

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 96
Committee Substitute Favorable 5/13/91

Short Title: Advance Directive/Health Care Decisions.

(Public)

Sponsors:

Referred to:

February 19, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE AN ADVANCE DIRECTIVE FOR HEALTH CARE MATTERS
AN OPTIONAL PART OF THE "RIGHT TO NATURAL DEATH" LAW.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 23 of Chapter 90 reads as rewritten:

"Right to Natural ~~Death~~; Death; Right to Advance Directive: Brain Death."

Sec. 2. G.S. 90-320 reads as rewritten:

"§ 90-320. General purpose of Article.

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or his representative has the fundamental right to control the decisions relating to the rendering of his own medical care, including the decision to have extraordinary means withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or his representative may exercise these ~~rights~~ rights and to establish an optional and nonexclusive procedure by which a patient may execute an Advance Directive designating several persons, one of whom shall act as the patient's agent to make health care decisions if and when the patient is unable to make or communicate his or her own.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining

1 procedures in any lawful manner. In such respect the provisions of this Article are
2 cumulative."

3 Sec. 3. G.S. 90-321 reads as rewritten:

4 **"§ 90-321. Right to a natural death; ~~death~~; right to Advance Directive.**

5 (a) As used in this Article the term:

6 (1) 'Advance Directive' means a document executed pursuant to
7 subsection (c), that designates several persons of 18 years of age or
8 more who are not actively engaged in providing health care to the
9 declarant for remuneration, one of whom shall act as the declarant's
10 agent to make health care decisions for the declarant if and when he or
11 she is unable to make or communicate his or her own decisions. The
12 designated agent has the power, as regulated by this Article, to consent
13 to the giving, withholding, or stopping of any health care, treatment,
14 service, or diagnostic procedure, including the withholding or
15 discontinuing of extraordinary means, and to talk with health care
16 personnel, get information, and sign forms necessary to carry out these
17 decisions.

18 ~~(1.1)~~ (1.1) 'Declarant' means a person who has signed a declaration in
19 accordance with subsection (c);

20 (2) 'Extraordinary means' is defined as any medical procedure or
21 intervention which in the judgment of the attending physician would
22 serve only to postpone artificially the moment of death by sustaining,
23 restoring, or supplanting a vital ~~function~~; ~~function~~. 'Extraordinary
24 means' do not include care necessary to provide comfort or to alleviate
25 pain. 'Extraordinary means' do include artificial hydration and
26 nutrition in cases in which a diagnosis of 'persistent vegetative state' as
27 defined in subdivision (2.1) of this subsection has been made;

28 (2.1) 'Persistent vegetative state' means a medical condition whereby in
29 the judgment of the attending physician the patient suffers from a
30 sustained complete loss of self-aware cognition and, without the
31 use of extraordinary means or artificial nutrition or hydration, will
32 succumb to death within a short period of time;

33 (3) 'Physician' means any person licensed to practice medicine under
34 Article 1 of Chapter 90 of the laws of the State of North Carolina.

35 (b) If a person has declared, in accordance with subsection (c) below, a desire
36 that his life not be prolonged by extraordinary means; and the declaration has not been
37 revoked in accordance with subsection (e) and

38 (1) It is determined by the attending physician that the declarant's
39 present condition is

40 a. ~~Terminal; and~~

41 b. ~~Incurable; and~~

42 a. Terminal and incurable; or

1 b. Incurable with a diagnosis of 'persistent vegetative state' as
2 defined in subdivision (2.1) of subsection (a) of this section;
3 and

4 (2) There is confirmation of the declarant's present condition as set out
5 above in subdivision (b)(1) by a physician other than the attending
6 physician;

7 then extraordinary means may be withheld or discontinued upon the direction and under
8 the supervision of the attending physician.

