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("Advance  
Directives for  
Health Care")

LAWS OF: 1991

CHAPTER: 201

Bill No: S1211

Sponsor(s): Ambrosio

Date Introduced: Pre-filed

Committee: Assembly: Judiciary, Law Public Safety & Defense

Senate: Judiciary

Amended during passage: Yes      Amendment during passage  
denoted by asterisks.

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Senate: March 29, 1990

Date of Approval: July 11, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: Yes

Hearings: Yes

(over)

974.90 New Jersey. Legislature. Assembly. Judiciary. Law and Public Safety  
H434 Public hearing on...S1211, held 11-15-90.  
1990g Trenton, 1990.

974.90 New Jersey. Commission on Legal and Ethical Problems in the  
H434 Delivery of Health Care.  
1989k Minority report. Princeton, 1989.

974.90 New Jersey. Commission on Legal and Ethical Problems in the  
H434 Delivery of Health Care.  
1990a Problems and approaches in health care decision making: the  
New Jersey experience. May, 1990. Princeton, 1990.

974.90 New Jersey. Commission on Legal and Ethical Problems in the  
H434 Delivery of  
1990e Advance directives for health care: planning ahead for Health  
Care. Important health care decisions. June, 1990. Princeton, 1990.

974.90 New Jersey. Commission on Legal and Ethical Problems in the  
H434 Delivery of Health Care.  
1991c Advance directives for health care: planning ahead for  
important health decisions. March 1991. Princeton, 1991.

**Hearing during previous Legislative sessions.**

974.90 New Jersey. Legislature. Senate. Judiciary Committee.  
H434 Committee meeting on S.3320, S.2067, S.2659...  
1989p held 6-8-89. Trenton, 1989.

**KBG/SLJ**

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senators AMBROSIO and CONTILLO

1 AN ACT concerning health care decision making and  
2 supplementing Title 26 and Title 52 of the Revised Statutes.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*  
5 *State of New Jersey:*

6 1. This act shall be known and may be cited as the "New  
7 Jersey Advance Directives for Health Care Act."

8 2. The Legislature finds and declares that:

9 a. Competent adults have the fundamental right, in  
10 collaboration with their health care providers, to control  
11 decisions about their own health care. This State recognizes, in  
12 its law and public policy, the personal right of the individual  
13 patient to make voluntary, informed choices to accept, to reject,  
14 or to choose among alternative courses of medical and surgical  
15 treatment.

16 b. Modern advances in science and medicine have made  
17 possible the prolongation of the lives of many seriously ill  
18 individuals, without always offering realistic prospects for  
19 improvement or cure. For some individuals the possibility of  
20 extended life is experienced as meaningful and of benefit. For  
21 others, artificial prolongation of life may seem to provide nothing  
22 medically necessary or beneficial, serving only to extend  
23 suffering and prolong the dying process. This State recognizes  
24 the inherent dignity and value of human life and within this  
25 context recognizes the fundamental right of individuals to make  
26 health care decisions to have life-prolonging medical or surgical  
27 means or procedures provided, withheld, or withdrawn.

28 c. In order that the right to control decisions about one's own  
29 health care should not be lost in the event a patient loses decision  
30 making capacity and is no longer able to participate actively in  
31 making his own health care decisions, this State recognizes the  
32 right of competent adults to plan ahead for health care decisions  
33 through the execution of advance directives, such as living wills  
34 and durable powers of attorney, and to have the wishes expressed  
35 therein respected, subject to certain limitations.

36 d. The right of individuals to forego life-sustaining measures is  
37 not absolute and is subject to certain interests of society. The  
38 most significant of these societal interests is the preservation of

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AJL committee amendments adopted December 6, 1990.

1 life, understood to embrace both an interest in preserving the life  
2 of the particular patient and a related but distinct interest in  
3 preserving the sanctity of all human life as an enduring social  
4 value. A second, closely related societal interest is the  
5 protection of individuals from direct and purposeful  
6 self-destruction, motivated by a specific intent to die. A third  
7 interest is the protection of innocent third parties who may be  
8 harmed by the patient's decision to forego therapy; this interest  
9 may be asserted to prevent the emotional and financial  
10 abandonment of the patient's minor children or to protect the  
11 paramount concerns of public health or safety. A fourth interest  
12 encompasses safeguarding the ethical integrity of the health care  
13 professions, individual professionals, and health care institutions,  
14 and maintaining public confidence and trust in the integrity and  
15 caring role of health care professionals and institutions. Finally,  
16 society has an interest in ensuring the soundness of health care  
17 decision making, including both protecting vulnerable patients  
18 from potential abuse or neglect and facilitating the exercise of  
19 informed and voluntary patient choice.

20 e. In accordance with these State interests, this State  
21 expressly rejects on both legal and moral grounds the practice of  
22 active euthanasia. No individual shall have the right to, nor shall  
23 any physician or other health care professional be authorized to  
24 engage in, the practice of active euthanasia.

25 f. In order to assure respect for patients' previously expressed  
26 wishes when the capacity to participate actively in decision  
27 making has been lost or impaired; to facilitate and encourage a  
28 sound decision making process in which patients, health care  
29 representatives, families, physicians, and other health care  
30 professionals are active participants; to properly consider  
31 patients' interests both in self-determination and in well-being;  
32 and to provide necessary and appropriate safeguards concerning  
33 the termination of life-sustaining treatment for incompetent  
34 patients as the law and public policy of this State, the Legislature  
35 hereby enacts the New Jersey Advance Directives for Health  
36 Care Act.

37 3. As used in this act:

38 "Adult" means an individual 18 years of age or older.

39 "Advance directive for health care" or "advance directive"  
40 means a writing executed in accordance with the requirements of  
41 this act. An "advance directive" may include a proxy directive  
42 or an instruction directive, or both.

43 "Attending physician" means the physician selected by, or  
44 assigned to, the patient who has primary responsibility for the  
45 treatment and care of the patient.

46 "Decision making capacity" means a patient's ability to  
47 understand and appreciate the nature and consequences of health  
48 care decisions, including the benefits and risks of each, and  
49 alternatives to any proposed health care, and to reach an

1 informed decision. A patient's decision making capacity is  
2 evaluated relative to the demands of a particular health care  
3 decision.

4 "Declarant" means a competent adult who executes an advance  
5 directive.

6 "Do not resuscitate order" means a physician's written order  
7 not to attempt cardiopulmonary resuscitation in the event the  
8 patient suffers a cardiac or respiratory arrest.

9 "Emergency care" means immediate treatment provided in  
10 response to a sudden, acute and unanticipated medical crisis in  
11 order to avoid injury, impairment or death.

12 "Health care decision" means a decision to accept or to refuse  
13 any treatment, service or procedure used to diagnose, treat or  
14 care for a patient's physical or mental condition, including  
15 life-sustaining treatment. "Health care decision" also means a  
16 decision to accept or to refuse the services of a particular  
17 physician, nurse, other health care professional or health care  
18 institution, including a decision to accept or to refuse a transfer  
19 of care.

20 "Health care institution" means all institutions, facilities, and  
21 agencies licensed, certified, or otherwise authorized by State law  
22 to administer health care in the ordinary course of business,  
23 including hospitals, nursing homes, residential health care  
24 facilities, home health care agencies, hospice programs operating  
25 in this State, mental health institutions, facilities or agencies, or  
26 institutions, facilities and agencies for the developmentally  
27 disabled. The term "health care institution" shall not be  
28 construed to include "health care professionals" as defined in this  
29 act.

30 "Health care professional" means an individual licensed by this  
31 State to administer health care in the ordinary course of business  
32 or practice of a profession.

33 "Health care representative" means the individual designated  
34 by a declarant pursuant to the proxy directive part of an advance  
35 directive for the purpose of making health care decisions on the  
36 declarant's behalf, and includes an individual designated as an  
37 alternate health care representative who is acting as the  
38 declarant's health care representative in accordance with the  
39 terms and order of priority stated in an advance directive.

40 "Instruction directive" means a writing which provides  
41 instructions and direction regarding the declarant's wishes for  
42 health care in the event that the declarant subsequently lacks  
43 decision making capacity.

