualify for cause
22 shown an individual otherwise eligible to serve as a health care
23 representative.

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

30 (g) Decision of health care representative.--

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

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

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

25 (i) Countermand of health care decision.--

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

30 (2) Regardless of the principal's mental or physical

1 capacity, a principal may countermand a health care decision
2 made by the principal's health care representative that would
3 withhold or withdraw life-sustaining treatment at any time
4 and in any manner by personally informing the attending
5 physician.

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

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

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

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

22 § 5462. Duties of attending physician and health care provider.

23 (a) Duty to certify end-stage medical condition.--promptly, after a determination that a
25 principal has an end-stage medical condition or is permanently
26 unconscious, the attending physician shall certify in writing
27 that the principal has an end-stage medical condition or is
28 permanently unconscious.

29 (b) Communication of health care decision.--Whenever
30 possible before implementing a health care decision made by a

1 health care representative or health care agent, an attending
2 physician or health care provider shall promptly communicate to
3 the principal the decision and the identity of the person making
4 the decision.

5 (c) Compliance with decisions of health care agent and
6 health care representative.--

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

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

22 (d) Medical record.--

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

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

1 one is furnished.

2 (e) Record of determination.--An attending physician who
3 determines that a principal is incompetent or has become
4 competent or makes a determination that affects the authority of
5 a health care agent shall enter the determination in the medical
6 record of the principal and, if possible, promptly inform the
7 principal and any health care agent of the determination.

8 § 5463. Effect on other State law.

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

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

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

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

20 (2) When consent is required for health care.

21 (3) Informed consent for health care.

22 (4) Consent to health care in an emergency.

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

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

1 (f) Disclosure.--The disclosure requirements of section
2 5456(d) (relating to authority of health care agent) supersede
3 any provision in any other State statute or regulation that
4 requires the principal to consent to disclosure or which
5 otherwise conflicts with section 5456(d), including, but not
6 limited to, the following:

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

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

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

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

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

19 § 5464. Validity.

20 This subchapter does not limit the validity of a power of
21 attorney executed prior to the effective date of this
22 subchapter. A health care power of attorney executed in another
23 state or jurisdiction and in conformity with the laws of that
24 state or jurisdiction shall be considered valid in this
25 Commonwealth, except to the extent that the health care power of
26 attorney executed in another state or jurisdiction would allow a
27 health care agent to make a health care decision inconsistent
28 with the laws of this Commonwealth.

29 § 5465. Form.

30 A health care power of attorney may be in any written form

1 identifying the principal, appointing a health care agent and
2 declaring that the principal authorizes the health care agent to
3 make health care decisions on behalf of the principal. An
4 example of a health care power of attorney appears in the
5 combined form set forth in Subchapter D (relating to combined
6 form).

7 SUBCHAPTER D
8 COMBINED FORM

9 Sec.

10 5471. Example.

11 § 5471. Example.

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

14 Durable Health Care Power of Attorney
15 and Health Care treatment instructions
16 (LIVING WILL)

17 PART I

18 INTRODUCTORY REMARKS ON
19 HEALTH CARE DECISION MAKING

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

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

26 (1) naming a health care agent to decide
27 treatment for you; and

28 (2) giving health care treatment instructions to
29 your health care agent or health care provider.

30 An advance health care directive is a written set of

1 instructions expressing your wishes for medical treatment. It
2 may contain a health care power of attorney, where you name a
3 person called a "health care agent" to decide treatment for
4 you, and a living will, where you tell your health care agent
5 and health care providers your choices regarding the
6 initiation, continuation, withholding or withdrawal of life-
7 sustaining treatment and other specific
12 directions.

13 You may limit your health care agent's involvement in
14 deciding your medical treatment so that your health care
15 agent will speak for you only when you are unable to speak
16 for yourself or you may give your health care agent the power
17 to speak for you immediately. This combined form gives your
18 health care agent the power to speak for you only when you
19 are unable to speak for yourself. A living will cannot be
20 followed unless your attending physician determines that you
21 lack the ability to understand, make or communicate
22 health care decisions for yourself and you are either permanently unconscious or you
26 have an end-stage medical condition, which is a condition
27 that will result in death despite the introduction or
28 continuation of medical treatment. You, and not your health
29 care agent, remain responsible for the cost of your medical
30 care.

