

(H. B. 386)

**(No. 160)**

(Approved November 17, 2001)

**AN ACT**

To legally acknowledge the right of all persons of legal age in the full use of their mental faculties to state their will in advance with regard to medical treatment, requirements, personal property, and conditions, as well as the naming of an executor with a power of attorney, in the event that they suffer a terminal health condition or persistent vegetative state; and for other purposes.

**STATEMENT OF MOTIVES**

Article II, Section 1 of the Constitution of the Commonwealth of Puerto Rico establishes that the dignity of the human being is inviolable, as a governing principle of our constitutional framework. Therefore, in the Bill of Rights, the Commonwealth of Puerto Rico lists a series of fundamental rights, whose statement is the logical and inevitable result of such recognition. Outstanding among said recognized rights are the right to privacy and the right to the protection by the State against abusive attacks to the honor and dignity of the individual. Much has been said about the convergence of said constitutional mandate and the boundary of what is permissible in the treatment of the human body in this regard.

With the current medical technological developments, the capacity to maintain the vital signs of a permanently unconscious person active and delay the normal course of death through artificial means during phases, which would normally result in death, has been achieved. In such cases, the right of the patients to have their express will respected with regard to whether to be submitted or not to a certain medical treatment has been claimed. Thus, the right

to privacy in the modality of preventing invasive medical treatments is claimed. This is, in turn, a statement of the free rights of individuals, acknowledged and protected under claims of due process of law.

This Act addresses the claim of the right to privacy and recognizes the autonomy of the will of an individual to integrate to our body of laws a legal process whereby any adult of sound mind may state, in advance, his/her will that in the event of suffering a terminal health condition or a persistent vegetative state in the future, his/her body be submitted or not submitted to certain medical treatments. This would be in the event that his/her medical condition does not allow him/her to express him/herself at the time in which said medical treatment should or should not be administered according to his/her will. The person may likewise designate an executor so that in this case, and in the event of not having made any medical provision in his/her will, may make decisions according to the values and ideas of the declarant in question. If said designation is lacking, prelation among relatives shall take effect, as set forth in the measure. In the device of the mandate established in the Civil Code, the obligations produced therein cease with the person's disability. Through the adoption of said device herein, the obligations of the mandate take effect once the de facto disability occurs.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- This Act shall be known as the “Advanced Statement of Will Regarding Treatment in the Event of a Terminal Health Condition or Persistent Vegetative State Act.”

Section 2.- The following terms shall have the meaning set forth hereinbelow:

- a. Person of legal age – Any person that is twenty-one (21) years of age.

- b. Medical Treatment – Any type of medical treatment, procedure or intervention administered to a patient to sustain, restore or establish vital functions of a patient with the sole purpose of delaying the time of death artificially, when according to the best judgment of the physician, death is imminent regardless of whether such procedures are used. These procedures include cardio-pulmonary resuscitation, diagnostic tests, dialysis, medications, respirators, surgery and invasive diagnostic procedures, blood transfusions and blood-derived products, among others.
- c. Terminal Health Condition – An incurable, medically diagnosed terminal and irreversible illness or health condition, which according to the best judgment of the physician shall cause the death of the patient within a term of not more than six (6) months.
- d. Persistent Vegetative State – Any health condition that prevents the patient to express his/her will due to a state of unconsciousness in which there is no cortical or cognizant brain function and for which no real possibility of recovery exists, according to established medical guidelines.
- e. Physician – Medical physician licensed and admitted to the practice of medicine in the Commonwealth Puerto Rico, who has the primary responsibility for the medical care of the patient-declarant.
- f. Health Care Institution – Any natural or juridical person, licensed, certified or otherwise authorized by the laws of the Commonwealth of Puerto Rico to provide health services in their ordinary course of business or the practice of their profession.
- g. Declarant – Any person who has issued a statement of their will, as provided in Section 3 of this Act.

- h. Witness – Any person who can appear as a competent witness, as provided in Act No. 75 of July 2, 1987, as amended, known as the “Puerto Rico Notarial Act.”

Section 3.- Any person of legal age and of sound mind may state, in advance and at any time, his/her will to be submitted or not to a specific medical treatment in the event of suffering a terminal health condition or a persistent vegetative state that would prevent him/her from expressing at the time said medical treatments should be administered or not, according to the person’s express will. Such a statement may include the designation of an executor to make the decision regarding the acceptance or rejection of treatment in the event that the declarant is unable to communicate. If the declarant does not designate an executor, the closest, eldest relative of legal age, according to the order of succession established in the Civil Code of Puerto Rico, as amended, with the spouse of the declarant being first in rank, shall be deemed the executor. However, no declarant shall prohibit that such available medical resources be administered in such a situation to relieve pain or to hydrate and feed him/her, unless death is imminent and/or the body can no longer absorb the nutrients and hydration that is administered.