44 "Life-sustaining treatment" means the use of any medical  
45 device or procedure, 1artificially provided fluids and nutrition,<sup>1</sup>  
46 drugs, surgery or therapy that uses mechanical or other artificial  
47 means to sustain, restore or supplant a vital bodily function, and  
48 thereby increase the expected life span of a patient.

49 "Other health care professionals" means health care

1 professionals other than physicians and nurses.

2 "Patient" means an individual who is under the care of a  
3 physician, nurse or other health care professional.

4 "Permanently unconscious" means a medical condition that has  
5 been diagnosed in accordance with currently accepted medical  
6 standards and with reasonable medical certainty as total and  
7 irreversible loss of consciousness and capacity for interaction  
8 with the environment. The term "permanently unconscious"  
9 includes without limitation a persistent vegetative state or  
10 irreversible coma.

11 "Physician" means an individual licensed to practice medicine  
12 and surgery in this State.

13 "Proxy directive" means a writing which designates a health  
14 care representative in the event the declarant subsequently lacks  
15 decision making capacity.

16 "State" means a state, territory, or possession of the United  
17 States, the District of Columbia, or the Commonwealth of Puerto  
18 Rico.

19 "Terminal condition" means the terminal stage of an  
20 irreversibly fatal illness, disease or condition. A determination  
21 of a specific life expectancy is not required as a precondition for  
22 a diagnosis of a "terminal condition," but a prognosis of a life  
23 expectancy of six months or less, with or without the provision of  
24 life-sustaining treatment, based upon reasonable medical  
25 certainty, shall be deemed to constitute a terminal condition.

26 4. A declarant may execute an advance directive for health  
27 care at any time. The advance directive shall be signed and  
28 dated by, or at the direction of, the declarant in the presence of  
29 two subscribing adult witnesses, who shall attest that the  
30 declarant is of sound mind and free of duress and undue  
31 influence. A designated health care representative shall not act  
32 as a witness to the execution of an advance directive.  
33 <sup>1</sup>Alternatively, the advance directive shall be signed and dated  
34 by, or at the direction of, the declarant and be acknowledged by  
35 the declarant before a notary public, attorney at law, or other  
36 person authorized to administer oaths.<sup>1</sup> An advance directive  
37 may be supplemented by a video or audio tape recording. <sup>1</sup>A  
38 female declarant may include in an advance directive executed  
39 by her, information as to what effect the advance directive shall  
40 have if she is pregnant.<sup>1</sup>

41 5. a. A declarant may reaffirm or modify either a proxy  
42 directive, or an instruction directive, or both. The reaffirmation  
43 or modification shall be made in accordance with the  
44 requirements for execution of an advance directive pursuant to  
45 section 4 of this act.

46 b. A declarant may revoke an advance directive, including a  
47 proxy directive, or an instruction directive, or both, by the  
48 following means:

49 (1) Notification, orally or in writing, to the health care

1 representative, physician, nurse or other health care professional,  
2 or other reliable witness, or by any other act evidencing an intent  
3 to revoke the document; or

4 (2) Execution of a subsequent proxy directive or instruction  
5 directive, or both, in accordance with section 4 of this act.

6 c. Designation of the declarant's spouse as health care  
7 representative shall be revoked upon divorce or legal separation,  
8 unless otherwise specified in the advance directive.

9 d. An incompetent patient may suspend an advance directive,  
10 including a proxy directive, an instruction directive, or both, by  
11 any of the means stated in paragraph (1) of subsection b. of this  
12 section. An incompetent patient who has suspended an advance  
13 directive may reinstate that advance directive by oral or written  
14 notification to the health care representative, physician, nurse or  
15 other health care professional of an intent to reinstate the  
16 advance directive.

17 e. Reaffirmation, modification, revocation or suspension of an  
18 advance directive is effective upon communication to any person  
19 capable of transmitting the information including the health care  
20 representative, the attending physician, nurse or other health  
21 care professional responsible for the patient's care.

22 6. a. A declarant may execute a proxy directive, pursuant to  
23 the requirements of section 4 of this act, designating a  
24 competent adult to act as his health care representative.

25 (1) A competent adult, including, but not limited to, a  
26 declarant's spouse, adult child, parent or other family member,  
27 friend, religious or spiritual advisor, or other person of the  
28 declarant's choosing, may be designated as a health care  
29 representative.

30 (2) An operator, administrator or employee of a health care  
31 institution in which the declarant is a patient or resident shall not  
32 serve as the declarant's health care representative unless the  
33 operator, administrator or employee is related to the declarant  
34 by blood, marriage or adoption.

35 This restriction does not apply to a physician, if the physician  
36 does not serve as the patient's attending physician and the  
37 patient's health care representative at the same time.

38 (3) A declarant may designate one or more alternate health  
39 care representatives, listed in order of priority. In the event the  
40 primary designee is unavailable, unable or unwilling to serve as  
41 health care representative, or is disqualified from such service  
42 pursuant to this section or any other law, the next designated  
43 alternate shall serve as health care representative. In the event  
44 the primary designee subsequently becomes available and able to  
45 serve as health care representative, the primary designee may,  
46 insofar as then practicable, serve as health care representative.

47 (4) A declarant may direct the health care representative to  
48 consult with specified individuals, including alternate designees,  
49 family members and friends, in the course of the decision making

1 process.

2 (5) A declarant shall state the limitations, if any, to be placed  
3 upon the authority of the health care representative <sup>1</sup>including  
4 the limitations, if any, which may be applicable if the declarant  
5 is pregnant.<sup>1</sup>

6 b. A declarant may execute an instruction directive, pursuant  
7 to the requirements of section 4 of this act, stating the  
8 declarant's general treatment philosophy and objectives; or the  
9 declarant's specific wishes regarding the provision, withholding  
10 or withdrawal of any form of health care, including  
11 life-sustaining treatment; or both. An instruction directive may,  
12 but need not, be executed contemporaneously with, or be  
13 attached to, a proxy directive.

14 <sup>1</sup>[A declarant who chooses to instruct that artificially provided  
15 fluids and nutrition should be withheld or withdrawn under certain  
16 conditions shall so indicate by an explicit statement in the  
17 instruction directive.]<sup>1</sup>

18 7. a. An advance directive becomes operative when (1) it is  
19 transmitted to the attending physician or to the health care  
20 institution, and (2) it is determined pursuant to section 8 of this  
21 act that the patient lacks capacity to make a particular health  
22 care decision.

23 b. Treatment decisions pursuant to an advance directive shall  
24 not be made and implemented until there has been an reasonable  
25 opportunity to establish, and where appropriate confirm, a  
26 reliable diagnosis and prognosis for the patient.

27 8. a. The attending physician shall determine whether the  
28 patient lacks capacity to make a particular health care decision.  
29 The determination shall be stated in writing, shall include the  
30 attending physician's opinion concerning the nature, cause,  
31 extent, and probable duration of the patient's incapacity, and  
32 shall be made a part of the patient's medical records.

33 b. The attending physician's determination of a lack of  
34 decision making capacity shall be confirmed by one or more  
35 physicians. The opinion of the confirming physician shall be  
36 stated in writing and made a part of the patient's medical  
37 records in the same manner as that of the attending physician.  
38 Confirmation of a lack of decision making capacity is not  
39 required when the patient's lack of decision making capacity is  
40 clearly apparent, and the attending physician and the health care  
41 representative agree that confirmation is unnecessary.

42 c. If the attending physician or the confirming physician  
43 determines that a patient lacks decision making capacity because  
44 of a mental or psychological impairment or a developmental  
45 disability, and neither the attending physician or the confirming  
46 physician has specialized training or experience in diagnosing  
47 mental or psychological conditions or developmental disabilities  
48 of the same or similar nature, a determination of a lack of  
49 decision making capacity shall be confirmed by one or more



1 physicians with appropriate specialized training or experience.  
2 The opinion of the confirming physician shall be stated in writing  
3 and made a part of the patient's medical records in the same  
4 manner as that of the attending physician.

5 d. A physician designated by the patient's advance directive  
6 as a health care representative shall not make or confirm the  
7 determination of a lack of decision making capacity.

8 e. The attending physician shall inform the patient, if the  
9 patient has any ability to comprehend that he has been  
10 determined to lack decision making capacity, and the health care  
11 representative that: (1) the patient has been determined to lack  
12 decision making capacity to make a particular health care  
13 decision; (2) each has the right to contest this determination; and  
14 (3) each may have recourse to the dispute resolution process  
15 established by the health care institution pursuant to section 14  
16 of this act.