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

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

9 You should give a copy of your advance health care
10 directive (a living will, health care power of attorney or a
11 document containing both) to your health care agent, your
12 physicians, family members and others whom you expect would
13 likely attend to your needs if you become unable to
14 understand, make or communicate decisions about medical care.

15 If your health care wishes change, tell your physician and
16 write a new advance health care directive to replace your old
17 one. It is important in selecting a health care agent that
18 you choose a person you trust who is likely to be available
19 In a medical situation where you cannot make decisions for
20 yourself. You should inform that person that you have
21 appointed him or her as your health care agent and discuss
22 your beliefs and values with him or her so that your health
23 care agent will understand your health care objectives.

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

1 a living will.

2 NOTES ABOUT THE USE OF THIS FORM

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

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

9 You may add comments to this form or use your own form to
11 care.

12 This form is designed to give your health care agent
13 broad powers to make health care decisions for you whenever
14 you cannot make them for yourself. It is also designed to
15 express a desire to limit or authorize care if you have an
16 end-stage medical condition or are permanently unconscious.

17 If you do not desire to give your health care agent broad
18 powers, or you do not wish to limit your care if you have an
19 end-stage medical condition or are permanently unconscious,
20 you may wish to use a different form or create your own. You
21 should also use a different form if you wish to express your
22 preferences in more detail than this form allows or if you
23 wish for your health care agent to be able to speak for you
24 immediately. In these situations, it is particularly
25 important that you consult with your attorney and physician
26 to make sure that your wishes are clearly expressed.

27 This form allows you to tell your health care agent your
28 goals if you have an end-stage medical condition or other
29 extreme and irreversible medical condition, such as advanced
30 Alzheimer's disease. Do you want medical care applied

1 aggressively in these situations or would you consider such
2 aggressive medical care burdensome and undesirable?

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

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

16 (1) will not maintain you in such a way as to permit the
17 continuing development and live birth of the unborn child;

18 (2) will be physically harmful to you; or

19 (3) will cause pain to you that cannot be alleviated by
20 medication.

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

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

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

4 PART II

5 DURABLE HEALTH CARE POWER OF ATTORNEY

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

10 Effective immediately and continuously until my death or
11 revocation by a writing signed by me or someone authorized to
12 make health care treatment decisions for me, I authorize all
13 health care providers or other covered entities to disclose
14 to my health care agent, upon my agent's request, any
15 information, oral or written, regarding my physical or mental
16 health, including, but not limited to, medical and hospital
17 records and what is otherwise private, privileged, protected
18 or personal health information, such as health information as
19 defined and described in the Health Insurance Portability and
20 Accountability Act of 1996 (Public Law 104-191, 110 Stat.
21 1936), the regulations promulgated thereunder and any
22 other State or local laws and rules. Information disclosed by
23 a health care provider or other covered entity may be
24 redisclosed and may no longer be subject to the privacy rules
25 provided by 45 C.F.R. Pt. 164.

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

1 My health care agent has all of the following powers

2 Subject to the health care treatment instructions that follow
3 In Part III (Cross out any powers you do not want to give
4 your health care agent):

5 1. To authorize, withhold or withdraw medical care and
6 surgical procedures.

7 2. To authorize, withhold or withdraw nutrition (food)
8 or hydration (water) medically supplied by tube through my
9 nose, stomach, intestines, arteries or veins.

10 3. To authorize my admission to or discharge from a
11 medical, nursing, residential or similar facility and to make
12 agreements for my care and health insurance for my care,
13 including hospice and/or palliative care.

14 4. To hire and fire medical, social service and other
15 support personnel responsible for my care.

16 5. To take any legal action necessary to do what I have
17 directed.

18 6. To request that a physician responsible for my care
19 issue a do-not-resuscitate (DNR) order, including an out-of-
20 hospital DNR order, and sign any required documents and
21 consents.