Section 4.- The statement of will authorized herein shall meet the following requirements:

- a. It shall contain the express will of the declarant ordering the physician or health service institution that keeps him/her under its care and attend to his/her bodily needs while the declarant is suffering a terminal health condition or a persistent vegetative state, to abstain from submitting him/her to any or a specific medical treatment that can only artificially prolong the imminent process of death. Likewise, it may state any other order pertaining to his/her

medical care, whose viability shall be professionally evaluated by the physicians in charge of his/her treatment.

- b. It shall be in writing, signed and sworn before a notary public by means of a document or testimony, or before a person authorized to authenticate signatures in the Commonwealth of Puerto Rico, who shall state therein the fact of having determined with the declarant the voluntary nature of said statement. Likewise, the declarant may make said statements in the presence of a physician and two (2) other competent witnesses who are not heirs of the declarant, and who do not participate in the direct care of the patient.
- c. The considered opinion of the authenticator and the witnesses shall be stated in the document that certifies said will, as well as the date, time and place of the execution of the statement.

Section 5.- It shall be the duty of the declarant to notify the physician and the health services institution of the existence of his/her statement and deliver a copy thereof to each. If the declarant falls into a persistent vegetative state or is incapable of communicating on his/her own, one (1) of the witnesses referred to in subsection (b) of Section 4 of this Act, or an executor designated by the declarant shall notify the physician. Once notified, the physician shall immediately include a copy of said statement in the medical record of the declarant.

Section 6.- The statement of will prepared pursuant to Section 3 of this Act shall be executable once the declarant is diagnosed with a terminal health condition or falls into a persistent vegetative state.

Section 7.- The statement of will recognized in Section 3 of this Act may be revoked in its totality at any time by the declarant through a written or verbal statement for said purpose. When the revocation is made in writing, it shall

contain the date of issue, the express will to revoke the provisions set forth in the statement of will, and the signature of the declarant. The physician shall attach said revocation to the medical record and shall make it a part thereof. The physician shall likewise notify the health care institution in which the declarant is admitted, if any.

Section 8.- The modification of the statement of will recognized in Section 3 of this Act shall only be done through the same means and with the same requirements established in Section 4 of this Act for the modified statement of will to be valid.

Section 9.- In the event that the declarant is a pregnant woman and as such suffers a terminal health condition, the statement of will authorized in Section 3 of this Act shall remain ineffective until the pregnancy has ended.

Section 10.- The physician and the health services institution that admits the patient shall faithfully comply with the stated will of the declarant, pursuant to the provisions of this Act. A violation of the provisions of this Act by the physicians or health service institutions responsible for the care of the declarant shall entail the corresponding obligation to compensate the parties thus affected for damages. No physician, health service institution or other person acting under the orders of a physician shall be subject to civil or criminal liability for enforcing the provisions of this Act.

Section 11.- The exercise of the rights recognized in this Act shall not in any manner affect the quality of basic health care, including but not limited to, hygiene, comfort and safety that shall be provided to ensure respect of human dignity and the quality of life until the moment of death.

Section 12.- The exercise of the rights recognized in this Act shall not, in any manner, affect the procedures for the request, sale or adjudication of any life insurance or health insurance policy. No life insurance policy shall be cancelled,

annulled or adversely affected in any manner that is prejudicial to the insured due to the granting or execution of the statement of will authorized in Section 3 of this Act, made by an insured declarant, regardless of any policy term to the contrary.

Section 13.- This Act does not authorize the practice of euthanasia or mercy killing.

Section 14.- The provisions of the Civil Code of Puerto Rico on mandates shall constitute suppletory rights to the provisions of this Act.

Section 15.- In the event a court declares any provision of this Act as null, invalid or unconstitutional, said determination shall not affect the remaining provisions thereof.

Section 16.- Immediately after its approval, the Department of State and the Office for the Affairs of the Elderly shall carry out a disclosure and orientation campaign for the citizenry on the provisions of this Act.

Section 17.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 160 (S.B. 386) of the 2<sup>nd</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to legally acknowledge the right of all persons of legal age in the full use of their mental faculties to state their will in advance with regard to medical treatment, requirements, personal property, and conditions, as well as the naming of an executor with a power of attorney, in the event that they suffer a terminal health condition or persistent vegetative state; and for other purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 25th of January of 2005.

Marialma Alfau Alemán  
Acting Director

