

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

PART 56A

TERMINAL ILLNESS

333.5651 Short title of part.

Sec. 5651. This part shall be known and may be cited as the "Michigan dignified death act".

History: Add. 1996, Act 594, Eff. Mar. 31, 1997.

Popular name: Act 368

333.5652 Legislative findings; Michigan dignified death act.

Sec. 5652. (1) The legislature finds all of the following:

(a) That patients face a unique set of circumstances and decisions once they have been diagnosed as having a reduced life expectancy due to advanced illness.

(b) That published studies indicate that patients with reduced life expectancy due to advanced illnesses fear that in end-of-life situations they could receive unwanted aggressive medical treatment.

(c) That patients with reduced life expectancy due to advanced illnesses are often unaware of their legal rights, particularly with regard to controlling end-of-life decisions.

(d) That the free flow of information among health care providers, patients, and patients' families can give patients and their families a sense of control over their lives, ease the stress involved in coping with a reduced life expectancy due to advanced illness, and provide needed guidance to all involved in determining the appropriate variety and degree of medical intervention to be used.

(e) That health care providers should be encouraged to initiate discussions with their patients regarding advance medical directives during initial consultations, annual examinations, and hospitalizations, at diagnosis of a chronic illness, and when a patient transfers from 1 health care setting to another.

(2) In affirmation of the tradition in this state recognizing the integrity of patients and their desire for a humane and dignified death, the Michigan legislature enacts the "Michigan dignified death act". In doing so, the legislature recognizes that a well-considered body of common law exists detailing the relationship between health care providers and their patients. This act is not intended to abrogate any part of that common law. This act is intended to increase awareness of the right of a patient who has a reduced life expectancy due to advanced illness to make decisions to receive, continue, discontinue, or refuse medical treatment. It is hoped that by doing so, the legislature will encourage better communication between patients with reduced life expectancy due to advanced illnesses and health care providers to ensure that the patient's final days are meaningful and dignified.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 239, Imd. Eff. Jan. 8, 2002.

Popular name: Act 368

333.5653 Definitions.

Sec. 5653. (1) As used in this part:

(a) "Advanced illness", except as otherwise provided in this subdivision, means a medical or surgical condition with significant functional impairment that is not reversible by curative therapies and that is anticipated to progress toward death despite attempts at curative therapies or modulation, the time course of which may or may not be determinable through reasonable medical prognostication. For purposes of section 5655(b) only, "advanced illness" has the same general meaning as "terminal illness" has in the medical community.

(b) "Health facility" means a health facility or agency licensed under article 17.

(c) "Hospice" means that term as defined in section 20106.

(d) "Medical treatment" means a treatment including, but not limited to, palliative care treatment, or a procedure, medication, surgery, a diagnostic test, or a hospice plan of care that may be ordered, provided, or withheld or withdrawn by a health professional or a health facility under generally accepted standards of medical practice and that is not prohibited by law.

(e) "Patient" means an individual who is under the care of a physician.

(f) "Patient advocate" means that term as described and used in sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(g) "Patient surrogate" means the parent or legal guardian of a patient who is a minor or a member of the immediate family, the next of kin, or the legal guardian of a patient who has a condition other than minority that prevents the patient from giving consent to medical treatment.

(h) "Physician" means that term as defined in section 17001 or 17501.

(2) Article 1 contains general definitions and principles of construction applicable to all articles in this code.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2000, Act 58, Eff. Apr. 1, 2000;—Am. 2001, Act 239, Imd. Eff. Jan. 8, 2002;—Am. 2004, Act 551, Imd. Eff. Jan. 3, 2005.

Popular name: Act 368

333.5654 Recommended medical treatment for advanced illness; duty of physician to inform orally; limitation or modification of disclosed information.

Sec. 5654. (1) A physician who has diagnosed a patient as having a reduced life expectancy due to an advanced illness and is recommending medical treatment for the patient shall do all of the following:

(a) Orally inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate acting on behalf of the patient in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515, about the recommended medical treatment and about alternatives to the recommended medical treatment.

(b) Orally inform the patient, patient surrogate, or patient advocate about the advantages, disadvantages, and risks of the recommended medical treatment and of each alternative medical treatment described in subdivision (a) and about the procedures involved.

(2) A physician's duty to inform a patient, patient surrogate, or patient advocate under subsection (1) does not require the disclosure of information beyond that required by the applicable standard of practice.