9 **(b1)** If a person has executed, in accordance with subsection (c), an Advance
10 Directive designating several persons, one of whom shall act as agent to make health
11 care decisions, if the designation has not been revoked in accordance with subsection
12 (e), and if it is determined by the attending physician that the person is not able to make
13 or communicate his or her own health care decisions, then the agent's decisions, other
14 than those involving the withholding or discontinuing of extraordinary means, will be
15 followed. If the determinations laid out in subsection (b) are made, then the agent's
16 decision to withhold or discontinue extraordinary means will be followed upon the
17 direction and under the supervision of the attending physician.

18 (c) The attending physician may rely upon a signed, witnessed, dated and proved
19 declaration:

20 (1) Which expresses a desire of the declarant that no extraordinary
21 means be used to prolong his life if his condition is determined to
22 be terminal and incurable; and

23 (2) Which states that the declarant is aware that the declaration
24 authorizes a physician to withhold or discontinue the extraordinary
25 means; and

26 (3) Which has been signed by the declarant in the presence of two
27 witnesses who believe the declarant to be of sound mind and who
28 state that they (i) are not related within the third degree to the
29 declarant or to the declarant's spouse, (ii) do not know or have a
30 reasonable expectation that they would be entitled to any portion of
31 the estate of the declarant upon his death under any will of the
32 declarant or codicil thereto then existing or under the Intestate
33 Succession Act as it then provides, (iii) are not the attending
34 physician, or an employee of the attending physician, or an
35 employee of a health facility in which the declarant is a patient, or
36 an employee of a nursing home or any group-care home in which
37 the declarant resides, and (iv) do not have a claim against any
38 portion of the estate of the declarant at the time of the declaration;
39 and

40 (4) Which has been proved before a clerk or assistant clerk of superior
41 court, or a notary public who certifies substantially as set out in
42 subsection (d) ~~below~~; below; or

43 (5) There is an Advance Directive designating a person to act as the
44 declarant's agent in making health care decisions; and

1 (6) That has been proved before a clerk or assistant clerk of superior
2 court, or a notary public who certifies substantially as set out in
3 subsection (d) below.

4 (d) The following form is specifically determined to meet the requirements
5 above:

6 **'DECLARATION OF A DESIRE FOR A NATURAL**
7 **~~DEATH-DEATH; ADVANCE DIRECTIVE (OPTIONAL)~~'**

8 'I,, being of sound mind, desire that my life not be prolonged by
9 extraordinary means if my condition is determined to be terminal, and incurable. I am
10 aware and understand that this writing authorizes a physician to withhold or discontinue
11 extraordinary means. I am aware and understand that if I have not made in this
12 document or elsewhere in a writing or oral communication that constitutes my patient
13 record any specific statement of desires concerning my health care treatment or any
14 specific directions regarding specific treatments or limitations on treatments, that my
15 attending physician's decisions shall be carried out, in accordance with this document.

16 Statement of desires concerning health care, treatment, services, and procedures,
17 including life-prolonging health care, treatment, services, and procedures, and including
18 any specific provisions and limitations, such as whether or not artificial feeding by vein
19 or stomach tube merely to prolong life is a desired treatment:

20
21
22
23
24
25
26
27

28 (Cross out the following if you do not wish to use 'Advance Directive' section and
29 initial the crossing out.)

30 'To effect my wishes, I,, being of sound mind, designate, residing
31 at....., (Phone #);
32 or if he or she shall for any reason fail to act,....., residing at (Phone #).....;
33 or if he or she shall for any reason fail to act,....., residing at (Phone #).....;
34 or if he or she shall for any reason fail to act,....., residing at (Phone #).....;
35 as my agent to make health care decisions for me if and when I am unable to make or
36 communicate my own health care decisions. This designation gives my agent the power
37 to consent to giving, withholding, or stopping any health care, treatment, service, or
38 diagnostic procedure, including the withholding or discontinuing of extraordinary
39 means. My agent also has the authority to talk with health care personnel, get
40 information, and sign forms necessary to carry out those decisions.

