

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1180

Short Title: Right to Nutrition & Hydration.

(Public)

Sponsors: Representative Arnold.

Referred to: Human Resources.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERSONS WHO ARE INCOMPETENT TO MAKE DECISIONS CONCERNING THEIR MEDICAL TREATMENT OR CARE ARE PRESUMED TO HAVE DIRECTED HEALTH CARE PROVIDERS TO PROVIDE THE NUTRITION AND HYDRATION NECESSARY TO SUSTAIN THE PERSON'S LIFE; AND TO PROVIDE THAT NO PERSON MAY MAKE A DECISION ON THE INCOMPETENT PERSON'S BEHALF TO WITHHOLD OR WITHDRAW NUTRITION OR HYDRATION EXCEPT AS PROVIDED IN THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

“ARTICLE 23A.

“NUTRITION AND HYDRATION FOR VULNERABLE PERSONS.

“§ 90-328.1. Short title.

This Article shall be known and may be cited as the Nutrition and Hydration for Vulnerable Persons Act.

“§ 90-328.2. Definitions.

As used in this Article, unless the context requires otherwise:

(1) ‘Attending physician’ means the physician who has primary responsibility for the overall medical treatment and care of a person.

(2) ‘Competent’ person means any adult or emancipated minor who is able to make decisions affecting medical treatment or care.

- 1 (3) 'Health-care provider' means a person or entity that administers health
2 care in the ordinary course of business or practice of a profession.
- 3 (4) 'Hydration' means fluids administered orally, intravenously, or by way
4 of the gastrointestinal tract.
- 5 (5) 'Nutrition' means sustenance administered orally, by way of the
6 gastrointestinal tract, or by any other means customarily employed by
7 health-care providers;
- 8 (6) 'Person' means a human being, individual, corporation, business trust,
9 estate, trust, partnership, association, government, governmental,
10 governmental subdivision or agency, court, or any other legal entity.
- 11 (7) 'Physician' means a person licensed to practice medicine in this State.
- 12 (8) 'Terminal illness or injury' means an incurable and irreversible
13 medical condition that, even with the use of medical treatment and
14 care, will result in the death of a person from that condition or a
15 complication arising from that condition; provided, however, that
16 'terminal illness or injury' does not include any form of mental illness,
17 or any other chronic mental or physical impairment, including
18 comatose conditions, that alone will not result in death.
- 19 (9) 'Vulnerable person' means any natural person who (i) is an
20 unemancipated minor, (ii) has been declared legally incompetent to
21 make decisions affecting his medical treatment or care, or (iii) is
22 unable to make decisions affecting his medical treatment or care.

23 **"§ 90-328.3. Presumption; exceptions.**

24 (a) It shall be presumed that every vulnerable person as defined in this Article
25 has directed his health-care providers to provide both nutrition and hydration to the
26 degree necessary to sustain his life.

27 (b) Notwithstanding subsection (a) of this section, this Article creates no
28 presumption with regard to the use of artificially administered nutrition or hydration
29 that, in the reasonable medical judgments of the attending physician and a second
30 consulting physician, will itself cause severe, intractable, and long-lasting pain to the
31 vulnerable person.

32 (c) Notwithstanding subsection (a) of this section, this Article creates no
33 presumption with regard to the use of artificially administered nutrition or hydration for
34 a vulnerable person when, in the reasonable medical judgments of the attending
35 physician and a second consulting physician, (i) the vulnerable person is chronically and
36 irreversibly incompetent, (ii) the vulnerable person has a terminal illness or injury, (iii)
37 the life expectancy of the vulnerable person is less than one week, and (iv) the
38 artificially administered nutrition or hydration does not abolish or alleviate pain or
39 discomfort of the vulnerable person; provided, however, that the withholding or
40 withdrawing of nutrition or hydration does not result in death from malnutrition or
41 dehydration, or complications thereof, rather than from an underlying terminal illness or
42 injury.

