CHAPTER 77

Death With Dignity Act

**SECTION 44‑77‑10.** Short title.

 This chapter may be cited as the Death With Dignity Act.

HISTORY: 1986 Act No. 341, Section 1; 1988 Act No. 586.

**SECTION 44‑77‑20.** Definitions.

 As used in this chapter:

 (1) “Declarant” means a person who has signed a declaration in accordance with Sections 44‑77‑40 and 44‑77‑50, in accordance with earlier, current, or future versions of this chapter, or in accordance with the law of another state if the declaration provided for by the law expresses an intent that is substantially the same as the intent of the declaration provided in Section 44‑77‑40.

 (2) “Life‑sustaining procedures” means any medical procedures or intervention which would serve only to prolong the dying process and where, in the judgment of the attending physician, death will occur whether or not the procedures are utilized. Life‑sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The declarant shall indicate in the declaration whether the provision of nutrition and hydration through medically or surgically implanted tubes is to be treated as a life‑sustaining procedure. Pursuant to a lawfully executed declaration if the declarant fails to give instructions by initialing the appropriate statements concerning nutrition and hydration, nutrition and hydration necessary for comfort care or alleviation of pain will be provided.

 (3) “Physician” means a person licensed to practice medicine.

 (4) “Terminal condition” means an incurable or irreversible condition that, within reasonable medical judgment, could cause death within a reasonably short period of time if life‑sustaining procedures are not used.

 (5) “Active treatment” means the standard of reasonable professional care that would be rendered by a physician to a patient in the absence of a declaration including, but not limited to, hospitalization and medication.

 (6) “Person” means an individual, partnership, committee, association, corporation, hospital, or other organization or group.

 (7) “Permanent unconsciousness” means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.

HISTORY: 1986 Act No. 341, Section 2; 1988 Act No. 586; 1991 Act No. 149, Section 2.

**SECTION 44‑77‑30.** When life‑sustaining procedures may be withheld.

 If a person eighteen years of age or older adopts a declaration that is substantially in the form provided in Section 44‑77‑50, whether executed before or after an amendment is made to the form, and that on its face is duly executed, witnessed, and authenticated as provided in Section 44‑77‑40 or on its face is in compliance with the law of the state of the declarant’s domicile at the time that the declaration is adopted, if the declaration provided for by the law expresses an intent that is substantially the same as the intent of the declaration provided in Section 44‑77‑40, and the person’s present condition is certified to be terminal or to be in a state of permanent unconsciousness by two physicians who personally have examined the declarant, one of whom is the declarant’s attending physician, and the other of whom is a physician other than the attending physician, then life‑sustaining procedures may be withheld or withdrawn upon the direction and under the supervision of the attending physician. A certification based upon a diagnosis of permanent unconsciousness may not be made until the declarant has remained unconscious for at least ninety consecutive days, or at any time if the declarant has experienced massive destruction or atrophy of the cortex as evidenced by neurodiagnostic studies or gross inspection of the brain, or some other characteristic of the declarant’s condition allows a diagnosis of permanent unconsciousness to be made with a high degree of medical certainty.

 All patients with life‑threatening conditions that are diagnosed as terminal or in a state of permanent unconsciousness must be administered active treatment for at least six hours following the diagnosis before the physician may give effect to a declaration.

HISTORY: 1986 Act No. 341, Section 3; 1988 Act No. 586; 1991 Act No. 149, Section 3.

**SECTION 44‑77‑40.** Validity of declaration.

 A declaration is valid:

 (1) which expresses substantially in the form set forth in Section 44‑77‑50 a desire of the declarant that no life‑sustaining procedures be used to prolong dying if his condition is terminal or if he is permanently unconscious and states that the declarant is aware that the declaration authorizes a physician to withhold or withdraw life‑sustaining procedures;

 (2) which has been dated and signed by the declarant in the presence of an officer authorized to administer oaths under the laws of the state where the signing occurs and in the presence of two witnesses, one of whom may be the officer authorized to administer oaths, who state in an affidavit as set forth in Section 44‑77‑50 that, to the extent they have knowledge of their status, they are not related to the declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the declarant, or spouse of any of them, not directly financially responsible for the person’s medical care, not entitled to a portion of the estate of the declarant upon his decease under a will of the declarant then existing or as an heir by intestate succession, and not a beneficiary of a life insurance policy of the declarant, and who state that no more than one witness is an employee of a health facility in which the declarant is a patient and that no witness to the declaration is the attending physician or an employee of the attending physician or a person who has a claim against a portion of the estate of the declarant upon his decease at the time of the execution of the declaration;