17 Notice to the patient and the health care representative shall  
18 be documented in the patient's medical records.

19 f. A determination of lack of decision making capacity under  
20 this act is solely for the purpose of implementing an advance  
21 directive in accordance with the provisions of this act, and shall  
22 not be construed as a determination of a patient's incapacity or  
23 incompetence for any other purpose.

24 g. For purposes of this section, a determination that a patient  
25 lacks decision making capacity shall be based upon, but need not  
26 be limited to, evaluation of the patient's ability to understand  
27 and appreciate the nature and consequences of a particular health  
28 care decision, including the benefits and risks of, and alternatives  
29 to, the proposed health care, and to reach an informed decision.

30 9. a. If it has been determined that the patient lacks decision  
31 making capacity, a health care representative shall have  
32 authority to make health care decisions on behalf of the patient.  
33 The health care representative shall act in good faith and within  
34 the bounds of the authority granted by the advance directive and  
35 by this act.

36 b. If a different individual has been appointed as the patient's  
37 legal guardian, the health care representative shall retain legal  
38 authority to make health care decisions on the patient's behalf,  
39 unless the terms of the legal guardian's court appointment or  
40 other court decree provide otherwise.

41 c. The conferral of legal authority on the health care  
42 representative shall not be construed to impose liability upon the  
43 health care representative for any portion of the patient's health  
44 care costs.

45 d. An individual designated as a health care representative or  
46 as an alternate health care representative may decline to serve in  
47 that capacity.

48 e. The health care representative shall exercise the patient's  
49 right to be informed of the patient's medical condition, prognosis

1 and treatment options, and to give informed consent to, or  
2 refusal of, health care.

3 f. In the exercise of these rights and responsibilities, the  
4 health care representative shall seek to make the health care  
5 decision the patient would have made had he possessed decision  
6 making capacity under the circumstances, or, when the patient's  
7 wishes cannot adequately be determined, shall make a health care  
8 decision in the best interests of the patient.

9 10. In addition to any rights and responsibilities recognized or  
10 imposed by, or pursuant to, this act, or by any other law,  
11 physicians, nurses, and other health care professionals shall have  
12 the following rights and responsibilities:

13 a. The attending physician shall make an affirmative inquiry of  
14 the patient, his family or others, as appropriate under the  
15 circumstances, concerning the existence of an advance directive.  
16 The attending physician shall note in the patient's medical  
17 records whether or not an advance directive exists, and the name  
18 of the patient's health care representative, if any, and shall  
19 attach a copy of the advance directive to the patient's medical  
20 records. The attending physician shall document in the same  
21 manner the reaffirmation, modification, or revocation of an  
22 advance directive, if he has knowledge of such action.

23 b. A physician may decline to participate in the withholding or  
24 withdrawing of measures utilized to sustain life, in accordance  
25 with his sincerely held personal or professional convictions. In  
26 such circumstances, the physician shall act in good faith to  
27 inform the patient and the health care representative, and the  
28 chief of the medical staff or other designated institutional  
29 official, of this decision as soon as practicable, to effect an  
30 appropriate, respectful and timely transfer of care, and to assure  
31 that the patient is not abandoned or treated disrespectfully.

32 In the event of transfer of a patient's care, the attending  
33 physician shall assure the timely transfer of the patient's  
34 medical records, including a copy of the patient's advance  
35 directive.

36 c. A nurse or other health care professional may decline to  
37 participate in the withholding or withdrawing of measures  
38 utilized to sustain life, in accordance with his sincerely held  
39 personal or professional convictions. In these circumstances, the  
40 nurse and other health care professional shall act in good faith to  
41 inform the patient and the health care representative, and the  
42 head of the nursing or other professional staff or other designated  
43 institutional official, of this decision as soon as practicable, to  
44 cooperate in effecting an appropriate, respectful and timely  
45 transfer of care, and to assure that the patient is not abandoned  
46 or treated disrespectfully.

47 d. Nothing in this act shall be construed to require a physician,  
48 nurse or other health care professional to begin, continue,  
49 withhold, or withdraw health care in a manner contrary to law or

1 'accepted professional standards.

2 11. a. The attending physician, the health care representative  
3 and, when appropriate, any additional physician responsible for  
4 the patient's care, shall discuss the nature and consequences of  
5 the patient's medical condition, and the risks, benefits and  
6 burdens of the proposed health care and its alternatives. Except  
7 as provided by subsection b. of this section, the attending  
8 physician shall obtain informed consent for, or refusal of, health  
9 care from the health care representative.

10 (1) Discussion of the proposed treatment and its alternatives  
11 shall include, as appropriate under the circumstances, the  
12 availability, benefits and burdens of rehabilitative treatment,  
13 therapy, and services.

14 (2) The decision making process shall allow, as appropriate  
15 under the circumstances, adequate time for the health care  
16 representative to understand and deliberate about all relevant  
17 information before a treatment decision is implemented.

18 b. Following a determination that a patient lacks decision  
19 making capacity, the health care representative and the  
20 attending physician shall, to a reasonable extent, discuss the  
21 treatment options with the patient, and seek to involve the  
22 patient as a participant in the decision making process. The  
23 health care representative and the attending physician shall seek  
24 to promote the patient's capacity for effective participation and  
25 shall take the patient's expressed wishes into account in the  
26 decision making process.

27 Once decision making authority has been conferred upon a  
28 health care representative pursuant to an advance directive, if the  
29 patient is subsequently found to possess adequate decision making  
30 capacity with respect to a particular health care decision, the  
31 patient shall retain legal authority to make that decision. In such  
32 circumstances, the health care representative may continue to  
33 participate in the decision making process in an advisory  
34 capacity, unless the patient objects.

35 Notwithstanding any other provision of this act to the contrary,  
36 if a patient who lacks decision making capacity clearly expresses  
37 or manifests the contemporaneous wish that medically  
38 appropriate measures utilized to sustain life be provided, that  
39 wish shall take precedence over any contrary decision of the  
40 health care representative and any contrary statement in the  
41 patient's instruction directive.

42 c. In acting to implement a patient's wishes pursuant to an  
43 advance directive, the health care representative shall give  
44 priority to the patient's instruction directive, and may also  
45 consider, as appropriate and necessary, the following forms of  
46 evidence of the patient's wishes:

47 (1) The patient's contemporaneous expressions, including  
48 nonverbal expressions;

49 (2) Other reliable sources of information, including the health

1 care representative's personal knowledge of the patient's values,  
2 preferences and goals; and

3 (3) Reliable oral or written statements previously made by the  
4 patient, including, but not limited to, statements made to family  
5 members, friends, health care professionals or religious leaders.

6 d. If the instruction directive, in conjunction with other  
7 evidence of the patient's wishes, does not provide, in the  
8 exercise of reasonable judgment, clear direction as applied to the  
9 patient's medical condition and the treatment alternatives, the  
10 health care representative shall exercise reasonable discretion, in  
11 good faith, to effectuate the terms, intent, and spirit of the  
12 instruction directive and other evidence of the patient's wishes.

13 e. Subject to the provisions of this act, and unless otherwise  
14 stated in the advance directive, if the patient's wishes cannot be  
15 adequately determined, then the health care representative shall  
16 make a health care decision in the patient's best interests.

17 12. a. If the patient has executed an instruction directive but  
18 has not designated a health care representative, or if neither the  
19 designated health care representative or any alternate designee is  
20 able or available to serve, the instruction directive shall be  
21 legally operative. If the instruction directive provides clear and  
22 unambiguous guidance under the circumstances, it shall be  
23 honored in accordance with its specific terms by a legally  
24 appointed guardian, if any, family members, the physicians,  
25 nurses, other health care professionals, health care institutions,  
26 and others acting on the patient's behalf.

27 b. If the instruction directive is, in the exercise of reasonable  
28 judgment, not specific to the patient's medical condition and the  
29 treatment alternatives, the attending physician, in consultation  
30 with a legally appointed guardian, if any, family members, or  
31 others acting on the patient's behalf, shall exercise reasonable  
32 judgment to effectuate the wishes of the patient, giving full  
33 weight to the terms, intent, and spirit of the instruction  
34 directive. Departure from the specific terms and provisions of  
35 the instruction directive shall be based upon clearly articulable  
36 factors not foreseen or contemplated by the instruction directive,  
37 including, but not limited to, the circumstances of the patient's  
38 medical condition.