22 Appointment of Health Care Agent

23 I appoint the following health care agent:

24 Health care agent:.....

25 (Name and relationship)

26 Address:.....

27

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

29 E-Mail:.....

5 If you do not name a health care agent, health care providers
6 will ask your family or an adult who knows your preferences

7 and values for help in determining your wishes for treatment.
8 Note that you may not appoint your doctor or other health
9 care provider as your health care agent unless related to you
10 by blood, marriage or adoption.

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

17 First Alternative Health Care Agent:.....

18 (Name and relationship)

19 Address:.....

20

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

22 E-Mail:.....

23 Second Alternative Health Care Agent:.....

24 (Name and relationship)

25 Address:.....

26

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

28 E-Mail:.....

29 Guidance for Health Care Agent (Optional)

30 GOALS

1 If I have an end-stage medical condition or other extreme
2 irreversible medical condition, my goals in making medical
3 decisions are as follows (insert your personal priorities

4 such as comfort, care, preservation of mental function,
5 etc.):.....

6

7

8

9 Severe brain damage or brain disease

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

19 Initials.....I agree

20 Initials.....I disagree

21 PART III

22 HEALTH CARE TREATMENT INSTRUCTIONS IN THE EVENT

23 OF END-STAGE MEDICAL CONDITION

24 OR PERMANENT UNCONSCIOUSNESS

25 (LIVING WILL)

26 The following health care treatment instructions exercise
27 my right to make my
28 Own health care decisions. These instructions are intended to
29 provide clear and convincing evidence of my wishes to be
30 followed when I lack the capacity to understand, make or

1 communicate my treatment decisions:

2 If I have an end-stage medical condition (which will
3 result in my death, despite the introduction or continuation
4 of medical treatment) or am permanently unconscious such as

5 an irreversible coma or an irreversible vegetative state and
6 there is no realistic hope of significant recovery, all of
7 the following apply (cross out any treatment options
8 with which you do not agree):
9 1. I direct that I be given health care treatment to
10 relieve pain or provide comfort even if such treatment might
11 shorten my life, suppress my appetite or my breathing, or be
12 habit forming.
13 2. I direct that all life prolonging procedures be
14 withheld or withdrawn.
15 3. I specifically do not want any of the following as
16 life prolonging procedures: (If you wish to receive any of
17 these treatments, write "I do want" after the treatment)
18 heart-lung resuscitation (CPR).....
19 mechanical ventilator (breathing machine).....
20 dialysis (kidney machine).....
21 surgery.....
22 chemotherapy.....
23 radiation treatment

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

1 Tube feedings
2I want tube feedings to be given
3 or
4 No tube feedings
5I do not want tube feedings to be given.

6 Agent's health care agent's use of instructions
7 (Initial one option only).

8My health care agent must follow these
9 instructions.

10 or

11These instructions are only guidance.

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

15

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

18 Legal Protection

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

28 organ donation (initial one option only.)

29I consent to donate my organs and tissues at the
30 time of my death for the purpose of transplant,

1 medical study or education. (Insert any
2 limitations you desire on donation of specific
3 organs or tissues or uses for donation of organs
4 and tissues.).....

5

6 or

7I do not consent to donate my organs or tissues
8 at the time of my death.

9 Signature

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

14

15 (Sign full name here for health care power of attorney and
16 Health care treatment instructions)

17 WITNESS:.....

18 WITNESS:.....

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

26 NOTARIZATION (OPTIONAL)

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

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

6 IN WITNESS WHEREOF, I have hereunto set my hand and
7 affixed my official seal in the County of....., State

8 of..... the day and year first above written.
9
10 Notary Public My commission expires