 (3) which, if the declarant is a patient in a hospital or a resident in a nursing care facility at the time the declaration is executed, has been witnessed by an ombudsman as designated by the State Ombudsman, Office of the Governor, with the ombudsman acting as one of the two witnesses and having the same qualifications as a witness as provided in this section. The intent of this item is to recognize that some residents in nursing care facilities may be so insulated from a voluntary decision‑making role, by virtue of the custodial nature of their care, as to require special assurance that they are capable of wilfully and voluntarily executing a declaration; and

 (4) which accompanying affidavit has been subscribed by the two witnesses and sworn to by at least one of the two witnesses in the presence of the declarant, and of each other, and of an officer authorized to administer oaths under the laws of the state where the signing occurs. A witness to a declaration who is also an officer authorized to administer oaths under the laws of this State may notarize the signature of the other witness of the declaration in the manner provided by Section 44‑77‑50.

HISTORY: 1986 Act No. 341, Section 4; 1988 Act No. 586; 1991 Act No. 149, Section 4.

**SECTION 44‑77‑50.** Form of declaration.

 The declaration must be substantially in the following form with the procedure and requirements for revocation of the declaration appearing either in boldface print or in all upper case letters, the characters in either case being of at least the same size as used in the rest of the declaration:

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|   | STATE OF SOUTH CAROLINA | DECLARATION |
|   | COUNTY OF \_\_\_\_\_\_\_\_ | OF A DESIRE FOR A |
|   |   | NATURAL DEATH |

 I, \_\_\_\_\_\_\_\_\_\_, Declarant, being at least eighteen years of age and a resident of and domiciled in the City of \_\_\_\_\_\_\_\_\_\_, County of \_\_\_\_\_\_\_\_\_\_, State of South Carolina, make this Declaration this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_\_\_.

 I wilfully and voluntarily make known my desire that no life‑sustaining procedures be used to prolong my dying if my condition is terminal or if I am in a state of permanent unconsciousness, and I declare:

 If at any time I have a condition certified to be a terminal condition by two physicians who have personally examined me, one of whom is my attending physician, and the physicians have determined that my death could occur within a reasonably short period of time without the use of life‑sustaining procedures or if the physicians certify that I am in a state of permanent unconsciousness and where the application of life‑sustaining procedures would serve only to prolong the dying process, I direct that the procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure necessary to provide me with comfort care.

INSTRUCTIONS CONCERNING ARTIFICIAL NUTRITION AND HYDRATION

INITIAL ONE OF THE FOLLOWING STATEMENTS

 If my condition is terminal and could result in death within a reasonably short time,

 \_\_\_\_\_\_\_\_\_\_ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

 \_\_\_\_\_\_\_\_\_\_ I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

INITIAL ONE OF THE FOLLOWING STATEMENTS

 If I am in a persistent vegetative state or other condition of permanent unconsciousness,

 \_\_\_\_\_\_\_\_\_\_ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

 \_\_\_\_\_\_\_\_\_\_ I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

 In the absence of my ability to give directions regarding the use of life‑sustaining procedures, it is my intention that this Declaration be honored by my family and physicians and any health facility in which I may be a patient as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences from the refusal.

 I am aware that this Declaration authorizes a physician to withhold or withdraw life‑sustaining procedures. I am emotionally and mentally competent to make this Declaration.

APPOINTMENT OF AN AGENT (OPTIONAL)

 1. You may give another person authority to revoke this declaration on your behalf. If you wish to do so, please enter that person’s name in the space below.

 Name of Agent with Power to Revoke:\_

 Address:\_

 Telephone Number:\_

 2. You may give another person authority to enforce this declaration on your behalf. If you wish to do so, please enter that person’s name in the space below.

 Name of Agent with Power to Enforce:\_

 Address:\_

 Telephone Number:\_

REVOCATION PROCEDURES

 THIS DECLARATION MAY BE REVOKED BY ANY ONE OF THE FOLLOWING METHODS. HOWEVER, A REVOCATION IS NOT EFFECTIVE UNTIL IT IS COMMUNICATED TO THE ATTENDING PHYSICIAN.