39 c. Nothing in this act shall be construed to impair the legal  
40 force and effect of an instruction directive executed prior to the  
41 effective date of this act.

42 13. a. In addition to any rights and responsibilities recognized  
43 or imposed by, or pursuant to, this act, or any other law, a health  
44 care institution shall have the following rights and responsibilities:

45 (1) A health care institution shall adopt such policies and  
46 practices as are necessary to provide for routine inquiry, at the  
47 time of admission and at such other times as are appropriate  
48 under the circumstances, concerning the existence and location  
49 of an advance directive.

1 (2) A health care institution shall adopt such policies and  
2 practices as are necessary to provide appropriate informational  
3 materials concerning advance directives to all interested patients  
4 and their families and health care representatives, and to assist  
5 patients interested in discussing and executing an advance  
6 directive.

7 (3) A health care institution shall adopt such policies and  
8 practices as are necessary to educate patients and their families  
9 and health care representatives about the availability, benefits  
10 and burdens of rehabilitative treatment, therapy and services,  
11 including but not limited to family and social services, self-help  
12 and advocacy services, employment and community living, and  
13 use of assistive devices. A health care institution shall, in  
14 consultation with the attending physician, assure that such  
15 information is discussed with a patient and his health care  
16 representative and made a part of the decision making process  
17 set forth in section 11 of this act, as appropriate under the  
18 circumstances.

19 (4) In situations in which a transfer of care is necessary,  
20 including a transfer for the purpose of effectuating a patient's  
21 wishes pursuant to an advance directive, a health care institution  
22 shall, in consultation with the attending physician, take all  
23 reasonable steps to effect the appropriate, respectful and timely  
24 transfer of the patient to the care of an alternative health care  
25 professional or institution, as necessary, and shall assure that the  
26 patient is not abandoned or treated disrespectfully. In such  
27 circumstances, a health care institution shall assure the timely  
28 transfer of the patient's medical records, including a copy of the  
29 patient's advance directive.

30 (5) A health care institution shall establish procedures and  
31 practices for dispute resolution, in accordance with section 14 of  
32 this act.

33 (6) A health care institution shall adopt such policies and  
34 practices as are necessary to inform physicians, nurses and other  
35 health care professionals of their rights and responsibilities under  
36 this act, to assure that such rights and responsibilities are  
37 understood, and to provide a forum for discussion and  
38 consultation regarding the requirements of this act.

39 b. A private, religiously-affiliated health care institution may  
40 develop institutional policies and practices defining  
41 circumstances in which it will decline to participate in the  
42 withholding or withdrawing of specified measures utilized to  
43 sustain life. Such policies and practices shall be written, and  
44 shall be properly communicated to patients and their families and  
45 health care representatives prior to or upon the patient's  
46 admission, or as soon after admission as is practicable.

47 If the institutional policies and practices appear to conflict  
48 with the legal rights of a patient wishing to forego health care,  
49 the health care institution shall attempt to resolve the conflict,

1 and if a mutually satisfactory accommodation cannot be reached,  
2 shall take all reasonable steps to effect the appropriate, timely  
3 and respectful transfer of the patient to the care of another  
4 health care institution appropriate to the patient's needs, and  
5 shall assure that the patient is not abandoned or treated  
6 disrespectfully.

7 c. Nothing in this act shall be construed to require a health  
8 care institution to participate in the beginning, continuing,  
9 withholding or withdrawing of health care in a manner contrary  
10 to law or accepted medical standards.

11 14. a. In the event of disagreement among the patient, health  
12 care representative and attending physician concerning the  
13 patient's decision making capacity or the appropriate  
14 interpretation and application of the terms of an advance  
15 directive to the patient's course of treatment, the parties  
16 <sup>1</sup>[shall] may<sup>1</sup> seek to resolve the disagreement by means of  
17 procedures and practices established by the health care  
18 institution, including but not limited to, consultation with an  
19 institutional ethics committee, or with a person designated by the  
20 health care institution for this purpose <sup>1</sup>or may seek resolution by  
21 a court of competent jurisdiction<sup>1</sup>.

22 b. A health care professional involved in the patient's care,  
23 other than the attending physician, or an administrator of a  
24 health care institution may also invoke the dispute resolution  
25 process established by the health care institution to seek to  
26 resolve a disagreement concerning the patient's decision making  
27 capacity or the appropriate interpretation and application of the  
28 terms of an advance directive.

29 <sup>1</sup>[c. If disagreement cannot be reconciled through an  
30 institutional dispute resolution process, the parties may seek  
31 resolution in a court of competent jurisdiction.]<sup>1</sup>

32 15. a. Consistent with the terms of an advance directive and  
33 the provisions of this act, life-sustaining treatment<sup>1</sup>[, other than  
34 artificially provided fluids and nutrition necessary to sustain  
35 life,]<sup>1</sup> may be withheld or withdrawn from a patient in the  
36 following circumstances:

37 (1) When the life-sustaining treatment is experimental and not  
38 a proven therapy, or is likely to be ineffective or futile in  
39 prolonging life, or is likely to merely prolong an imminent dying  
40 process;

41 (2) When the patient is permanently unconscious, as  
42 determined by the attending physician and confirmed by a second  
43 qualified physician;

44 (3) When the patient is in a terminal condition, as determined  
45 by the attending physician and confirmed by a second qualified  
46 physician; or

47 (4) In the event none of the above circumstances applies, when  
48 the patient has a serious irreversible illness or condition, and the  
49 likely risks and burdens associated with the medical intervention

1 to be withheld or withdrawn may reasonably be judged to  
2 outweigh the likely benefits to the patient from such  
3 intervention, <sup>1</sup>[and] or<sup>1</sup> imposition of the medical intervention on  
4 an unwilling patient would be inhumane. In such cases prior to  
5 implementing a decision to withhold or withdraw life-sustaining  
6 treatment, the attending physician <sup>1</sup>[shall] may<sup>1</sup> promptly seek  
7 consultation with an institutional or regional reviewing body in  
8 accordance with section <sup>1</sup>[18] 17<sup>1</sup> of this act, or <sup>1</sup>[shall] may<sup>1</sup>  
9 promptly seek approval of a public agency recognized by law for  
10 this purpose.

11 b. Nothing in this section shall be construed to impair the  
12 obligations of physicians, nurses and other health care  
13 professionals to provide for the care and comfort of the patient  
14 and to alleviate pain, in accordance with accepted medical and  
15 nursing standards.

16 c. Nothing in this section shall be construed to abridge any  
17 constitutionally-protected right to refuse treatment<sup>1</sup>[, based  
18 upon the free exercise of religion or the right of privacy,]<sup>1</sup> under  
19 either the United States Constitution or the Constitution of the  
20 State of New Jersey.

21 <sup>1</sup>[16. a. Consistent with the explicit terms of an advance  
22 directive and the provisions of this act, artificially provided  
23 fluids and nutrition necessary to sustain life may be withheld or  
24 withdrawn from a patient in the following circumstances:

25 (1) When the artificial provision of fluids and nutrition is likely  
26 to be ineffective or futile in prolonging life, or is likely to merely  
27 prolong an imminent dying process;

28 (2) When the patient is permanently unconscious, as  
29 determined by the attending physician and confirmed by a second  
30 qualified physician; or

31 (3) When the patient is in a terminal condition, as determined  
32 by the attending physician and confirmed by a second qualified  
33 physician, and the likely risks and burdens associated with the  
34 least burdensome treatment modality likely to be effective may  
35 reasonably be judged to outweigh the likely benefits to the  
36 patient from such intervention, and imposition of the intervention  
37 on an unwilling patient would be inhumane. In such cases, prior  
38 to implementing a decision to withhold or withdraw artificially  
39 provided fluids and nutrition, the attending physician shall seek  
40 prompt consultation with a qualified institutional or regional  
41 reviewing body in accordance with section 18 of this act, or shall  
42 promptly seek approval of a public agency recognized by law for  
43 this purpose.

