

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE DRH80229-LB-175 (3/30)

Short Title: NC Disabled Persons Protection Act.

(Public)

Sponsors: Representative Vinson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA DISABLED PERSONS
PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Short Title. – This act shall be known and may be cited as the
"North Carolina Disabled Persons Protection Act."

SECTION 2. Definitions. – As used in this act:

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

(2) "Health care provider" means a person who is licensed, certified, or
otherwise authorized by the law of this State to administer health care
in the ordinary course of business or practice of a profession.

(3) "Express and informed consent" means consent voluntarily given with
sufficient knowledge of the subject matter involved, including a
general understanding of the procedure, the medically acceptable
alternative procedures or treatments, and the substantial risks and
hazards inherent in the proposed treatment or procedures, to enable
the person giving consent to make an understanding and enlightened
decision without any element of force, fraud, deceit, duress, or other
form of constraint or coercion.

(4) "Nutrition" means sustenance administered by way of the
gastrointestinal tract.

(5) "Person legally incapable of making health care decisions" means any
person who:

a. Has been declared legally incompetent to make decisions
affecting medical treatment or care;

1 b. In the reasonable judgment of the attending physician, is unable
2 to make decisions affecting medical treatment or other health
3 care services; or

4 c. Is a minor.

5 (6) "Physician" means a physician licensed by the State of North Carolina.

6 (7) "Reasonable medical judgment" means a medical judgment that would
7 be made by a reasonably prudent physician, knowledgeable about the
8 case and the treatment possibilities with respect to the medical
9 conditions involved.

10 **SECTION 3.** Presumption of Nutrition and Hydration Sufficient to Sustain
11 Life.

12 (a) It shall be presumed that every person legally incapable of making
13 health care decisions has directed his or her health care providers to provide him or her
14 with nutrition and hydration to a degree that is sufficient to sustain life.

15 (b) No guardian, surrogate, public or private agency, court, or any other
16 person shall have the authority to make a decision on behalf of a person legally
17 incapable of making health care decisions to withhold or withdraw hydration or
18 nutrition from such a person except in the circumstances and under the conditions
19 specifically provided for in Section 4 of this act.

20 **SECTION 4.** Presumption of Nutrition and Hydration, When Inapplicable.

21 The presumption pursuant to Section 3 of this act shall not apply:

22 (1) To the extent that, in reasonable medical judgment:

23 a. Provision of nutrition and hydration is not medically possible;

24 b. Provision of nutrition and hydration would hasten death; or

25 c. Because of the medical condition of the person legally
26 incapable of making health care decisions, that person would be
27 incapable of digesting or absorbing the nutrition and hydration
28 so that its provision would not contribute to sustaining the
29 person's life.

30 (2) If the person under either Article 23 of Chapter 90 of the General
31 Statutes (Declaration Of A Desire For A Natural Death) or Article 3 of
32 Chapter 32A of the General Statutes (Health Care Powers of Attorney)
33 specifically authorized the withholding or withdrawal of nutrition
34 and/or hydration, to the extent the authorization applies.

35 (3) If there is clear and convincing evidence that the person, when legally
36 capable of making health care decisions, gave express and informed
37 consent to withdrawing or withholding hydration or nutrition in the
38 applicable circumstances.

39 **SECTION 5.** Civil Remedies.

40 (a) A cause of action for injunctive relief may be maintained against any
41 person who is reasonably believed to be about to violate or who is in the course of
42 violating this act, or to secure a court determination, notwithstanding the position of a
43 guardian or surrogate, whether there is clear and convincing evidence that the person
44 legally incapable of making health care decisions, when legally capable of making such

1 decisions, gave express and informed consent to withdrawing or withholding hydration
2 or nutrition in the applicable circumstances.

3 (b) The action may be brought by any person who is:

4 (1) The spouse, parent, child, or sibling of the person;

5 (2) A current or former health care provider of the person;

6 (3) A legally appointed guardian of the person;

7 (4) The Executive Director of the Governor's Advocacy Council for
8 Persons with Disabilities; or

9 (5) A public official with appropriate jurisdiction to prosecute or
10 enforce the laws of this State.

11 (c) Pending the final determination of the court, it shall direct that
12 nutrition and hydration be provided unless it determines that Section 4(1) of this act is
13 applicable.

14 **SECTION 6.** This act is effective when it becomes law.