

HOUSE BILL No. 4743

May 5, 2005, Introduced by Reps. Stahl, Palmer, Garfield, Gosselin, Stakoe, Vander Veen, Sheen, Taub, Hummel, Pastor and Moolenaar and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding part 56B.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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PART 56B

WITHHOLDING OR WITHDRAWAL OF NUTRITION OR HYDRATION

SEC. 5675. (1) AS USED IN THIS PART:

(A) "PATIENT" MEANS AN INDIVIDUAL WHO IS UNDER THE CARE OF A
PHYSICIAN.

(B) "PATIENT ADVOCATE" MEANS THAT TERM AS DEFINED IN SECTION
1106 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386,

1 MCL 700.1106.

2 (C) "PATIENT SURROGATE" MEANS THE PARENT OR LEGAL GUARDIAN OF
3 A PATIENT WHO IS A MINOR OR A MEMBER OF THE IMMEDIATE FAMILY, THE
4 NEXT OF KIN, OR THE LEGAL GUARDIAN OF A PATIENT WHO HAS A CONDITION
5 OTHER THAN MINORITY THAT PREVENTS THE PATIENT FROM GIVING CONSENT
6 TO MEDICAL TREATMENT.

7 (D) "PERSISTENT VEGETATIVE STATE" MEANS A PERMANENT AND
8 IRREVERSIBLE CONDITION OF UNCONSCIOUSNESS IN WHICH THERE IS NO
9 VOLUNTARY ACTION OR COGNITIVE BEHAVIOR OF ANY KIND AND NO ABILITY
10 TO COMMUNICATE OR INTERACT PURPOSEFULLY WITH THE ENVIRONMENT.

11 (E) "PHYSICIAN" MEANS THAT TERM AS DEFINED IN SECTION 17001 OR
12 17501.

13 (2) ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND PRINCIPLES OF
14 CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS CODE.

15 SEC. 5677. IF A PATIENT IS DIAGNOSED AS BEING IN A PERSISTENT
16 VEGETATIVE STATE AND THE PATIENT HAS NOT DESIGNATED A PATIENT
17 ADVOCATE, HAS DESIGNATED A PATIENT ADVOCATE BUT THE DESIGNATION
18 DOES NOT SPECIFICALLY AUTHORIZE THE PATIENT ADVOCATE TO WITHHOLD OR
19 WITHDRAW NUTRITION OR HYDRATION IN THE EVENT THAT THE PATIENT IS
20 DIAGNOSED AS BEING IN A PERSISTENT VEGETATIVE STATE, OR THE
21 PATIENT'S IMMEDIATE FAMILY DISAGREES ON THE ISSUE OF WITHHOLDING OR
22 WITHDRAWING NUTRITION OR HYDRATION, A PHYSICIAN SHALL NOT WITHHOLD
23 OR WITHDRAW NUTRITION OR HYDRATION FROM THAT PATIENT UNLESS ANY OF
24 THE FOLLOWING CONDITIONS APPLY:

25 (A) IN THE PHYSICIAN'S REASONABLE MEDICAL JUDGMENT AND IN
26 COMPLIANCE WITH THE APPLICABLE STANDARD OF PRACTICE AND CARE, ANY
27 OF THE FOLLOWING APPLY:

1 (i) THE PROVISION OF NUTRITION OR HYDRATION IS NOT MEDICALLY
2 POSSIBLE.

3 (ii) THE PROVISION OF NUTRITION OR HYDRATION WOULD HASTEN
4 DEATH.

5 (iii) THE PATIENT'S CONDITION IS SUCH THAT THE PROVISION OF
6 NUTRITION OR HYDRATION WOULD NOT CONTRIBUTE TO SUSTAINING THE
7 PATIENT'S LIFE OR PROVIDE COMFORT TO THE PATIENT.

8 (B) THE PATIENT HAS EXECUTED A WRITTEN ADVANCED DIRECTIVE OR A
9 LIVING WILL IN ACCORDANCE WITH THE PROVISIONS OF ANOTHER STATE THAT
10 SPECIFICALLY AUTHORIZES THE WITHHOLDING OR WITHDRAWAL OF NUTRITION
11 OR HYDRATION IF HE OR SHE IS DIAGNOSED AS BEING IN A PERSISTENT
12 VEGETATIVE STATE.