44 b. Nothing in this act shall be construed to provide  
45 authorization for the health care representative, or any other  
46 individual acting pursuant to this act, to direct or implement the  
47 withholding or withdrawal of artificially provided fluids and  
48 nutrition necessary to sustain life in the absence of explicit  
49 instructions to that effect in the patient's advance directive.

1 c. Nothing in this section shall be construed to impair the  
2 obligations of a physician, nurse or other health care professional  
3 to provide for the care and comfort of the patient and to  
4 alleviate pain, in accordance with accepted medical and nursing  
5 standards.

6 d. Nothing in this section shall be construed to abridge any  
7 constitutionally-protected right to refuse treatment, based upon  
8 the free exercise of religion or the right of privacy, under either  
9 the United States Constitution or the Constitution of the State of  
10 New Jersey.]<sup>1</sup>

11 <sup>1</sup>[17.] 16.<sup>1</sup> a. Consistent with the terms of an advance  
12 directive and the provisions of this act, the attending physician  
13 may issue a do not resuscitate order.

14 b. A do not resuscitate order shall be entered in writing in the  
15 patient's medical records prior to implementation of the order.

16 c. Nothing in this act shall be construed to impair any existing  
17 legal authority to issue a do not resuscitate order when the  
18 patient has not executed an advance directive.

19 <sup>1</sup>[18.] 17.<sup>1</sup> a. An institutional or regional reviewing body  
20 which engages in prospective case consultation pursuant to  
21 paragraph (4) of subsection a. of section 15 <sup>1</sup>[and paragraph (3) of  
22 subsection a. of section 16]<sup>1</sup> of this act <sup>1</sup>[shall advise] may be  
23 consulted by<sup>1</sup> the attending physician, patient <sup>1</sup>[and] or<sup>1</sup> health  
24 care representative as to<sup>1</sup> whether it believes that the  
25 withholding or withdrawal of the medical intervention under  
26 consideration would be in conformity with the requirements of  
27 this act, including without limitation: whether such action would  
28 be within the scope of the patient's advance directive; whether it  
29 may reasonably be judged that the likely risks and burdens  
30 associated with the medical intervention to be withheld or  
31 withdrawn outweigh its likely benefits; and whether it may  
32 reasonably be judged that imposition of the medical intervention  
33 on an unwilling patient would be inhumane. The attending  
34 physician, patient and health care representative shall also be  
35 advised of any other course of diagnosis or treatment  
36 recommended for consideration.

37 <sup>1</sup>[The advice of] Consultation with<sup>1</sup> the institutional or  
38 regional reviewing body shall be documented in the patient's  
39 medical records.

40 b. <sup>1</sup>[The advice of] Consultation with<sup>1</sup> an institutional or  
41 regional reviewing body acting in accordance with subsection a.  
42 of this section is not <sup>1</sup>[legally binding] required<sup>1</sup>. <sup>1</sup>[A]  
43 Furthermore, nothing in this act shall be construed to impair the  
44 right of a patient,<sup>1</sup> health care representative, physician, nurse,  
45 or other health care professional who <sup>1</sup>[believes the advice should  
46 not be followed may choose] consults with an institutional or  
47 regional reviewing body<sup>1</sup> to:

48 (1) <sup>1</sup>[Pursue an alternative course of treatment for the  
49 patient. In this case, no immunity is conferred upon such actions



1 by this act, and the individual is subject to existing norms of civil  
2 and criminal liability and may be subject to discipline by the  
3 respective State licensing board for professional misconduct;

4 (2)]<sup>1</sup> Seek review by a public agency recognized by law for this  
5 purpose; or

6 <sup>1</sup>[(3)](2)]<sup>1</sup> Seek review by a court of competent jurisdiction.

7 c. Nothing in this section shall preclude the transfer of the  
8 patient to another appropriate health care professional or health  
9 care institution. In this case the health care institution  
10 responsible for the patient's care shall assure that the health  
11 care professional or health care institution to which the patient is  
12 transferred is properly informed of the advice given by the  
13 institutional or regional reviewing body.

14 <sup>1</sup>[d. An institutional or regional reviewing body acting in  
15 accordance with subsection a. of this section shall conform to  
16 standards established by law and shall be subject to periodic  
17 accreditation and review under procedures established by law.]<sup>1</sup>

18 <sup>1</sup>[19.] 18.<sup>1</sup> a. Nothing in this act shall be construed to alter,  
19 amend or revoke the rights and responsibilities under existing law  
20 of health care institutions not governed by the provisions of this  
21 act.

22 b. The provisions of this act shall not be construed to require  
23 emergency personnel, including paid or volunteer fire fighters;  
24 paramedics; members of an ambulance team, rescue squad, or  
25 mobile intensive care unit; or emergency room personnel of a  
26 licensed health care institution, to withhold or withdraw  
27 emergency care in circumstances which do not afford reasonable  
28 opportunity for careful review and evaluation of an advance  
29 directive without endangering the life of the patient.

30 <sup>1</sup>[20.] 19.<sup>1</sup> In accordance with the "Administrative Procedure  
31 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the Department of  
32 Health shall establish rules and regulations <sup>1</sup>[necessary to carry  
33 out the provisions of this act.

34 a. The department shall establish rules and regulations for]; a.  
35 For<sup>1</sup> the annual reporting by health care institutions, and the  
36 gathering of such additional data as is reasonably necessary to  
37 oversee and evaluate the implementation of this act. The  
38 department shall seek to minimize the burdens of record-keeping  
39 imposed by the rules and regulations and shall seek to assure the  
40 appropriate confidentiality of patient records.

41 b. <sup>1</sup>[The department shall establish rules and regulations  
42 requiring] Requiring<sup>1</sup> health care institutions to adopt policies  
43 and practices designed to:

44 (1) Make routine inquiry, at the time of admission and at such  
45 other times as are appropriate under the circumstances,  
46 concerning the existence and location of an advance directive;

47 (2) Provide appropriate informational materials concerning  
48 advance directives to all interested patients and their families  
49 and health care representatives, and to assist patients interested

1 in discussing and executing an advance directive:

2 (3) Educate patients and their families and health care  
3 representatives about the availability, benefits and burdens of  
4 rehabilitative treatment, therapy and services, as appropriate;

5 (4) Inform physicians, nurses, and other health care  
6 professionals of their rights and responsibilities under this act, to  
7 assure that the rights and responsibilities are understood, and to  
8 provide a forum for discussion and consultation regarding the  
9 requirements of this act; and

10 (5) Otherwise comply with the provisions of this act.

11 <sup>1</sup>[21.] 20.<sup>1</sup> The Department of Health and the New Jersey  
12 Commission on Legal and Ethical Problems in the Delivery of  
13 Health Care established pursuant to P.L.1985, c.363 (C.52:9Y-1  
14 et seq.), shall jointly evaluate the implementation of this act and  
15 report to the Governor and the Legislature, including  
16 recommendations for any changes deemed necessary, within five  
17 years from the effective date of this act.

18 <sup>1</sup>[22.] 21.<sup>1</sup> a. A health care representative shall not be subject  
19 to criminal or civil liability for any actions performed in good  
20 faith and in accordance with the provisions of this act<sup>1</sup>:

21 (1) To] to<sup>1</sup> carry out the terms of an advance directive<sup>1</sup>; or

22 (2) To follow and implement the advice of an institutional or  
23 regional reviewing body acting in accordance with subsection a.  
24 of section 18 of this act]<sup>1</sup>.

25 b. A health care professional shall not be subject to criminal  
26 or civil liability or to discipline by the health care institution or  
27 the respective State licensing board for professional misconduct  
28 for any actions performed in good faith and in accordance with  
29 the provisions of this act, any rules and regulations established by  
30 the Department of Health pursuant to this act, and accepted  
31 professional standards<sup>1</sup>:

32 (1) To] to<sup>1</sup> carry out the terms of an advance directive<sup>1</sup>; or

33 (2) To follow and implement the advice of an institutional or  
34 regional reviewing body acting in accordance with subsection a.  
35 of section 18 of this act]<sup>1</sup>.

36 c. A health care institution shall not be subject to criminal or  
37 civil liability for any actions performed in good faith and in  
38 accordance with the provisions of this act to carry out the terms  
39 of an advance directive.

