

ENGROSSED HOUSE
BILL NO. 1969

By: Vaughn of the House

and

Hendrick of the Senate

An Act relating to public health and safety; amending Sections 4, 9, 10, 12 and 15, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 1994, Sections 3101.4, 3101.9, 3101.10, 3101.12 and 3101.15), which relate to advance directives; adding designation for donation of body, organs or body parts in an advance directive; requiring provision of requested treatment pending transfer to a willing provider; providing for prior executed directives; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 4, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 1994, Section 3101.4), is amended to read as follows:

Section 3101.4 A. An individual of sound mind and eighteen (18) years of age or older may execute at any time an advance directive governing the withholding or withdrawal of life-sustaining treatment. The advance directive shall be signed by the declarant and witnessed by two individuals who are eighteen (18) years of age or older who are not legatees, devisees or heirs at law.

B. An advance directive shall be in substantially the following form:

Advance Directive for Health Care

I, _____, being of sound mind and eighteen (18) years of age or older, willfully and voluntarily make known my desire, by my instructions to others through my living will, or by my appointment of a health care proxy, or both, that my life shall not be artificially prolonged under the circumstances set forth below. I thus do hereby declare:

I. Living Will

a. If my attending physician and another physician determine that I am no longer able to make decisions regarding my medical treatment, I direct my attending physician and other health care providers, pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, to withhold or withdraw treatment from me under the circumstances I have indicated below by my signature. I understand that I will be given treatment that is necessary for my comfort or to alleviate my pain.

b. If I have a terminal condition:

(1) I direct that life-sustaining treatment shall be withheld or withdrawn if such treatment would only prolong my process of dying, and if my attending physician and another physician determine that I have an incurable and irreversible condition that even with the administration of life-sustaining treatment will cause my death within six (6) months. _____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) that will only prolong the process of dying from an incurable and irreversible condition is of particular

importance. I understand that if I do not sign this paragraph, artificially administered nutrition and hydration will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding or withdrawal of artificially administered nutrition (food) and hydration (water).

_____ (signature)

(3) I direct that (add other medical directives, if any)

_____. _____ (signature)

c. If I am persistently unconscious:

(1) I direct that life-sustaining treatment be withheld or withdrawn if such treatment will only serve to maintain me in an irreversible condition, as determined by my attending physician and another physician, in which thought and awareness of self and environment are absent. _____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) for individuals who have become persistently unconscious is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition and hydration will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding or withdrawal of artificially administered nutrition (food) and hydration (water). _____ (signature)

(3) I direct that (add other medical directives, if any)

_____. _____ (signature)

II. My Appointment of My Health Care Proxy

a. If my attending physician and another physician determine that I am no longer able to make decisions regarding my medical treatment, I direct my attending physician and other health care providers pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act to follow the instructions of _____, whom I appoint as my health care proxy. If my health care proxy is unable or unwilling to serve, I appoint _____ as my alternate health care proxy with the same authority. My health care proxy is authorized to make whatever medical treatment decisions I could make if I were able, except that decisions regarding life-sustaining treatment can be made by my health care proxy or alternate health care proxy only as I indicate in the following sections.

b. If I have a terminal condition:

(1) I authorize my health care proxy to direct that life-sustaining treatment be withheld or withdrawn if such treatment would only prolong my process of dying and if my attending physician and another physician determine that I have an incurable and irreversible condition that even with the administration of life-sustaining treatment will cause my death within six (6) months. _____

(signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition (food) or hydration (water) will be

administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding or withdrawal of artificially administered nutrition and hydration. _____ (signature)

(3) I authorize my health care proxy to (add other medical directives, if any)

_____. _____ (signature)

c. If I am persistently unconscious:

(1) I authorize my health care proxy to direct that life-sustaining treatment be withheld or withdrawn if such treatment will only serve to maintain me in an irreversible condition, as determined by my attending physician and another physician, in which thought and awareness of self and environment are absent.

_____ (signature)

(2) I understand that the subject of the artificial administration of nutrition and hydration (food and water) is of particular importance. I understand that if I do not sign this paragraph, artificially administered nutrition (food) and hydration (water) will be administered to me. I further understand that if I sign this paragraph, I am authorizing the withholding and withdrawal of artificially administered nutrition and hydration. _____ (signature)

(3) I authorize my health care proxy to (add other medical directives, if any)

_____. _____ (signature)

III. Anatomical Gifts

I direct that at the time of my death my entire body or designated body organs or body parts be donated for purposes of transplantation, therapy, advancement of medical or dental science or research or education pursuant to the provisions of the Uniform Anatomical Gift Act. Death means either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem. I specifically donate:

[] My entire body; or

[] The following body organs or parts:

() lungs, () liver, () pancreas,

() heart, () kidneys, () brain,

() skin, () bones/marrow,

() bloods/fluids, () tissue,

() arteries, () eyes/cornea/lens,

() glands, () other

_____. _____ (signature)

IV. Conflicting Provision

I understand that if I have completed both a living will and have appointed a health care proxy, and if there is a conflict between my health care proxy's decision and my living will, my living will shall take precedence unless I indicate otherwise.