11 SUBCHAPTER E
12 OUT-OF-HOSPITAL NONRESUSCITATION

- 13 Sec. 5481. Short title of subchapter.
15 5482. Legislative findings and intent.
16 5483. Definitions.
17 5484. Orders, bracelets and necklaces.
18 5485. Revocation.
19 5486. Absence of order, bracelet or necklace.
20 5487. Emergency medical services.
21 5488. Advisory committee.
22 § 5481. Short title of subchapter.
23 This subchapter shall be known and may be cited as the Out-
24 of-Hospital Nonresuscitation Act.
25 § 5482. Legislative findings and intent.
26 The General Assembly finds and declares as follows:
27 (1) Although cardiopulmonary resuscitation has saved the
28 lives of individuals about to experience sudden, unexpected
29 death, present medical data indicates that cardiopulmonary
30 resuscitation rarely leads to prolonged survival in

- 1 individuals with terminal illnesses in whom death is
2 expected.
3 (2) In many circumstances, the performance of
4 cardiopulmonary resuscitation may inflict unwanted and
5 unnecessary pain and suffering.
6 (3) Existing emergency medical services protocols may
7 require emergency medical services personnel to proceed to
8 cardiopulmonary resuscitation when an individual is found in

9 a cardiac or respiratory arrest even if the individual has
10 completed an advance health care directive indicating that
11 the individual does not wish to receive cardiopulmonary
12 resuscitation.

13 (4) The administration of cardiopulmonary resuscitation
14 by emergency medical services personnel to an individual with
15 an out-of-hospital do-not-resuscitate order offends the
16 dignity of the individual and conflicts with standards of
17 accepted medical practice.

18 (5) This subchapter provides clear direction to
19 emergency medical services personnel and other health care
20 providers in regard to the performance of cardiopulmonary
21 resuscitation.

22 § 5483. Definitions.

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

26 "Department." The Department of Health of the Commonwealth.

27 "Emergency medical services provider." A health care
28 provider recognized under the act of July 3, 1985 (P.L.164,
29 No.45), known as the Emergency Medical Services Act. The term
30 includes those individuals recognized under 42 Pa.C.S. § 8331.2

1 (relating to good Samaritan civil immunity for use of automated
2 external defibrillator).

3 "EMS." Emergency medical services.

4 "Health care provider." A person who is licensed, certified
5 or otherwise authorized by the laws of this Commonwealth to
6 administer or provide health care in the ordinary course of
7 business or practice of a profession. The term includes
8 personnel recognized under the act of July 3, 1985 (P.L.164,
9 No.45), known as the Emergency Medical Services Act, and those

10 individuals recognized under 42 Pa.C.S. § 8331.2 (relating to
11 good Samaritan civil immunity for use of automated external
12 defibrillator).

13 "Out-of-hospital do-not-resuscitate bracelet." A bracelet in
14 the standard format set forth in section 5484 (relating to
15 orders, bracelets and necklaces), supplied by the department and
16 issued by the attending physician, which may be worn at the
17 patient's option to notify emergency medical services providers
18 of the presence of an order.

19 "Out-of-hospital do-not-resuscitate necklace." A necklace in
20 the standard format set forth in section 5484 (relating to
21 orders, bracelets and necklaces), supplied by the department and
22 issued by the attending physician, which may be worn at the
23 patient's option to notify emergency medical services providers
24 of the presence of an order.

25 "Out-of-hospital do-not-resuscitate order." An order in the
26 standard format set forth in section 5484 (relating to orders,
27 bracelets and necklaces), supplied by the department and issued
28 by the attending physician, directing emergency medical services
29 providers to withhold cardiopulmonary resuscitation from the
30 patient in the event of respiratory or cardiac arrest.

1 "Out-of-hospital do-not-resuscitate patient." An individual
2 who:

3 (1) Has an end-stage medical condition or is permanently
4 unconscious.

5 (2) Pursuant to section 5484(a) (relating to orders,
6 bracelets and necklaces), possesses and in any manner
7 displays or causes to be displayed for emergency medical
8 services providers an apparently valid order, bracelet or
9 necklace.

10 "Surrogate." A health care agent or a health care

11 representative.

12 § 5484. Orders, bracelets and necklaces.