40 <sup>1</sup>[23.] 22.<sup>1</sup> The absence of an advance directive shall create no  
41 presumption with respect to a patient's wishes regarding the  
42 provision, withholding or withdrawing of any form of health care.  
43 The provisions of this act do not apply to persons who have not  
44 executed an advance directive.

45 <sup>1</sup>[24.] 23.<sup>1</sup> The execution of an advance directive pursuant to  
46 this act shall not in any manner affect, impair or modify the  
47 terms of, or rights or obligations created under, any existing  
48 policy of health insurance, life insurance or annuity, or  
49 governmental benefits program. No health care practitioner or

1 other health care provider, and no health service plan, insurer, or  
2 governmental authority, shall deny coverage or exclude from the  
3 benefits of service any individual because that individual has  
4 executed or has not executed an advance directive. The  
5 execution, or non-execution, of an advance directive shall not be  
6 made a condition of coverage under any policy of health  
7 insurance, life insurance or annuity, or governmental benefits  
8 program.

9 <sup>1</sup>[25.] 24.<sup>1</sup> An advance directive executed under the laws of  
10 another state in compliance with the laws of that state or the  
11 State of New Jersey is validly executed for purposes of this act.  
12 An advance directive executed in a foreign country in compliance  
13 with the laws of that country or the State of New Jersey, and not  
14 contrary to the public policy of this State, is validly executed for  
15 purposes of this act.

16 <sup>1</sup>[26.] 25.<sup>1</sup> a. The withholding or withdrawing of  
17 life-sustaining treatment pursuant to section 15 of this act <sup>1</sup>[or  
18 of artificially provided fluids and nutrition necessary to sustain  
19 life pursuant to section 16 of this act]<sup>1</sup>, when performed in good  
20 faith, and in accordance with the terms of an advance directive  
21 and the provisions of this act, shall not constitute homicide,  
22 suicide, assisted suicide, or active euthanasia.

23 b. To the extent any of the provisions of this act are  
24 inconsistent with P.L.1971, c.373 (C.46:2B-8 et seq.) concerning  
25 the designation of a health care representative, the provisions of  
26 this act shall have priority over those of P.L.1971, c.373  
27 (C.46:2B-8 et seq.).

28 Durable powers of attorney for health care executed pursuant  
29 to P.L.1971, c.373 (C.46:2B-8 et seq.) prior to the effective date  
30 of this act shall have the same legal force and effect as if they  
31 had been executed in accordance with the provisions of this act.

32 c. Nothing in this act shall be construed to impair the rights of  
33 emancipated minors under existing law.

34 <sup>1</sup>[27.]26.<sup>1</sup> The Office of the Ombudsman for the  
35 Institutionalized Elderly shall <sup>1</sup>[adopt regulations] conform and  
36 implement procedures<sup>1</sup> necessary to comply with the  
37 requirements of P.L. , c. (C. ) (now pending before the  
38 Legislature as this bill), and shall make a written statement of its  
39 obligations under that act available to the public.

40 <sup>1</sup>[28.]27.<sup>1</sup> The Office of the Public Guardian for Elderly Adults  
41 shall <sup>1</sup>[adopt regulations] conform and implement procedures<sup>1</sup>  
42 necessary to comply with the requirements of P.L. , c.  
43 (C. ) (now pending before the Legislature as this bill), and  
44 shall make a written statement of its obligations under that act  
45 available to the public.

46 <sup>1</sup>[29.] 28.<sup>1</sup> a. A health care professional who <sup>1</sup>[willfully]  
47 intentionally<sup>1</sup> fails to act in accordance with the requirements of  
48 this act is subject to discipline for professional misconduct  
49 pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

1 b. A health care institution that <sup>1</sup>[willfully] intentionally<sup>1</sup> fails  
2 to act in accordance with the requirements of this act <sup>1</sup>[and  
3 regulations adopted in accordance with this act]<sup>1</sup> shall be subject  
4 to a fine of not more than \$1,000 for each offense. For the  
5 purposes of this subsection, each violation shall constitute a  
6 separate offense. Penalties for violations of this act shall be  
7 recovered in a summary civil proceeding, brought in the name of  
8 the State in a court of competent jurisdiction pursuant to "the  
9 penalty enforcement law," N.J.S.2A:58-1 et seq.

10 c. The following acts constitute crimes:

11 (1) To willfully conceal, cancel, deface, obliterate or withhold  
12 personal knowledge of an advance directive or a modification or  
13 revocation thereof, without the declarant's consent, is a crime of  
14 the fourth degree.

15 (2) To falsify or forge an advance directive or a modification  
16 or revocation thereof of another individual is a crime of the  
17 fourth degree.

18 (3) To coerce or fraudulently induce the execution of an  
19 advance directive or a modification or revocation thereof is a  
20 crime of the fourth degree.

21 (4) To require or prohibit the execution of an advance  
22 directive or a modification or revocation thereof as a condition  
23 of coverage under any policy of health insurance, life insurance  
24 or annuity, or governmental benefits program, or as a condition  
25 of the provision of health care is a crime of the fourth degree.

26 d. Commission of any of the acts identified in paragraphs (1),  
27 (2), or (3) of subsection c., resulting in the involuntary earlier  
28 death of a patient, shall constitute a crime of the fourth degree.

29 e. The sanctions provided in this section shall not be construed  
30 to repeal any sanctions applicable under other law.

31 <sup>1</sup>[30.] 29.<sup>1</sup> This act shall take effect 180 days after the date of  
32 enactment.

33  
34  
35 JUDICIARY

36  
37 Designated the "New Jersey Advance Directives for Health Care  
38 Act."

1 Penalties for violations of this act shall be recovered in a  
2 summary civil proceeding, brought in the name of the State in a  
3 court of competent jurisdiction pursuant to "the penalty  
4 enforcement law," N.J.S.2A:58-1 et seq.

5 c. The following acts constitute crimes:

6 (1) To willfully conceal, cancel, deface, obliterate or withhold  
7 personal knowledge of an advance directive or a modification or  
8 revocation thereof, without the declarant's consent, is a crime of  
9 the fourth degree.

10 (2) To falsify or forge an advance directive or a modification  
11 or revocation thereof of another individual is a crime of the  
12 fourth degree.

13 (3) To coerce or fraudulently induce the execution of an  
14 advance directive or a modification or revocation thereof is a  
15 crime of the fourth degree.

16 (4) To require or prohibit the execution of an advance  
17 directive or a modification or revocation thereof as a condition  
18 of coverage under any policy of health insurance, life insurance  
19 or annuity, or governmental benefits program, or as a condition  
20 of the provision of health care is a crime of the fourth degree.

21 d. Commission of any of the acts identified in paragraphs (1),  
22 (2), or (3) of subsection c., resulting in the involuntary earlier  
23 death of a patient, shall constitute a crime of the fourth degree.

24 e. The sanctions provided in this section shall not be construed  
25 to repeal any sanctions applicable under other law.

26 30. This act shall take effect 180 days after the date of  
27 enactment.

28  
29  
30 STATEMENT

31  
32 The "New Jersey Advance Directives for Health Care Act" is  
33 based on the recommendations of the New Jersey Commission on  
34 Legal and Ethical Problems in the Delivery of Health Care. The  
35 major provisions of S-3320 are as follows:

36 1. Advance directives for health care may encompass both the  
37 designation of a health care representative ("a proxy directive")  
38 and/or a statement of personal wishes regarding health care in  
39 the event of loss of decision making capacity ("an instruction  
40 directive").

41 2. Advance directives may be revoked by oral or written  
42 destruction of the document or execution of a subsequent  
43 directive.

44 3. With regard to instruction directives, if a person chooses to  
45 instruct that artificially provided fluids and nutrition be withheld  
46 or withdrawn, that choice must be explicitly stated in the  
47 directive.

48 4. An advance directive becomes operative when transmitted

.1 to the attending physician or to the health care institution and  
2 when the person is determined to lack decision making capacity.

3 5. An attending physician's determination that a patient lacks  
4 decision making capacity must be confirmed by another physician.

5 6. Once a proxy directive is operative, the designated health  
6 care representative has the legal authority to participate in the  
7 decision making process and to make health care decisions on the  
8 patient's behalf.

