

CHAPTER 224
SB 170 – FINAL VERSION

03/21/13 0852s
8May2013... 1303h
6/12/13 2083EBA
6/12/13 2180EBA

2013 SESSION

13-0865
01/09

SENATE BILL ***170***

AN ACT relative to advance directives pertaining to life-sustaining treatment.

SPONSORS: Sen. Gilmour, Dist 12; Sen. Lasky, Dist 13; Rep. Harding, Graf 13; Rep. Weber, Ches 1; Rep. Watrous, Merr 16

COMMITTEE: Health, Education and Human Services

ANALYSIS

This bill clarifies the definition of life-sustaining treatment to include medically administered nutrition and hydration for purposes of an advance directive.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to advance directives pertaining to life-sustaining treatment.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 224:1 Advance Directives; Definition. Amend RSA 137-J:2, XIII to read as follows:

2 XIII. “Life-sustaining treatment” means any medical procedures or interventions which utilize
3 mechanical or other medically administered means to sustain, restore, or supplant a vital function
4 which, in the written judgment of the attending physician or APRN, would serve only to artificially
5 postpone the moment of death, and where the person is near death or is permanently unconscious.
6 “Life-sustaining treatment” includes, but is not limited to, the following: ***medically administered***
7 ***nutrition and hydration***, mechanical respiration, kidney dialysis, or the use of other external
8 mechanical or technological devices. Life sustaining treatment may include drugs to maintain blood
9 pressure, blood transfusions, and antibiotics. “Life-sustaining treatment” shall not include the
10 administration of medication, natural ingestion of food or fluids by eating and drinking, or the
11 performance of any medical procedure deemed necessary to provide comfort or to alleviate pain.

12 224:2 Durable Power of Attorney and Living Will; Form. Amend RSA 137-J:20 to read as
13 follows:

14 137-J:20 Advance Directive; Durable Power of Attorney and Living Will; Form. An advance
15 directive in its individual “Durable Power of Attorney for Health Care”; and “Living Will”;
16 components shall be in substantially the following form:

NEW HAMPSHIRE ADVANCE DIRECTIVE

NOTE: This form has two sections.

You may complete both sections, or only one section.

I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

21 I, _____, hereby appoint _____ of _____ (Please choose only one person. If you
22 choose more than one agent, they will have authority in priority of the order their names are listed,
23 unless you indicate another form of decision making.) as my agent to make any and all health care
24 decisions for me, except to the extent I state otherwise in this directive or as prohibited by law. This
25 durable power of attorney for health care shall take effect in the event I lack the capacity to make my
26 own health care decisions.

27 In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as

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1 my health care agent, I hereby appoint _____ of _____ as alternate agent. (Please choose
2 only one person. If you choose more than one alternate agent, they will have authority in priority of
3 the order their names are listed.)

4 **STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING**
5 **HEALTH CARE DECISIONS.**

6 For your convenience in expressing your wishes, some general statements concerning the
7 withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment
8 is defined as procedures without which a person would die, such as but not limited to the following:
9 mechanical respiration, kidney dialysis or the use of other external mechanical and technological
10 devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a
11 section which allows you to set forth specific directions for these or other matters. If you wish, you
12 may indicate your agreement or disagreement with any of the following statements and give your
13 agent power to act in those specific circumstances.

14 **A. LIFE-SUSTAINING TREATMENT.**

15 1. If I am near death and lack the capacity to make health care decisions, I authorize my agent
16 to direct that:

17 (Initial beside your choice of (a) or (b).)

18 ___(a) life-sustaining treatment not be started, or if started, be discontinued.

19 -or-

20 ___(b) life-sustaining treatment continue to be given to me.

21 2. Whether near death or not, if I become permanently unconscious **and life-sustaining**
22 **treatment has no reasonable hope of benefit**, I authorize my agent to direct that:

23 (Initial beside your choice of (a) or (b).)

24 ___a) life-sustaining treatment not be started, or if started, be discontinued.

25 -or-

26 ___(b) life-sustaining treatment continue to be given to me.

27 **B. ~~MEDICALLY ADMINISTERED NUTRITION AND HYDRATION.~~**

28 ~~1. I realize that situations could arise in which the only way to allow me to die would be to not~~
29 ~~start or to discontinue medically administered nutrition and hydration. In carrying out any~~
30 ~~instructions I have given in this document, I authorize my agent to direct that:~~

31 ~~(Initial beside your choice of (a) or (b).)~~

32 ~~___(a) medically administered nutrition and hydration not be started or, if started, be~~
33 ~~discontinued.~~

34 ~~-or-~~

35 ~~___(b) even if all other forms of life-sustaining treatment have been withdrawn, medically~~
36 ~~administered nutrition and hydration continue to be given to me.~~

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1 death or in a permanently unconscious condition by 2 physicians or a physician and an APRN, and 2
2 physicians or a physician and an APRN have determined that my death is imminent whether or not
3 life-sustaining treatment is utilized and where the application of life-sustaining treatment would
4 serve only to artificially prolong the dying process, or that I will remain in a permanently
5 unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be
6 permitted to die naturally with only the administration of medication, the natural ingestion of food
7 or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to
8 provide me with comfort care. I realize that situations could arise in which the only way to allow me
9 to die would be to discontinue medically administered nutrition and hydration.

10 ***(Initial below if it is your choice)***

11 In carrying out any instruction I have given under this section, I authorize that[:

12 ~~(Initial beside your choice of (a) or (b).)~~

13 ~~___(a) medically administered nutrition and hydration not be started or, if started, be~~
14 ~~discontinued,~~

15 ~~-or-~~

16 ~~___(b)]~~ even if all other forms of life-sustaining treatment have been withdrawn, medically
17 administered nutrition and hydration continue to be given to me. _____

18 In the absence of my ability to give directions regarding the use of such life-sustaining treatment,
19 it is my intention that this declaration shall be honored by my family and health care providers as
20 the final expression of my right to refuse medical or surgical treatment and accept the consequences
21 of such refusal.

22 I understand the full import of this declaration, and I am emotionally and mentally competent to
23 make this declaration.

24 Signed this ___ day of _____, 2___.

25 Principal's Signature: _____

26 [If you are physically unable to sign, this directive may be signed by someone else writing your
27 name, in your presence and at your express direction.]

28 THIS LIVING WILL DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A NOTARY
29 PUBLIC OR A JUSTICE OF THE PEACE.

30 We declare that the principal appears to be of sound mind and free from duress at the time the
31 living will is signed and that the principal affirms that he or she is aware of the nature of the
32 directive and is signing it freely and voluntarily.

33 Witness: _____ Address: _____

34 Witness: _____ Address: _____

35 STATE OF NEW HAMPSHIRE

36 COUNTY OF _____

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1 The foregoing living will was acknowledged before me this ___ day of _____, 20___, by
2 _____ (the “Principal”). _____

3 Notary Public/Justice of the Peace

4 My commission expires:

5 224:3 Repeal. RSA 137-J:13, III, relative to medically administered nutrition and hydration, is
6 repealed.

7 224:4 Effective Date. This act shall take effect January 1, 2014.

8

9 Approved: July 12, 2013

10 Effective Date: January 1, 2014