41 By this document I intend to create a power of attorney for health care decisions that
42 shall take effect upon my incapacity to make my own health care decisions and shall
43 continue during that incapacity. This power of attorney is intended to be supplemental
44 to any power of attorney executed pursuant to G.S. 32A-2(9), except that, if the

1 decisions of the attorney-in-fact appointed pursuant to G.S. 32A-2(9) regarding my
2 health care contradict the decisions made by my agent designated in this form, the
3 decisions of my agent designated in this form shall be followed.

4 My agent shall make health care decisions as I direct below or as I otherwise make
5 known in some other way. I am aware and understand that if I have not made in this
6 document or elsewhere in a writing or oral communication that constitutes my patient
7 record any specific statement of desires concerning my health care treatment or any
8 specific directions regarding specific treatments or limitations on treatments, that my
9 agent's decisions shall be carried out, in accordance with this document.

10 If this document is in any way in conflict with a Declaration of a Desire for a
11 Natural Death executed earlier, this document is to control.

12 Statement of desires concerning health care, treatment, services, and procedures,
13 including life-prolonging health care, treatment, services, and procedures, and including
14 any specific provisions and limitations such as:

15 (1) Whether methods of treatment used merely to prolong life shall be
16 used, such as:

- 17 a. Artificial nutrition or hydration;
- 18 b. Mechanical respiration;
- 19 c. Cardiac resuscitation; or
- 20 d. Antibiotic therapy; or

21 (2) Whether drugs for the relief of pain shall be used even if these drugs
22 might result in the shortening of life; or

23 (3) Whether the declarant wishes to die at home:

24

25

26

27

28

29

30

31

32 "This the day of"

33 Signature

34 'I hereby state that the declarant,....., being of sound mind signed the above
35 declaration in my presence and that I am not related to the declarant by blood or
36 marriage and that I do not know or have a reasonable expectation that I would be
37 entitled to any portion of the estate of the declarant under any existing will or codicil of
38 the declarant or as an heir under the Intestate Succession Act if the declarant died on
39 this date without a will. I also state that I am not the agent designated in the Advance
40 Directive. I also state that I am not the declarant's attending physician or an employee of
41 the declarant's attending physician, or an employee of a health facility in which the
42 declarant is a patient or an employee of a nursing home or any group-care home where
43 the declarant resides. I further state that I do not now have any claim against the
44 declarant.

1 Witness

2 Witness

3 The clerk or the assistant clerk, or a notary public may, upon proper proof, certify
4 the declaration as follows:

5

6 **'CERTIFICATE'**

7 'I,, Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one
8 as appropriate) for

9 County hereby certify that....., the declarant, appeared before me and swore to me
10 and to the witnesses in my presence that this instrument is his Declaration Of A Desire
11 For A Natural Death, including his Advance Directive (cross out and initial if not
12 applicable) and that he had willingly and voluntarily made and executed it as his free act
13 and deed for the purposes expressed in it.

14 'I further certify that and....., witnesses, appeared before me and swore that
15 they witnessed, declarant, sign the attached declaration, believing him to be of
16 sound mind; and also swore that at the time they witnessed the declaration (i) they
17 were not related within the third degree to the declarant or to the declarant's spouse, and
18 (ii) they did not know or have a reasonable expectation that they would be entitled to
19 any portion of the estate of the declarant upon the declarant's death under any will of the
20 declarant or codicil thereto then existing or under the Intestate Succession Act as it
21 provides at that time, and (iii) they were not the agent designated in the Advance
22 Directive, and (iv) they were not a physician attending the declarant or an employee of
23 an attending physician or an employee of a health facility in which the declarant was a
24 patient or an employee of a nursing home or any group-care home in which the
25 declarant resided, and ~~(iv)~~-(v) they did not have a claim against the declarant. I further
26 certify that I am satisfied as to the genuineness and due execution of the declaration.