9 7. An incapacitated patient's contemporaneous wish that  
10 medically appropriate life sustaining treatment be provided would  
11 take precedence over any decision made by a health care  
12 representative or any contrary statement in an instructive  
13 directive.

14 8. Pursuant to an advance directive life sustaining treatment  
15 other than artificially provided fluids and nutrition, may only be  
16 removed when the patient is permanently unconscious; the  
17 patient's condition is terminal or if the treatment is  
18 experimental and is likely to be ineffective or is likely merely to  
19 prolong the dying process. Life-sustaining treatment may be also  
20 be withdrawn if the patient has a serious irreversible illness and  
21 the risks and burdens of withdrawn or withholding of treatment  
22 reasonably outweigh the benefits to the patient and imposition of  
23 treatment on an unwilling patient would be inhumane.

24 9. Pursuant to an advance directive, the artificial provision of  
25 fluids and nutrition may be withdrawn or withheld if the patient  
26 is permanently unconscious; the provisions of fluids and nutrition  
27 is likely to be ineffective or likely merely to prolong the  
28 imminent dying process or if the patient is in a terminal condition  
29 and the likely risks and burdens of such intervention outweigh the  
30 likely benefits to the patient.

31 10. Pursuant to an advance directive, an attending physician  
32 may, issue a "do not resuscitate order".

33 11. If an instruction directive does not specifically cover a  
34 patient's medical condition, the attending physician shall, in  
35 consultation with the patient's family members, exercise  
36 reasonable judgement to effectuate the wishes of the patient  
37 giving consultation to the term, intent and spirit of the directive.

38 12. Institutional or regional review bodies are authorized to  
39 advise attending physicians and health care representatives if the  
40 conditions required for the withdrawing or withholding of  
41 life-sustaining treatment or of artificially provided fluids and  
42 nutrition are present.

43 13. Health care professionals may decline to participate in the  
44 withholding or withdrawing of life-sustaining treatment or  
45 artificially provided fluids and nutrition necessary to sustain life  
46 on the basis of sincerely held personal or professional  
47 convictions. In such cases the health care professional shall  
48 facilitate the appropriate, respectful and timely transfer of the

.1 patient's care.

2 14. Private, religiously-affiliated health care institutions may  
3 adopt institutional policies and practices defining circumstances  
4 in which they will decline to participate in the withholding or  
5 withdrawing of life sustaining treatment or artificially provided  
6 fluids and nutrition necessary to sustain life.

7 15. Individuals and institutions acting in good faith and in  
8 accordance with the provisions of this act to carry out the terms  
9 of an advance directive shall be immune from legal liability and  
10 from discipline for unprofessional conduct.

11 16. A health care institution which willfully fails to acts in  
12 conformance with the bill's provisions would be subject to a civil  
13 penalty of up to \$1,000 for each violation.

14 17. The following would be classified as crimes of the fourth  
15 degree (up to 18 months imprisonment and/or a fine of up to  
16 \$7,500): to change, destroy or withhold an advance directive  
17 without the declarant's consent; to falsify or forge an advanced  
18 directive, to coerce the execution of an advance directive or to  
19 require the execution of an advance directive as a condition of  
20 coverage under a health insurance policy.

21 18. The absence of an advance directive would not create a  
22 presumption with respect to the patient's wishes regarding health  
23 care.

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#### JUDICIARY

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28 Designated the "New Jersey Advance Directives for Health Care  
29 Act."

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

**SENATE, No. 1211**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 6, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1211.

This bill, the "New Jersey Advance Directives for Health Care Act," is based on the recommendations of the N.J. Commission on Legal and Ethical Problems in the Delivery of Health Care (the Bioethics Commission).

The major provisions of the advance care legislation are as follows:

1. Advance directives for health care may encompass both the designation of a health care representative ("a proxy directive") and/or a statement of personal wishes regarding health care in the event of loss of decision making capacity ("an instruction directive").
2. Advance directives may be revoked by oral or written notification or by the execution of a subsequent directive.
3. An advance directive becomes operative when transmitted to the attending physician or to the health care institution and when the person is determined to lack capacity to make a particular health care decision.
4. An attending physician's determination that a patient lacks decision making capacity must be confirmed by another physician.
5. Once a proxy directive is operative, the designated health care representative has the legal authority to participate in the decision making process and to make health care decisions on the patient's behalf.
6. An incapacitated patient's contemporaneous wish that medically appropriate life sustaining treatment be provided would take precedence over any decision made by a health care representative or any contrary statement in an instructive directive.
7. Pursuant to an advance directive, life sustaining treatment may be removed only when the patient is permanently unconscious; the patient's condition is terminal; or if the treatment is experimental and is likely to be ineffective or is likely merely to prolong the dying process. Life-sustaining treatment may also be withdrawn if the patient has a serious irreversible illness and the risks and burdens of withdrawing or withholding of treatment reasonably outweigh the benefits to the patient and imposition of treatment on an unwilling patient would be inhumane. (Section 15 of the bill)



8. Pursuant to an advance directive, an attending physician may issue a "do not resuscitate order".

9. If an instruction directive does not specifically cover a patient's medical condition, the attending physician shall, in consultation with the patient's family members, exercise reasonable judgement to effectuate the wishes of the patient giving consideration to the intent and spirit of the directive.

10. Health care professionals may decline to participate in the withholding or withdrawing of measures utilized to sustain life on the basis of sincerely held personal or professional convictions. In such cases, the health care professional shall facilitate the appropriate, respectful and timely transfer of the patient's care.

11. Private, religiously-affiliated health care institutions may adopt institutional policies and practices defining circumstances in which they will decline to participate in the withholding or withdrawing of measures utilized to sustain life.

12. Individuals and institutions acting in good faith and in accordance with the provisions of this act to carry out the terms of an advance directive shall be immune from legal liability and from discipline for unprofessional conduct.

13. A health care institution which intentionally fails to acts in conformance with the bill's provisions would be subject to a civil penalty of up \$1,000 for each violation.

14. The following would be classified as crimes of the fourth degree (up to 18 months imprisonment and/or a fine of up to \$7,500): to change, destroy or withhold an advance directive without the declarant's consent; to falsify or forge an advanced directive; to coerce the execution of an advance directive as a condition of coverage under a health insurance policy.

15. The absence of an advance directive would not create a presumption with respect to the patient's wishes regarding health care.

#### COMMITTEE AMENDMENTS

The committee adopted amendments to the bill including the following:

1. Clarifying that "life-sustaining treatment" includes artificially provided fluids and nutrition. (Section 3)

2. Providing that notaries public, attorneys and other persons authorized to take oaths may witness advance directives. (Section 4)

3. Providing that a female declarant may include in an advance directive information as to what effect the directive shall have if she is pregnant. (Section 4)

4. Clarifying that the authority of the health care representative may include limitations based upon whether the declarant is pregnant. (Section 6)

5. Providing that parties may resolve disagreement about the patient's capacity or interpretation of a directive by resort to a

court without necessarily going through dispute resolution procedures. (Section 14)

6. Removing section 16 of the bill in its previous form and making amendments to section 15 so that section 15 of the bill as amended governs the circumstances in which life-sustaining treatment may be withheld or withdrawn.

7. Providing that a physician may consult with an institutional or regional reviewing body but does not require that consultation. In that regard, the amendments remove the liability provision concerning such advisement.

8. Providing that a health care professional or health care institution may incur certain civil penalties for certain intentional violations of the act. The bill before amendment required "willful" violations.

This bill, as amended, is identical to the Assembly Committee Substitute for Assembly Bills Nos. 16, 1191, 2466, 2492 and 2514.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1211

STATE OF NEW JERSEY

DATED: JANUARY 25, 1990

The Senate Judiciary Committee reports favorably Senate Bill No. 1211.

S1211, the "New Jersey Advance Directives for Health Care Act," is based on the recommendations of the N.J. Commission on Legal and Ethical Problems in the Delivery of Health Care (the Bioethics Commission).

The major provisions of the advance care legislation are as follows:

1. Advance directives for health care may encompass both the designation of a health care representative ("a proxy directive") and/or a statement of personal wishes regarding health care in the event of loss of decision making capacity ("an instruction directive").

2. Advance directives may be revoked by oral or written notification or by the execution of a subsequent directive.

3. With regard to instruction directives, if a person chooses to instruct that artificially provided fluids and nutrition be withheld or withdrawn, that choice must be explicitly stated in the directive.