 (1) BY BEING DEFACED, TORN, OBLITERATED, OR OTHERWISE DESTROYED, IN EXPRESSION OF YOUR INTENT TO REVOKE, BY YOU OR BY SOME PERSON IN YOUR PRESENCE AND BY YOUR DIRECTION. REVOCATION BY DESTRUCTION OF ONE OR MORE OF MULTIPLE ORIGINAL DECLARATIONS REVOKES ALL OF THE ORIGINAL DECLARATIONS;

 (2) BY A WRITTEN REVOCATION SIGNED AND DATED BY YOU EXPRESSING YOUR INTENT TO REVOKE;

 (3) BY YOUR ORAL EXPRESSION OF YOUR INTENT TO REVOKE THE DECLARATION. AN ORAL REVOCATION COMMUNICATED TO THE ATTENDING PHYSICIAN BY A PERSON OTHER THAN YOU IS EFFECTIVE ONLY IF:

 (a) THE PERSON WAS PRESENT WHEN THE ORAL REVOCATION WAS MADE;

 (b) THE REVOCATION WAS COMMUNICATED TO THE PHYSICIAN WITHIN A REASONABLE TIME;

 (c) YOUR PHYSICAL OR MENTAL CONDITION MAKES IT IMPOSSIBLE FOR THE PHYSICIAN TO CONFIRM THROUGH SUBSEQUENT CONVERSATION WITH YOU THAT THE REVOCATION HAS OCCURRED.

 TO BE EFFECTIVE AS A REVOCATION, THE ORAL EXPRESSION CLEARLY MUST INDICATE YOUR DESIRE THAT THE DECLARATION NOT BE GIVEN EFFECT OR THAT LIFE‑SUSTAINING PROCEDURES BE ADMINISTERED;

 (4) IF YOU, IN THE SPACE ABOVE, HAVE AUTHORIZED AN AGENT TO REVOKE THE DECLARATION, THE AGENT MAY REVOKE ORALLY OR BY A WRITTEN, SIGNED, AND DATED INSTRUMENT. AN AGENT MAY REVOKE ONLY IF YOU ARE INCOMPETENT TO DO SO. AN AGENT MAY REVOKE THE DECLARATION PERMANENTLY OR TEMPORARILY.

 (5) BY YOUR EXECUTING ANOTHER DECLARATION AT A LATER TIME.

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|   |   |   |
|   | Signature of Declarant |   |

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|  |  |  |
|   | STATE OF \_\_\_\_\_\_\_\_ | AFFIDAVIT |
|   | COUNTY OF \_\_\_\_\_\_\_\_ |   |

 We, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_, the undersigned witnesses to the foregoing Declaration, dated the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_\_\_, at least one of us being first duly sworn, declare to the undersigned authority, on the basis of our best information and belief, that the Declaration was on that date signed by the declarant as and for his DECLARATION OF A DESIRE FOR A NATURAL DEATH in our presence and we, at his request and in his presence, and in the presence of each other, subscribe our names as witnesses on that date. The declarant is personally known to us, and we believe him to be of sound mind. Each of us affirms that he is qualified as a witness to this Declaration under the provisions of the South Carolina Death With Dignity Act in that he is not related to the declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the declarant, or spouse of any of them; nor directly financially responsible for the declarant’s medical care; nor entitled to any portion of the declarant’s estate upon his decease, whether under any will or as an heir by intestate succession; nor the beneficiary of a life insurance policy of the declarant; nor the declarant’s attending physician; nor an employee of the attending physician; nor a person who has a claim against the declarant’s decedent’s estate as of this time. No more than one of us is an employee of a health facility in which the declarant is a patient. If the declarant is a resident in a hospital or nursing care facility at the date of execution of this Declaration, at least one of us is an ombudsman designated by the State Ombudsman, Office of the Governor.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness

 Subscribed before me by \_\_\_\_\_\_\_\_\_\_, the declarant, and subscribed and sworn to before me by \_\_\_\_\_\_\_\_\_\_, the witnesses, this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_\_\_.