43 (d) Any competent person may issue a written directive that provides for a named
44 surrogate to make an informed consent decision regarding the provision, maintenance,

1 withholding, or withdrawing of artificially administered nutrition or hydration when the
2 circumstances and conditions described in subsections (b) or (c) of this section apply.

3 **"§ 90-328.4. Informed consent decisions.**

4 (a) The presumption established by this Article shall not apply when there is
5 clear and convincing evidence that a person, after being diagnosed as terminally ill or
6 injured, and while competent, decided based on information sufficient to establish
7 informed consent, that artificially administered nutrition or hydration otherwise required
8 as a result of the illness or injury should be withheld or withdrawn.

9 (b) Nothing in this Article shall be construed to effect or to diminish any State
10 interest such as in the preservation of human life, the maintenance of the ethical
11 integrity of the medical profession, the protection of third parties, or the prevention of
12 suicide, that may require artificially administered nutrition and hydration in a particular
13 case.

14 (c) Nothing in this Article, including the existence of a surrogate appointment
15 made pursuant to this Article, shall relieve any physician of the duty to seek informed
16 consent from the patient concerning reasonably foreseeable options regarding
17 artificially administered nutrition and hydration during a likely future period of
18 incompetence, if there is a reasonable opportunity to do so after the diagnosis of the
19 illness or injury while the physician's patient is still competent.

20 **"§ 90-328.5. Limited authority of decision maker other than the vulnerable person.**

21 (a) Except as otherwise provided in this Article, no surrogate, guardian, court, or
22 person may make a decision on behalf of the vulnerable person to withhold or withdraw
23 nutrition or hydration from the vulnerable person.

24 **"§ 90-328.6. Rights and duties of health-care providers.**

25 For purposes of this Article, following are the rights and duties of health-care
26 providers:

- 27 (1) Withholding or withdrawing of nutrition or hydration, except as
28 provided by this act, constitutes patient abuse pursuant to G.S. 14-
29 32.2.
- 30 (2) Any health-care provider who is licensed or credentialed to practice an
31 occupation by a licensing agency and who willfully fails to conform to
32 the standards, requirements, or limitations of this Article shall be
33 disciplined after a hearing by the appropriate licensing agency.
- 34 (3) Nothing in this Article shall be construed to require a health-care
35 provider to provide or maintain artificially administered nutrition or
36 hydration if it is not medically possible.
- 37 (4) Notwithstanding any other provision of law, no health-care provider
38 shall be required to participate in or provide facilities for any patient
39 for whom nutrition or hydration is to be withheld or withdrawn if this
40 would violate the policy or conscientious belief of the health-care
41 provider.
- 42 (5) The health-care provider for a person shall enter or cause to be entered
43 into the permanent medical record of that person a copy of any
44 document and any other evidence of a person's decision concerning

1 nutrition or hydration, indicating the circumstances under which such
2 decisions were made or documents issued.

3 (6) Nothing in this act shall be construed to require, or to alter any duty
4 that requires, any health-care provider to provide artificially
5 administered nutrition or hydration for which the health-care provider
6 will not be reimbursed.

7 (7) The law of this State shall not be construed to permit withdrawing or
8 withholding of medical treatment, medical care, nutrition, or hydration
9 from a person because of the mental disability or mental status of that
10 person.

11 **"§ 90-328.7. Vulnerable pregnant women.**

12 Notwithstanding G.S. 90-328.3, and unless the woman has specifically consented
13 pursuant to the requirements of G.S. 90-328.4, when a vulnerable person as defined in
14 this Article is a woman known to be pregnant, it shall be presumed that she has directed
15 the use of artificially administered nutrition or hydration if, in the reasonable medical
16 judgment of the attending physician, the use of such care will enable the woman's child
17 to develop to a sufficient degree that the child would sustain life apart from the woman's
18 body."

19 Sec. 2. The provisions of this act are severable, and if any provision of this
20 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
21 other provisions of the act which can be given effect without the invalid provision.

22 Sec. 3. This act shall become effective January 1, 1990.