4. An advance directive becomes operative when transmitted to the attending physician or to the health care institution and when the person is determined to lack capacity to make a particular health care decision.

5. An attending physician's determination that a patient lacks decision making capacity must be confirmed by another physician.

6. Once a proxy directive is operative, the designated health care representative has the legal authority to participate in the decision making process and to make health care decisions on the patient's behalf.

7. An incapacitated patient's contemporaneous wish that medically appropriate life sustaining treatment be provided would take precedence over any decision made by a health care representative or any contrary statement in an instructive directive.

8. Pursuant to an advance directive, life sustaining treatment, other than artificially provided fluids and nutrition, may be removed only when the patient is permanently unconscious; the patient's condition is terminal; or if the treatment is experimental and is likely to be ineffective or is likely merely to prolong the dying process. Life-sustaining treatment may also be withdrawn if the patient has a serious irreversible illness and the risks and burdens of withdrawing or withholding of treatment reasonably outweigh the benefits to the patient and imposition of treatment on an unwilling patient would be inhumane.

9. Pursuant to an advance directive, the artificial provision of fluids and nutrition may be withdrawn or withheld if the patient is permanently unconscious; if the provision of fluids and nutrition is likely to be ineffective or likely merely to prolong the imminent dying process; or if the patient is in a terminal condition and the likely risks and burdens of such intervention outweigh the likely benefits to the patient.

10. Pursuant to an advance directive, an attending physician may issue a "do not resuscitate order".

11. If an instruction directive does not specifically cover a patient's medical condition, the attending physician shall, in consultation with the patient's family members, exercise reasonable judgement to effectuate the wishes of the patient giving consideration to the intent and spirit of the directive.

12. Institutional or regional review bodies are authorized to advise attending physicians and health care representatives if the conditions required for the withdrawing or withholding of life-sustaining treatment or of artificially provided fluids and nutrition are present.

13. Health care professionals may decline to participate in the withholding or withdrawing of life-sustaining treatment or artificially provided fluids and nutrition necessary to sustain life on the basis of sincerely held personal or professional convictions. In such cases, the health care professional shall facilitate the appropriate, respectful and timely transfer of the patient's care.

14. Private, religiously-affiliated health care institutions may adopt institutional policies and practices defining circumstances in which they will decline to participate in the withholding or withdrawing of life sustaining treatment or artificially provided fluids and nutrition necessary to sustain life.

15. Individuals and institutions acting in good faith and in accordance with the provisions of this act to carry out the terms of an advance directive shall be immune from legal liability and from discipline for unprofessional conduct.

16. A health care institution which willfully fails to acts in conformance with the bill's provisions would be subject to a civil penalty of up \$1,000 for each violation.

17. The following would be classified as crimes of the fourth degree (up to 18 months imprisonment and/or a fine of up to \$7,500): to change, destroy or withhold an advance directive without the declarant's consent; to falsify or forge an advanced directive; to coerce the execution of an advance directive as a condition of coverage under a health insurance policy.

18. The absence of an advance directive would not create a presumption with respect to the patient's wishes regarding health care.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

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# NEW JERSEY ADVANCE DIRECTIVES FOR HEALTH CARE ACT

## *Fact Sheet*

Under the bill, competent individuals may plan ahead for health care decisions through the execution of advance directives, such as living wills and durable powers of attorney and have their wishes, as expressed in the advanced directive respected. Forty-five states and the District of Columbia have enacted advance directive legislation.

### THE INDIVIDUAL

Under the bill, a competent individual may:

- execute a "living will" which must be signed and dated in the presence of 2 witnesses, an attorney or a notary public. The "living will" may include the designation of a health care representative, and/or a statement of personal wishes regarding health care in the event of the loss of decision-making capacity.

This statement may include an individual's specific wishes regarding the withholding or withdrawal health care, including life-sustaining treatment, or a general statement regarding treatment philosophy.

- A female may indicate what effect the advance directive shall have if she is pregnant.

### THE PATIENT

- An individual who has executed a "living will" may revoke that document at any time.
- If a patient has not designated a health care representative, the "living will" is legally operative and must be honored by the patient's legal guardian, family and physicians.

- If a "living will" statement does not specifically cover the patient's illness, the attending physician shall, in consultation with the family, exercise reasonable judgement and carry out the wishes of the patient giving consideration to the intent and the spirit of the will.
- A "living will" becomes operative when transmitted to the attending physician or to the health care institution and it is determined that the patient lacks the capacity to make a health care decision.
- Life sustaining treatment, including artificially provided fluids and nutrition may be removed only when the patient is permanently unconscious; the patient's condition is terminal; if treatment is experimental and is likely to be ineffective or is likely merely to prolong the dying process; or if the patient has a serious irreversible illness and the risks and burdens of withdrawing or withholding treatment reasonably outweigh the benefits to the patient and imposition of treatment on an unwilling patient would be inhumane.
- Patients who regain their ability to make decisions may immediately begin to make personal, independent health care decisions.

#### **THE HEALTH CARE REPRESENTATIVE**

- Any competent adult may be designated as a health care representative.
- However, no employee of the health care institution in which the individual is a patient shall serve unless the employee is related to the patient.
- Physicians may be designated as health care representatives if the physician is not the patient's attending physician.

- A patient or an individual may require that the health care representative consult with specific individuals in the course of the decision-making process.

### THE PHYSICIAN

- The attending physician must ask the patient, the family or others if there is a "living will" statement.
- The attending physician must state in writing whether the patient lacks capacity to make health care decisions.
- The physician's determination must be confirmed in writing by at least one other physician.
- The attending physician must inform the family or the health care representative that the patient is not competent to make health care decisions.
- The law allows physicians and nurses to decline to participate in the withholding or withdrawing of life sustaining measures based upon personal or professional convictions. In such cases, the health care professional shall make appropriate and timely arrangements for alternate care.
- Physicians and other health care professionals who act in good faith and in a manner consistent with a living will document, are given civil and criminal immunity and may not be subject to professional disciplinary proceedings.
- Under this law, an attending physician may issue a "do not resuscitate" order consistent with the terms of a living will statement.

THE INSTITUTION

- Institutions must adopt policies and practices to provide for the routine inquiry of patients regarding the existence of a living will.
- Private, religiously-affiliated institutions may decline to participate in the withholding or withdrawing of life sustaining treatment. In such cases, with family or health care representatives, the hospital shall arrange for an appropriate and timely transfer of the patient.
- Institutions are given civil and criminal immunity if they act in good faith and in compliance with a living will statement.



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# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001  
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Release: THURSDAY  
JULY 11, 1991

## GOVERNOR FLORIO SIGNS "LIVING WILL" LEGISLATION Allows Individuals Choice on Health Care Decisions

Governor Jim Florio today signed what experts agree is the most comprehensive, sensible "living will" legislation in the nation. The law is designed to allow people the right to decide in advance what type of health care treatment they would - or would not - want if they became terminally ill or comatose. New Jersey was one of only five states in the country not to have such legislation.

"We're finally giving New Jersey's people a choice about the quality of their lives," said Governor Florio. "We're giving them a choice about the dignity they want and deserve."

"No one should have that important, personal question decided for them. Everyone should have the right to answer it themselves," said the Governor.

Speaking to an audience at the State House which included Joseph and Julia Quinlan, of Sussex, the Governor noted that some 15 years ago the Quinlans were the center of a great debate which focused on the right to choose because their daughter Karen Ann was in a coma with no hope of recovery. "They believed in their hearts that if Karen were able to choose for herself, she would not want to be kept alive artificially," he said.

The Governor said the Quinlans "fought a courageous battle for their daughter" and the courts finally determined that life support could be removed. Following that decision, states across the country began enacting "living will" legislation.

Governor Florio praised Senator Gabe Ambrosio, the sponsor of the bill, for his leadership, saying, it took both courage and a strong conviction about what's right to champion such an issue.

Noting that the bill has attracted widespread support among medical, religious and senior citizen organizations, Governor Florio said, "Medical technology is advancing faster and faster every day. We have the ability to keep people alive for many years through artificial means, but we are only now asking whether that constitutes a quality of life that's worth maintaining."

Copies of the bill are available upon request.

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