13 (C) THE PATIENT HAS EXPRESSED IN A CLEAR AND CONVINCING MANNER
14 THAT IF DIAGNOSED AS BEING IN A PERSISTENT VEGETATIVE STATE HE OR
15 SHE WOULD CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF NUTRITION OR
16 HYDRATION THAT WOULD ALLOW HIM OR HER TO DIE.

17 SEC. 5679. A LIFE INSURER, A HEALTH INSURER, OR A HEALTH CARE
18 PAYMENT OR BENEFITS PLAN SHALL NOT DO ANY OF THE FOLLOWING BECAUSE
19 A PATIENT IS DIAGNOSED AS BEING IN A PERSISTENT VEGETATIVE STATE
20 AND THE PATIENT, THE PATIENT'S PATIENT SURROGATE, OR THE PATIENT
21 ADVOCATE HAS AUTHORIZED THE WITHHOLDING OR WITHDRAWAL OF NUTRITION
22 OR HYDRATION:

23 (A) REFUSE TO PROVIDE OR CONTINUE COVERAGE OR BENEFITS TO THE
24 PATIENT WITHIN THE SCOPE AND LEVEL OF COVERAGE OR BENEFITS OF AN
25 EXISTING POLICY, CERTIFICATE, OR CONTRACT.

26 (B) LIMIT THE AMOUNT OF COVERAGE OR BENEFITS AVAILABLE TO THE
27 PATIENT WITHIN THE SCOPE AND LEVEL OF COVERAGE OR BENEFITS OF AN

1 EXISTING POLICY, CERTIFICATE, OR CONTRACT.

2 (C) CHARGE THE PATIENT A DIFFERENT RATE FOR COVERAGE OR
3 BENEFITS UNDER AN EXISTING POLICY, CERTIFICATE, OR CONTRACT.

4 (D) CONSIDER THE TERMS OF AN EXISTING POLICY, CERTIFICATE, OR
5 CONTRACT TO HAVE BEEN BREACHED OR MODIFIED.

6 (E) INVOKE A SUICIDE OR INTENTIONAL DEATH EXEMPTION OR
7 EXCLUSION IN A POLICY, CERTIFICATE, OR CONTRACT COVERING THE
8 PATIENT.

9 SEC. 5681. THIS PART DOES NOT DO THE FOLLOWING:

10 (A) IMPAIR OR SUPERSEDE A LEGAL RIGHT A PARENT, PATIENT,
11 PATIENT ADVOCATE, LEGAL GUARDIAN, OR OTHER INDIVIDUAL MAY HAVE TO
12 AUTHORIZE OR DENY THE WITHHOLDING OR WITHDRAWING OF NUTRITION OR
13 HYDRATION ON BEHALF OF A PATIENT WHO IS DIAGNOSED AS BEING IN A
14 PERSISTENT VEGETATIVE STATE.

15 (B) CREATE A PRESUMPTION ABOUT THE DESIRE OF A PATIENT WHO IS
16 DIAGNOSED AS BEING IN A PERSISTENT VEGETATIVE STATE TO WITHHOLD OR
17 WITHDRAW NUTRITION OR HYDRATION.

18 (C) LIMIT THE ABILITY OF A COURT MAKING A DETERMINATION ABOUT
19 A DECISION OF A PATIENT WHO IS DIAGNOSED AS BEING IN A PERSISTENT
20 VEGETATIVE STATE TO TAKE INTO CONSIDERATION ALL OF THE FOLLOWING
21 STATE INTERESTS:

22 (i) THE PRESERVATION OF LIFE.

23 (ii) THE PREVENTION OF SUICIDE.

24 (iii) THE PROTECTION OF INNOCENT THIRD PARTIES.

25 (iv) THE PRESERVATION OF THE INTEGRITY OF THE MEDICAL
26 PROFESSION.

27 (D) CONDONE, AUTHORIZE, OR APPROVE SUICIDE, ASSISTED SUICIDE,

1 MERCY KILLING, OR EUTHANASIA.