13 (a) Issuance.--An attending physician, upon the request of a
14 patient who is at least 18 years of age, has graduated from high
15 school, has married or is an emancipated minor, or the patient's
16 surrogate if the surrogate is so authorized, shall issue to the
17 patient an order and may issue at the request of the patient or
18 the patient's surrogate a bracelet or necklace supplied by the
19 department. The patient may, at the patient's option, wear the
20 bracelet or display the order or necklace to notify emergency
21 medical services providers of the patient's DNR status.

22 (b) Format of order.--The department shall, with the advice
23 of the Pennsylvania Emergency Health Services Council and with
24 the assistance of the regional emergency medical services
25 councils, make available standard orders for issuance to
26 patients by attending physicians of this Commonwealth. The form
27 of the order shall contain, but not be limited to, the
28 following:

29 PENNSYLVANIA OUT-OF-HOSPITAL
30 DO-NOT-RESUSCITATE ORDER

1 Patient's full legal name:

2 I, the undersigned, state that I am the attending
3 physician of the patient named above. The above-named
4 patient or the patient's surrogate has requested this
5 order, and I have made the determination that the patient
6 is eligible for an order and satisfies one of the
7 following:

8 has an end-stage medical condition.

9 is permanently unconscious and has a
10 living will directing that no cardiopulmonary
11 resuscitation be provided to the patient in the event of

12 the patient's cardiac or respiratory arrest.
13 I direct any and all emergency medical services
14 personnel, commencing on the effective date of this
15 order, to withhold cardiopulmonary resuscitation (cardiac
16 compression, invasive airway techniques, artificial
17 ventilation, defibrillation and other related procedures)
18 from the patient in the event of the patient's
19 respiratory or cardiac arrest. I further direct such
20 personnel to provide to the patient other medical
21 interventions, such as intravenous fluids, oxygen or
22 other therapies necessary to provide comfort care or to
23 alleviate pain, unless directed otherwise by the patient
24 or the emergency medical services provider's authorized
25 medical command physician.
26 Signature of attending physician:
27 Printed name of attending physician:
28 Dated:
29 Attending physician's emergency telephone number:
30 I, the undersigned, hereby direct that in the event

1 of my cardiac and/or respiratory arrest efforts at
2 cardiopulmonary resuscitation not be initiated and that
3 they may be withdrawn if initiated. I understand that I
4 may revoke these directions at any time by giving verbal
5 instructions to the emergency medical services providers,
6 by physical cancellation or destruction of this form or
7 my bracelet or necklace or by simply not displaying this
8 form or the bracelet or necklace for my EMS caregivers.
9 Signature of patient (if capable of making informed
10 decisions):
11 I, the undersigned, hereby certify that I am
12 authorized to execute this order on the patient's behalf

13 by virtue of having been designated as the patient's
14 surrogate and/or by virtue of my relationship to the
15 patient (specify relationship:). I
16 hereby direct that in the event of the patient's cardiac
17 and/or respiratory arrest efforts at cardiopulmonary
18 resuscitation not be initiated and be withdrawn if
19 initiated.

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

22 (c) Format of bracelet.--The department shall, with the
23 advice of the Pennsylvania Emergency Health Services Council and
24 with the assistance of the regional emergency medical services
25 councils, make available standard bracelets for issuance to
26 patients by attending physicians. The bracelets shall be uniform
27 in design and shall, at a minimum, on the face clearly indicate
28 OUT-OF-HOSPITAL DNR and the name of the patient and attending
29 physician as well as the dated signature of the attending
30 physician.

1 (d) Format of necklace.--The department shall, with the
2 advice of the Pennsylvania Emergency Health Services Council and
3 with the assistance of the regional emergency medical services
4 councils, make available standard necklaces for issuance to
5 patients by attending physicians. The necklaces shall be uniform
6 in design and shall, at a minimum, on the face clearly indicate
7 OUT-OF-HOSPITAL DNR and the name of the patient and attending
8 physician as well as the dated signature of the attending
9 physician.

10 § 5485. Revocation.

11 (a) Patient.--If a patient has obtained an order, only the
12 patient may revoke the patient's DNR status.