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|   |   |
|   | Signature |

Notary Public for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_

SEAL

HISTORY: 1986 Act No. 341, Section 5; 1988 Act No. 586; 1991 Act No. 149, Section 5.

**SECTION 44‑77‑65.** Supplementation of declaration under prior or foreign law with artificial nutrition and hydration instructions.

 A declarant whose declaration is executed in accordance with earlier versions of this chapter or in accordance with the law of another state may supplement that declaration by executing a document containing the provisions for “Instructions Concerning Artificial Nutrition and Hydration” as provided for in Section 44‑77‑50 which must be signed by the declarant and witnessed in accordance with this chapter.

HISTORY: 1991 Act No. 149, Section 9.

**SECTION 44‑77‑70.** Ineffectiveness of declaration during course of declarant’s pregnancy.

 If a declarant has been diagnosed as pregnant, the Declaration is not effective during the course of the declarant’s pregnancy.

HISTORY: 1986 Act No. 341, Section 5B; 1988 Act No. 586.

**SECTION 44‑77‑80.** Revocation of declaration.

 The Declaration may be revoked:

 (1) by being defaced, torn, obliterated, or otherwise destroyed in expression of the declarant’s intent to revoke by the declarant or by some person in the presence of and by the direction of the declarant. Revocation by destruction of one or more of multiple original declarations revokes all of the original declarations. The revocation of the original declarations actually not destroyed becomes effective only upon communication to the attending physician. The attending physician shall record in the declarant’s medical record the time and date when the physician received notification of the revocation;

 (2) by a written revocation signed and dated by the declarant expressing his intent to revoke. The revocation becomes effective only upon communication to the attending physician. The attending physician shall record in the declarant’s medical record the time and date when the physician received notification of the written revocation;

 (3) by an oral expression by the declarant of his intent to revoke the Declaration. The revocation becomes effective only upon communication to the attending physician by the declarant. However, an oral revocation made by the declarant becomes effective upon communication to the attending physician by a person other than the declarant if:

 (a) the person was present when the oral revocation was made;

 (b) the revocation was communicated to the physician within a reasonable time;

 (c) the physical or mental condition of the declarant makes it impossible for the physician to confirm through subsequent conversation with the declarant that the revocation has occurred. The attending physician shall record in the declarant’s medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the physician received notification of the revocation. To be effective as a revocation, the oral expression clearly must indicate the declarant’s desire that the declaration not be given effect or that life‑sustaining procedures be administered;

 (4) by a written, signed, and dated revocation or by an oral revocation by the declarant’s designee, the designee’s name and address being supplied in the declaration, expressing the designee’s intent to permanently or temporarily revoke the declaration. The revocation becomes effective only upon communication to the attending physician by the designee. The attending physician shall record in the declarant’s medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the physician received notification of the revocation. A designee may revoke only if the declarant is incompetent to do so.

 (5) by the declarant’s execution of a subsequent declaration.

HISTORY: 1986 Act No. 341, Section 6; 1988 Act No. 586; 1991 Act No. 149, Section 6.

**SECTION 44‑77‑85.** Agent may be appointed to effectuate declaration.

 The declarant may indicate in the declaration whether he wants to appoint an agent to act on his behalf in assuring that the declaration is given effect by petitioning the court of common pleas for an order directing providers to withhold or withdraw treatment as provided in the declaration. The authority of a person designated pursuant to this section is not affected by the subsequent appointment of a guardian or by the declarant’s execution of a durable power of attorney before or after execution of the declaration. If the agent is not reasonably available, or is unable or unwilling to ensure that the declaration be given effect, an interested person may petition the court of common pleas for an order directing providers to withhold or withdraw treatment as provided in the declaration. Nothing in this section alters the self‑executing nature of a declaration or requires that a court order be obtained or other affirmative action be taken to make the declaration valid or to bring about its implementation. This section does not apply to a declaration that has been revoked as provided in Section 44‑77‑80.

HISTORY: 1991 Act No. 149, Section 1.