27 'This the day of

28 Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as
29 appropriate) for the County of

30 The above declaration may be proved by the clerk or the assistant clerk, or a notary
31 public in the following manner:

- 32 (1) Upon the testimony of the two witnesses; or
- 33 (2) If the testimony of only one witness is available, then
 - 34 a. Upon the testimony of such witness, and
 - 35 b. Upon proof of the handwriting of the witness who is dead or
 - 36 whose testimony is otherwise unavailable, and
 - 37 c. Upon proof of the handwriting of the declarant, unless he
 - 38 signed by his mark; or upon proof of such other circumstances
 - 39 as will satisfy the clerk or assistant clerk of the superior court,
 - 40 or a notary public as to the genuineness and due execution of
 - 41 the declaration.
- 42 (3) If the testimony of none of the witnesses is available, such declaration
- 43 may be proved by the clerk or assistant clerk, or a notary public

- 1 a. Upon proof of the handwriting of the two witnesses whose
- 2 testimony is unavailable, and
- 3 b. Upon compliance with paragraph c of subdivision (2) above.

4 Due execution may be established, where the evidence required above is
 5 unavoidably lacking or inadequate, by testimony of other competent witnesses as to the
 6 requisite facts.

7 The testimony of a witness is unavailable within the meaning of this subsection
 8 when the witness is dead, out of the State, not to be found within the State, insane or
 9 otherwise incompetent, physically unable to testify or refuses to testify.

10 If the testimony of one or both of the witnesses is not available the clerk or the
 11 assistant clerk, or a notary public or superior court may, upon proper proof, certify the
 12 declaration as follows:

13 **'CERTIFICATE'**

14 'I, Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public
 15 (circle one as appropriate) of..... County hereby certify that based upon the evidence
 16 before me I am satisfied as to the genuineness and due execution of the attached
 17 declaration by, declarant, and that the declarant's signature was witnessed by.....,
 18 and, who at the time of the declaration met the qualifications of G.S. 90-
 19 321(c)(3).

20 "This the day of,

21,
 22 Clerk (Assistant Clerk) of Superior Court
 23 or Notary Public (circle one as
 24 appropriate) for County.'

25 (e) The above declaration may be revoked by the declarant, in any manner by which
 26 he is able to communicate his intent to revoke, without regard to his mental or physical
 27 condition. Such revocation shall become effective only upon communication to the
 28 attending physician by the declarant or by an individual acting on behalf of the
 29 declarant.

30 (f) The execution and consummation of declarations made in accordance with
 31 subsection (c) shall not constitute suicide for any purpose.

32 (g) No person shall be required to sign a declaration in accordance with
 33 subsection (c) as a condition for becoming insured under any insurance contract or for
 34 receiving any medical treatment.

35 (h) The withholding or discontinuance of extraordinary means in accordance
 36 with this section shall not be considered the cause of death for any civil or criminal
 37 purposes nor shall it be considered unprofessional conduct. Any person, institution or
 38 facility against whom criminal or civil liability is asserted because of conduct in
 39 compliance with this section may interpose this section as a defense.

40 (i) Any certificate in the form provided by this section prior to July 1, 1979, shall
 41 continue to be valid."

42 Sec. 4. G.S. 32A-9 reads as rewritten:

43 **"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set**
 44 **out in G.S. 32A-1.**

1 The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the
2 following powers on the attorney-in-fact named therein:

3 (1) Real Property Transactions. – To lease, purchase, exchange,
4 and acquire, and to agree, bargain, and contract for the lease,
5 purchase, exchange, and acquisition of, and to accept, take, receive,
6 and possess any interest in real property whatsoever, on such terms
7 and conditions, and under such covenants, as said attorney-in-fact
8 shall deem proper; and to maintain, repair, improve, manage, insure,
9 rent, lease, sell, convey, subject to liens, mortgage, subject to deeds
10 of trust, and in any way or manner deal with all or any part of any
11 interest in real property whatsoever, that the principal owns at the
12 time of execution or may thereafter acquire, for under such terms
13 and conditions, and under such covenants, as said attorney-in-fact
14 shall deem proper.

15 (2) Personal Property Transactions. – To lease, purchase, exchange, and
16 acquire, and to agree, bargain, and contract for the lease, purchase,
17 exchange, and acquisition of, and to accept, take, receive, and possess
18 any personal property whatsoever, tangible or intangible, or interest
19 thereto, on such terms and conditions, and under such covenants, as
20 said attorney-in-fact shall deem proper; and to maintain, repair,
21 improve, manage, insure, rent, lease, sell, convey, subject to liens, and
22 mortgages, and hypothecate, and in any way or manner deal with all or
23 any part of any personal property whatsoever, tangible or intangible, or
24 any interest therein, that the principal owns at the time of execution or
25 may thereafter acquire, under such terms and conditions, and under
26 such covenants, as said attorney-in-fact shall deem proper.

27 (3) Bond, Share and Commodity Transactions. – To request,
28 ask, demand, sue for, recover, collect, receive, and hold and possess
29 any bond, share, instrument of similar character, commodity interest
30 or any instrument with respect thereto together with the interest,
31 dividends, proceeds, or other distributions connected therewith, as
32 now are, or shall hereafter become, owned by, or due, owing
33 payable, or belonging to, the principal at the time of execution or in
34 which the principal may thereafter acquire interest, to have, use, and
35 take all lawful means and equitable and legal remedies, procedures,
36 and writs in the name of the principal for the collection and recovery
37 thereof, and to adjust, sell, compromise, and agree for the same, and
38 to make, execute, and deliver for the principal, all indorsements,
39 acquittances, releases, receipts, or other sufficient discharges for the
40 same.

41 (4) Banking Transaction. – To make, receive, sign, indorse,
42 execute, acknowledge, deliver, and possess checks, drafts, bills of
43 exchange, letters of credit, notes, stock certificates, withdrawal
44 receipts and deposit instruments relating to accounts or deposits in,

1 or certificates of deposit of, banks, savings and loan or other
2 institutions or associations for the principal.

3 (5) Safe Deposits. – To have free access at any time or times to
4 any safe deposit box or vault to which the principal might have
5 access as lessee or owner.

6 (6) Business Operating Transactions. – To conduct, engage in,
7 and transact any and all lawful business of whatever nature or kind
8 for the principal.

9 (7) Insurance Transactions. – To exercise or perform any act,
10 power, duty, right or obligation whatsoever in regard to any contract
11 of life, accident, health, disability or liability insurance or any
12 combination of such insurance procured by or on behalf of the
13 principal prior to execution; and to procure new, different or
14 additional contracts of insurance for the principal and to designate
15 the beneficiary of any such contract of insurance, provided,
16 however, that the agent himself cannot be such beneficiary unless
17 the agent is spouse, child, grandchild, parent, brother or sister of the
18 principal.

19 (8) Estate Transactions. – To request, ask, demand, sue for,
20 recover, collect, receive, and hold and possess all legacies, bequests,
21 devises, as are, owned by, or due, owing, payable, or belonging to,
22 the principal at the time of execution or in which the principal may
23 thereafter acquire interest, to have, use, and take all lawful means
24 and equitable and legal remedies, procedures, and writs in the name
25 of the principal for the collection and recovery thereof, and to adjust,
26 sell, compromise, and agree for the same, and to make, execute, and
27 deliver for the principal, all indorsements, acquittances, releases,
28 receipts, or other sufficient discharges for the same.