_____. _____ (signature)

IV.— a. I understand that if I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this advance directive shall have no force or effect during the course of my pregnancy.

b. In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this advance directive shall be honored by

my family and physicians as the final expression of my legal right to refuse medical or surgical treatment including, but not limited to, the administration of any life-sustaining procedures, and I accept the consequences of such refusal.

c. This advance directive shall be in effect until it is revoked.

d. I understand that I may revoke this advance directive at any time.

e. I understand and agree that if I have any prior directives, and if I sign this advance directive, my prior directives are revoked.

f. I understand the full importance of this advance directive and I am emotionally and mentally competent to make this advance directive.

Signed this _____ day of _____, 19 __.

(Signature)

City, County and State of Residence

This advance directive was signed in my presence.

(Signature of Witness)

(Address)

(Signature of Witness)

(Address)

C. A physician or other health care provider who is furnished the original or a photocopy of the advance directive shall make it a

part of the declarant's medical record and, if unwilling to comply with the advance directive, promptly so advise the declarant.

D. In the case of a qualified patient, the patient's health care proxy, in consultation with the attending physician, shall have the authority to make treatment decisions for the patient including the withholding or withdrawal of life-sustaining procedures if so indicated in the patient's advance directive.

E. A person executing an advanced directive appointing a health care proxy who may not have an attending physician for reasons based on established religious beliefs or tenets may designate an individual other than the designated health care proxy, in lieu of an attending physician and other physician, to determine the lack of decisional capacity of the person. Such designation shall be specified and included as part of the advanced directive executed pursuant to the provisions of this section.

SECTION 2. AMENDATORY Section 9, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 1994, Section 3101.9), is amended to read as follows:

Section 3101.9 An attending physician or other health care provider who is unwilling to comply with the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall as promptly as practicable take all reasonable steps to arrange care of the declarant by another physician or health care provider when the declarant becomes a qualified patient. If the patient's attending physician or other health care provider has administered treatment under the provisions of this act, but subsequently chooses to no longer treat the patient, such physician or health care provider must comply with the patient's advance directive pending the transfer of the patient to another physician or health care provider willing to comply with such directive. Nothing in this section may be construed to alter any legal obligation or lack of legal obligation of a physician or other health care provider to provide

medical treatment, nutrition, or hydration to a patient who refuses or is unable to pay for them.

SECTION 3. AMENDATORY Section 10, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 1994, Section 3101.10), is amended to read as follows:

Section 3101.10 A. In the absence of knowledge of the revocation of an advance directive, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the advance directive pursuant to the requirements of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

B. A physician or other health care provider, whose actions under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act are in accord with reasonable medical standards, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to those actions; provided, that this subsection may not be construed to authorize a violation of Section 3101.9 of this title.

C. An individual designated as a health care proxy, pursuant to Section 4 3101.4 of this ~~act~~ title, to make health care decisions for a declarant and whose decisions regarding the declarant are made in good faith pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, is not subject to criminal or civil liability, or discipline for unprofessional conduct with respect to those decisions.

SECTION 4. AMENDATORY Section 12, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 1994, Section 3101.12), is amended to read as follows:

Section 3101.12 A. Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not constitute, for any purpose, a suicide or homicide.

B. The making of an advance directive pursuant to Section 4 3101.4 of this ~~act~~ title shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor shall it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity shall not be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured qualified patient, regardless of any term of the policy or annuity to the contrary.

C. A person shall not prohibit or require the execution of an advance directive as a condition for being insured for, or receiving, health care services.

D. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act creates no presumption concerning the intention of an individual who has revoked or has not executed an advance directive with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event the individual becomes persistently unconscious or in a terminal condition.

E. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care.

F. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not require any physician or other health care provider to take any action contrary to reasonable medical standards; provided, that this subsection may not be construed to authorize a violation of Section 3101.9 of this title.

G. The Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act shall not be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia.

H. Failure to designate a health care proxy in accordance with Section 4 3101.4 of this ~~act~~ title shall not be interpreted to invalidate the authority of a health care proxy to make life-sustaining treatment decisions if otherwise authorized by law.

SECTION 5. AMENDATORY Section 15, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 1994, Section 3101.15), is amended to read as follows:

Section 3101.15 A. Any directive to a physician executed pursuant to the former Oklahoma Natural Death Act, 63 O.S. 1991, Section 3101 et seq., which was executed prior to ~~the effective date of this act~~ September 1, 1992, shall be enforceable according to its terms until revoked and shall have the same force and effect as if made pursuant to this act. Such directive shall be binding on the attending physician whether or not the person who executed the directive was in a terminal condition at the time of execution unless there is evidence that the person executing the directive intended that it should be binding only if executed or re-executed after the person became afflicted with a terminal condition as defined by the former Oklahoma Natural Death Act.

B. Any advance directive executed prior to the enactment of any amendment to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act which substantially complied with the law in effect at the time of the execution of the directive shall be enforceable according to its terms until revoked and shall have the same force and effect as if made pursuant to this act, as amended.

SECTION 6. This act shall become effective November 1, 1995.

Passed the House of Representatives the 2nd day of March, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate