

10 GCA HEALTH AND SAFETY
CH. 91 NATURAL DEATH ACT

CHAPTER 91
NATURAL DEATH ACT

SOURCE: Chapter was added by P.L. 23-73:1.

KEYWORDS: Living Will

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- § 91101. Legislative Findings and Intent.
- § 91102. Definitions.
- § 91103. Declaration Concerning Life-Sustaining Treatment; Execution Requirements
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§ 91100. Title.

This act shall be known and cited as the *Natural Death Act*.

§ 91101. Legislative Findings and Intent.

(a) The Legislature finds that an adult person has the fundamental right to control the decisions relating to the rendering of his or her own medical care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of a terminal condition or permanent unconscious condition. This right extends to parents and other adults who are legally

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responsible for the well-being of patients who are unmarried, unemancipated minors.

(b) The Legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

(c) The Legislature further finds that, in the interest of protecting individual autonomy, such prolongation of the process of dying for a person with a terminal condition or permanent unconscious condition for whom continued medical treatment does not improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person.

(d) In recognition of the dignity and privacy that a person has a right to expect, the Legislature hereby declares that the laws of the Territory of Guam shall recognize the right of any adult person to make a written declaration instructing his or her physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition, in the event that the person is unable to make those decisions for himself or herself.

(e) The Legislature further declares that, in the absence of controversy, a court normally is not the proper forum in which to make decisions regarding life-sustaining treatment.

(f) To avoid treatment that is not desired by a person in a terminal condition or permanent unconscious condition, the Legislature declares that this chapter is in the interest of the public health and welfare.

(g) The Legislature further finds that the family should be encouraged to openly express their opinion and concerns with the individual. It recognizes the importance family plays in supporting the decision of the individual.

(h) The Legislature creates, recognizes and supports a patient's right to remove himself from a hospital or other facility upon certification of his anticipated death by his attending physician.

SOURCE: Subsection (a) amended and subsection (h) added by P.L. 29-008:3 (Sept. 7, 2007).

§ 91102. Definitions.

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

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(a) *Anticipated Death* means a death caused by life-limiting illness, infirmity, or disease, as certified by the attending physician that he discussed a prognosis of terminal condition with the patient and the patient's family, and that the patient consented to a 'No Resuscitation' order or has executed a Declaration or an Advanced Directive to that effect.

(b) *Attending physician* means the physician who has primary responsibility for the treatment and care of the patient.

(c) *Declaration* means a writing executed in accordance with the requirements of subdivision (a) of § 91103.

(d) *Health care provider* means a person who is licensed, certified, or otherwise authorized by the laws of this Territory to administer health care in the ordinary course of business or practice of a profession.

(e) *Life-sustaining treatment* means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or an irreversible coma or persistent vegetative state. *Life-sustaining treatment* shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain or for nutrition or hydration.

(f) *Permanent unconscious condition* means an incurable and irreversible condition that, within reasonable medical judgment, renders the patient in an irreversible coma or persistent vegetative state.

(g) *Person* means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(h) *Physician* means an individual licensed to practice medicine in the Territory of Guam.

(i) *Qualified patient* means a patient 18 or more years of age who has executed a declaration and who has been diagnosed and certified in writing by the attending physician and a second physician who has personally examined the patient to be in a terminal condition or permanent unconscious condition.

(j) *State* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

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(k) *Terminal condition* means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, result in death within a relatively short time.

SOURCE: Subsections (a-j) re-lettered to (b-k), respectively, and new subsection (a) added by P.L. 29-008:5 (Sept. 7, 2007).

§ 91103. Declaration Concerning Life-Sustaining Treatment; Execution Requirements.

(a) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration shall be a separate document and not a part of another document nor contained on a piece of paper containing some other document, shall be signed by the declarant, or another at the declarant's direction and in the declarant's presence, and witnessed by two individuals neither of whom may be a person who is entitled to any portion of the estate of the qualified patient upon his or her death under any will or codicil thereto of the qualified patient existing at the time of execution of the declaration or by operation of law. In addition, a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, or an employee of an operator of a residential care facility for the elderly may not be a witness.

(b) A declaration shall substantially contain the following provisions:

DECLARATION

If I should have an incurable and irreversible condition that has been diagnosed by two physicians and that will result in my death within a relatively short time without the administration of life-sustaining treatment or has produced an irreversible coma or persistent vegetative state, and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Natural Death Act of Guam, to withhold or withdraw life-sustaining treatment that only prolongs the process of dying or the irreversible coma or persistent vegetative state and is not necessary for my comfort, nutrition, hydration or to alleviate pain.

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If I have been diagnosed as pregnant, and that diagnosis is known to my physician, this declaration shall have no force or effect during my pregnancy.

Signed _____ this day of _____, _____

Signature _____

Address _____

The declarant voluntarily signed this writing in my presence. I am not entitled to any portion of the estate of the declarant upon his or her death under any will or codicil thereto of the declarant now existing or by operation of law. I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, or an employee of an operator of a residential care facility for the elderly.

Witness _____ Witness _____

Address _____ Address _____

(c) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

(d) A declaration may be made by parents or other adults who are legally responsible for a minor patient who is neither married nor emancipated.

SOURCE: Subsection (d) added by P.L. 29-008:6 (Sept. 7, 2007).

§ 91104. Patients in Nursing Homes; Effect of Declaration.

A declaration shall have no force or effect if the declarant is a person in a skilled nursing facility as defined in 10 Guam Code Annotated §7102(a), at the time the declaration is executed unless one of the two witnesses to the declaration is a patient advocate or ombudsman as may be designated by the Administrator of the Division of Senior Citizens, Department of Public Health & Social Services, for this purpose.

§ 91105. Operative Effect of Declaration.

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A declaration becomes operative when (a) it is communicated to the attending physician and (b) the declarant is diagnosed and certified in writing by the attending physician and a second physician who has personally examined the declarant to be in a terminal condition or permanent unconscious condition and no longer able to make decisions regarding administration of life-sustaining treatment. When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer requirements of § 91109.

§ 91106. Revocation of Declaration.

(a) A declarant may revoke a declaration at any time and in any manner, without regard to the declarant's mental or physical condition. A revocation is effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(b) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

§ 91107. Terminal or Permanent Unconscious Condition; Records.

Upon determining that the declarant is in a terminal condition or permanent unconscious condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record and file a copy of the declaration in the record.

§ 91108. Self-Determination by Patient; Pregnant Patients.

(a) A qualified patient may make decisions regarding life sustaining treatment, including whether to stay in a hospital or healthcare facility, as long as the patient is able to do so.

(b) This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care or alleviation of pain.

(c) The declaration of a qualified patient known to the attending physician to be pregnant shall not be given effect as long as the patient is pregnant. The attending physician shall cause a test to be made to determine if a female qualified patient in a terminal condition is pregnant.

SOURCE: Subsection (a) amended by P.L. 29-008:7 (Sept. 7, 2007).

§ 91109. Physician or Health Care Provider Unwilling to Comply with Chapter; Transfer of Patient.

An attending physician or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

§ 91110. Civil or Criminal Liability; Unprofessional Conduct.

(a) A physician or other health care provider is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a declaration in the absence of knowledge of the revocation of a declaration.

(b) A physician or other health care provider, whose action under this chapter is in accord with reasonable medical standards, is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction if the physician or health care provider believes in good faith that the action is consistent with this chapter and the desires of the declarant expressed in the declaration.

§ 91111. Willful Failure to Act; Fraudulent Conduct; Penalties.

(a) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with Section 91109 is guilty of a felony of the third degree.

(b) A physician who willfully fails to record a determination of terminal condition or permanent unconscious condition or the terms of a declaration in accordance with Section 91107 is guilty of a felony of the third degree.

(c) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another individual without the declarant's consent or who falsifies or forges a revocation of the declaration of another individual is guilty of a felony of the third degree.

(d) An individual who falsifies or forges the declaration of another individual, or willfully conceals or withholds personal knowledge of a revocation is guilty of a felony of the third degree.

(e) A personal who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a felony of the third degree.

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(f) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a felony of the third degree.

(g) The sanctions provided in this section do not displace any sanction applicable under other law.

§ 91112. Construction of Chapter, Characterization of Death Resulting from Decisions Made in Accordance with Chapter; Effect of Declaration on Life Insurance or Annuities; Deliberate Acts or Omissions to End Life.

(a) Death resulting from the withholding or withdrawal of a life-sustaining treatment in accordance with this Act does not constitute, for any purpose, a suicide or homicide.

(b) The making of a declaration pursuant to § 91103 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated by the withholding or withdrawal of life sustaining treatment from an insured, notwithstanding any term to the contrary.

(c) A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.

(d) This Act creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition or permanent conscious condition.

(e) This Act does 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 a right or responsibility that a person has to effect the withholding or withdrawal of medical treatment.

(f) This Act does not require any physician or other health care provider to take any action contrary to reasonable medical standards.

(g) This Act does not condone, authorize, or approve mercy killing or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(h) The rights granted by this Act are in addition to, and not in derogation of, rights under any other statutory or case law.

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(i) A person shall be considered dead if, in the opinion of a physician, based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory function. Death occurs when the irreversible cessation of said functions first occurs. A registered nurse may pronounce death if the patient's anticipated death has been certified pursuant to Title 10 GCA §12332. Said certification *shall* be placed in the patient's medical and clinical records and *shall* remain valid for *no more than* one hundred eighty (180) days after its execution and must be renewed every one hundred eighty (180) days to remain valid.

(j) In the event that artificial means of support preclude a determination that respiratory and circulatory functions have ceased, a person shall be considered dead if, in the opinion of the attending physician and one other physician, based on ordinary standards of medical practice, the person has experienced irreversible cessation of all function of the brain, including brain stem. The opinions of the physicians shall be evidenced by signed statements. Death will have occurred at the time when the irreversible cessation of all functions of the entire brain, including the brain stem, first occurred. Death shall be pronounced before artificial means of support are withdrawn and before any vital organ is removed for purposes of transplantation.

SOURCE: Subsection (i) amended by P.L. 29-008:8 (Sept. 7, 2007).

§ 91113. Declaration Presumed in Compliance and Valid.

In the absence of knowledge to the contrary, a physician or other health care provider may presume that a declaration complies with this Act and is valid.

§ 91114. Instruments Executed in Other States.

An instrument governing the withholding or withdrawal of life-sustaining treatment executed in another state in compliance with the laws of that state or of the Territory of Guam, is valid for purposes of this Act.

§ 91115. Instruments to Be Given Effect Pursuant to Act.

The following instruments shall be given effect pursuant to the provisions of this Act.

(a) An instrument executed before the effective date of this Act that substantially complies with subdivision (a) of Section 91103.

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(b) An instrument governing the withholding or withdrawal of life-sustaining treatment executed in another state that does not comply with the laws of that state, but substantially complies with the laws of the Territory of Guam.

§ 91116. Severability of Provisions.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 91117. Uniform Law; Construction of Act.

To the extent that a provision of this Act conforms to the Uniform Rights of the Terminally Ill Act, that provision shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.