13 (b) Surrogate.--If a surrogate has obtained an order, the
14 patient or the surrogate may revoke a patient's status.

15 (c) Manner.--Revocation under this section may be done at
16 any time without regard to the patient's physical or mental
17 condition and in any manner, including verbally or by destroying
18 or not displaying the order, bracelet or necklace.

19 § 5486. Absence of order, bracelet or necklace.

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

24 § 5487. Emergency medical services.

25 (a) Medical command instructions.--Notwithstanding the
26 absence of an order, bracelet or necklace pursuant to this
27 section, emergency medical services providers shall at all times
28 comply with the instructions of an authorized medical command
29 physician to withhold or discontinue resuscitation.

30 (b) Effect of order, bracelet or necklace.--

1 (1) Emergency medical services providers are authorized
2 to and shall comply with an order if made aware of the order
3 by examining a bracelet, a necklace or the order itself.

4 (2) Emergency medical services providers shall provide
5 other medical interventions necessary and appropriate to
6 provide comfort and alleviate pain, including intravenous
7 fluids, medications, oxygen and any other intervention
8 appropriate to the level of the certification of the
9 provider, unless otherwise directed by the patient or the
10 emergency medical services provider's authorized medical
11 command physician.

12 (3) As used in this subsection, the term "comply" means:

13 (i) to withhold cardiopulmonary resuscitation from

14 the patient in the event of respiratory or cardiac
15 arrest; or
16 (ii) to discontinue and cease cardiopulmonary
17 resuscitation in the event the emergency medical services
18 provider is presented with an order or discovers a
19 necklace or bracelet after initiating cardiopulmonary
20 resuscitation.

21 (c) Uncertainty regarding validity or applicability of
22 order, bracelet or necklace.--

23 (1) Emergency medical services providers who in good
24 faith are uncertain about the validity or applicability of an
25 order, bracelet or necklace shall render care in accordance
26 with their level of certification.

27 (2) Emergency medical services providers who act under
28 paragraph (1) shall not be subject to civil or criminal
29 liability or administrative sanction for failure to comply
30 with an order under this section.

1 (d) Recognition of other states' orders.--Emergency medical
2 services or out-of-hospital DNR orders, bracelets or necklaces
3 valid in states other than this Commonwealth shall be recognized
4 in this Commonwealth to the extent that these orders, bracelets
5 or necklaces and the criteria for their issuances are consistent
6 with the laws of this Commonwealth. Emergency medical services
7 providers shall act in accordance with the provisions of this
8 section when encountering a patient with an apparently valid EMS
9 or out-of-hospital DNR form, bracelet or necklace issued by
10 another state. Emergency medical services providers acting in
11 good faith under this section shall be entitled to the same
12 immunities and protections that would otherwise be applicable.
13 § 5488. Advisory committee.

14 (a) Establishment.--Within 60 days of the effective date of

15 this section, the department shall establish a committee to
16 assist it in determining the advisability of using a
17 standardized form containing orders by qualified physicians that
18 detail the scope of medical treatment for patients' life-
19 sustaining wishes.

20 (b) Membership.--The committee shall include representatives
21 from the Pennsylvania Medical Society, the Hospital and Health
22 System Association of Pennsylvania, the Joint State Government
23 Commission's Advisory Committee on Decedents' Estates Laws,
24 the Pennsylvania Bar Association, the Department of Aging,
25 the Department of Public Welfare and other interested persons at
26 the department's discretion.

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

29 (1) The need to adopt this type of standardized form in
30 view of the existing use of do-not-resuscitate orders.

1 (2) The use and evaluation of use of such forms in other
2 states.

(3) Any other matters determined by the department
13 to be relevant to its determination.

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

15 [Prior Chapter 54A is deleted in its entirety]

Section 6. The Department of Health shall adopt regulations,

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

9 Section 7. The repeal of 20 PA.C.S. CH. 54 shall not affect the
11 validity of any declaration executed, pursuant to the
12 sample form provided in former 20 PA.C.S. § 5404(B), before, on

13 or after the effective date of this section.

SECTION 8. This Act shall take effect in 60 days.