**SECTION 44‑77‑90.** Reliance on declaration; presumption of good faith; immunity from liability.

 After certification of a terminal condition or a state of permanent unconsciousness, any person who relies on a declaration which on its face appears to have been executed in accordance with the provisions of this chapter, of which he has no actual notice of revocation, and who withholds or withdraws or participates in the withholding or withdrawal of life‑sustaining procedures from the terminally ill or permanently unconscious patient who executed the declaration, is presumed to be acting in good faith. A physician who in good faith certifies that a patient’s condition is terminal or that the patient is permanently unconscious is not subject to liability merely on account of certification. Any person who in good faith and in accordance with the provisions of this chapter participates in the withholding or withdrawal of life‑sustaining procedures from the patient is not subject to criminal or civil liability on account of the withholding or withdrawal. The immunity from civil liability does not extend to cases in which a physician deviates from standards of reasonable medical care in connection with the decision to withhold or withdraw.

HISTORY: 1986 Act No. 341, Section 7; 1988 Act No. 586; 1991 Act No. 149, Section 7.

**SECTION 44‑77‑100.** Substitution of willing physician or health care worker for one unwilling to effectuate declaration.

 A physician or health care facility electing for any reason not to participate in the withholding or withdrawal of life‑sustaining procedures in accordance with a declaration executed under this chapter shall make a reasonable effort to locate a physician or health care facility that will effectuate the declaration and has a duty to transfer the patient to that physician or facility. A failure by a physician to effectuate the declaration of a terminal patient constitutes unprofessional conduct if the physician fails or refuses to make reasonable efforts to effect the transfer of the patient to another physician who will effectuate the declaration. If a nurse or other employee of a health care facility informs the physician or health care facility that the employee does not wish to participate in the withholding or withdrawal of life‑sustaining procedures from a declarant, the physician or health care facility shall make a reasonable effort to effectuate the declaration without the participation of the employee.

HISTORY: 1986 Act No. 341, Section 8; 1988 Act No. 586; 1991 Act No. 149, Section 10.

**SECTION 44‑77‑110.** Execution and consummation of declaration as not constituting suicide.

 The execution and consummation of declarations made in accordance with Sections 44‑77‑40 and 44‑77‑50 do not constitute suicide for any purpose.

HISTORY: 1986 Act No. 341, Section 9; 1988 Act No. 586.

**SECTION 44‑77‑120.** Declaration as a condition for insurance, receipt of medical treatment, or admission to hospital or nursing home.

 No person may be required to sign a declaration in accordance with Sections 44‑77‑40 and 44‑77‑50 as a condition for becoming insured under any insurance contract or for receiving any medical treatment or as a condition of being admitted to a hospital or nursing home facility.

HISTORY: 1986 Act No. 341, Section 10; 1988 Act No. 586.

**SECTION 44‑77‑130.** Chapter not to be construed to authorize or approve mercy killing.

 Nothing in this chapter may be construed to authorize or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

HISTORY: 1986 Act No. 341, Section 11; 1988 Act No. 586.

**SECTION 44‑77‑140.** No presumption as to intent to arise from absence of declaration; other legal rights not impaired.

 The absence of a declaration by an adult patient does not give rise to a presumption as to his intent to consent to or refuse life‑sustaining procedures. This chapter applies only to persons who have executed a declaration in accordance with this chapter. Nothing in this chapter impairs any other legal right or legal responsibility which a person may have to effect the withholding or withdrawal or the provision of life‑sustaining procedures in any lawful manner.

HISTORY: 1986 Act No. 341, Section 12; 1988 Act No. 586; 1991 Act No. 149, Section 11; 1997 Act No. 23, Section 1.

**SECTION 44‑77‑160.** Penalties.

 (A) If any person coerces or fraudulently induces another person to execute a declaration under this chapter, falsifies or forges a declaration, or wilfully conceals, cancels, obliterates, or destroys a revocation of a declaration, and the declarant dies as a result of the withdrawal of treatment or nontreatment in reliance on the declaration, that person is subject to prosecution in accordance with the criminal laws of this State.

 (B) Nothing in this chapter prohibits any person from informing another person of the existence of this chapter, delivering to another person a copy of this chapter or a form of declaration, or counseling another person in good faith concerning the execution of a declaration.

 (C) If any person wilfully conceals, cancels, defaces, obliterates, or damages the declaration of another without the declarant’s consent or falsifies or forges a revocation of the declaration of another, that person breaches a duty owed to the declarant and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.

HISTORY: 1986 Act No. 341, Section 14; 1988 Act No. 586.