29 (9) Personal Relationships and Affairs. – To do all acts
30 necessary for maintaining the customary standard of living of the
31 principal, the spouse and children, and other dependents of the
32 principal; to provide medical, dental and surgical care,
33 hospitalization and custodial care for the principal, the spouse, and
34 children, and other dependents of the principal; to continue whatever
35 provision has been made by the principal, for the principal, the
36 spouse, and children, and other dependents of the principal, with
37 respect to automobiles, or other means of transportation; to continue
38 whatever charge accounts have been operated by the principal, for
39 the convenience of the principal, the spouse, and children, and other
40 dependents of the principal, to open such new accounts as the
41 attorney-in-fact shall think to be desirable for the accomplishment of
42 any of the purposes enumerated in this section, and to pay the items
43 charged on such accounts by any person authorized or permitted by
44 the principal or the attorney-in-fact to make such charges; to

1 continue the discharge of any services or duties assumed by the
2 principal, to any parent, relative or friend of the principal; to
3 continue payments incidental to the membership or affiliation of the
4 principal in any church, club, society, order or other organization, or
5 to continue contributions thereto. In the event the attorney-in-fact
6 named pursuant to G.S. 32A-1 makes a decision regarding the
7 hospitalization for the principal that is contradictory to a decision
8 made by an agent designated in an Advance Directive executed
9 pursuant to Article 23 of Chapter 90 of the General Statutes, the
10 decision of the agent shall overrule the decision of the attorney-in-
11 fact.

12 (10) Social Security and Unemployment. – To prepare, execute
13 and file all social security, unemployment insurance and information
14 returns required by the laws of the United States, or of any state or
15 subdivision thereof, or of any foreign government.

16 (11) Benefits from Military Service. – To execute vouchers in the
17 name of the principal for any and all allowances and reimbursements
18 payable by the United States, or subdivision thereof, to the principal,
19 arising from or based upon military service and to receive, to indorse
20 and to collect the proceeds of any check payable to the order of the
21 principal drawn on the treasurer or other fiscal officer or depository
22 of the United States or subdivision thereof; to take possession and to
23 order the removal and shipment, of any property of the principal
24 from any post, warehouse, depot, dock or other place of storage or
25 safekeeping, either governmental or private, to execute and to
26 deliver any release, voucher, receipt, bill of lading, shipping ticket,
27 certificate or other instrument which the agent shall think to be
28 desirable or necessary for such purpose; to prepare, to file and to
29 prosecute the claim of the principal to any benefit or assistance,
30 financial or otherwise, to which the principal is, or claims to be,
31 entitled, under the provisions of any statute or regulation existing at
32 the creation of the agency or thereafter enacted by the United States
33 or by any state or by any subdivision thereof, or by any foreign
34 government, which benefit or assistance arises from or is based upon
35 military service performed prior to or after execution.

36 (12) Tax. – To prepare, execute, verify and file in the name of the
37 principal and on behalf of the principal any and all types of tax
38 returns, amended returns, declaration of estimated tax, report,
39 protest, application for correction of assessed valuation of real or
40 other property, appeal, brief, claim for refund, or petition, including
41 petition to the Tax Court of the United States, in connection with any
42 tax imposed or proposed to be imposed by any government, or
43 claimed, levied or assessed by any government, and to pay any such
44 tax and to obtain any extension of time for any of the foregoing; to

1 execute waivers or consents agreeing to a later determination and
2 assessment of taxes than is provided by any statute of limitations; to
3 execute waivers of restriction on the assessment and collection of
4 deficiency in any tax; to execute closing agreements and all other
5 documents, instruments and papers relating to any tax liability of any
6 sort; to institute and carry on through counsel any proceeding in
7 connection with determining or contesting any such tax or to recover
8 any tax paid or to resist any claim for additional tax on any proposed
9 assessment or levy thereof; and to enter into any agreements or
10 stipulations for compromise or other adjustments or disposition of
11 any tax.

12 (13) Employment of Agents. – To employ agents such as legal
13 counsel, accountants or other professional representation as may be
14 appropriate and to grant such agents such powers of attorney or other
15 appropriate authorization as may be required in connection with such
16 representation or by the Internal Revenue Service or other
17 governmental authority."

18 Sec. 5. This act becomes effective October 1, 1991, and applies to documents
19 executed on and after that date.