(3) Subsection (1) does not limit or modify the information required to be disclosed under sections 5133(2) and 17013(1).

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2000, Act 58, Eff. Apr. 1, 2000;—Am. 2001, Act 239, Eff. Oct. 1, 2002;—Am. 2004, Act 551, Imd. Eff. Jan. 3, 2005.

Popular name: Act 368

333.5655 Recommended medical treatment for advanced illness; duty of physician to inform orally and in writing; requirements.

Sec. 5655. In addition to the requirements of section 5654, a physician who has diagnosed a patient as having a reduced life expectancy due to an advanced illness and is recommending medical treatment for the patient shall, both orally and in writing, inform the patient, the patient's patient surrogate, or, if the patient has designated a patient advocate and is unable to participate in medical treatment decisions, the patient advocate, of all of the following:

(a) If the patient has not designated a patient advocate, that the patient has the option of designating a patient advocate to make medical treatment decisions for the patient in the event the patient is not able to participate in his or her medical treatment decisions because of his or her medical condition.

(b) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, has the right to make an informed decision regarding receiving, continuing, discontinuing, and refusing medical treatment for the patient's reduced life expectancy due to advanced illness.

(c) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, may choose palliative care treatment including, but not limited to, hospice care and pain management.

(d) That the patient or the patient's surrogate or patient advocate acting on behalf of the patient may choose adequate and appropriate pain and symptom management as a basic and essential element of medical treatment.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 239, Eff. Oct. 1, 2002.

Compiler's note: Enacting section 3 of Act 239 of 2001 provides:

"Enacting section 3. The 2001 amendatory act that amended section 5655 of the public health code, 1978 PA 368, MCL 333.5655, shall not be construed as creating a new mandated benefit for any coverages issued under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, or any other health care payment or benefits plan."

Popular name: Act 368

333.5656 Updated standardized written summary; development; publication; contents; availability to physicians.

Sec. 5656. (1) By July 1, 2002, the department of community health shall develop and publish an updated standardized, written summary that contains all of the information required under section 5655.

(2) The department shall develop the updated standardized, written summary in consultation with

appropriate professional and other organizations. The department shall draft the summary in nontechnical terms that a patient, patient surrogate, or patient advocate can easily understand.

(3) The department shall make the updated standardized, written summary described in subsection (1) available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery created in article 15. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing each physician subject to this part of the requirements of this part and the availability of the updated standardized, written summary within 10 days after the updated standardized, written summary is published.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 237, Eff. Jan. 8, 2002.

Compiler's note: Enacting section 3 of Act 237 of 2001 provides:

"Enacting section 3. The 2001 amendatory act that amended section 5656 of the public health code, 1978 PA 368, MCL 333.5656, shall not be construed as creating a new mandated benefit for any coverages issued under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, or any other health care payment or benefits plan."

Popular name: Act 368

333.5657 Availability of form to patient, patient surrogate, or patient advocate; compliance with MCL 333.5656; placement of signed form in patient's medical record; signed form as bar to civil or administrative action.

Sec. 5657. (1) If a physician gives a copy of the standardized, written summary developed and published before July 1, 2002 or a copy of the updated standardized, written summary made available under section 5656 to a patient with reduced life expectancy due to advanced illness, to the patient's patient surrogate, or to the patient advocate, the physician is in full compliance with the requirements of section 5655.

(2) A physician may make available to a patient with reduced life expectancy due to advanced illness, to the patient's patient surrogate, or to the patient advocate a form indicating that the patient, patient surrogate, or patient advocate has been given a copy of the standardized, written summary developed and published under section 5656 before July 1, 2002 or a copy of the updated standardized, written summary developed and published under section 5656 on or after July 1, 2002 and received the oral information required under section 5654. If a physician makes such a form available to a patient, to the patient's patient surrogate, or to the patient advocate, the physician shall request that the patient, patient's patient surrogate, or patient advocate sign the form and shall place a copy of the signed form in the patient's medical record.

(3) A patient, a patient's patient surrogate, or a patient advocate who signs a form under subsection (2) is barred from subsequently bringing a civil or administrative action against the physician for providing the information orally and in writing under section 5655 based on failure to obtain informed consent.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 237, Eff. Oct. 1, 2002.

Popular name: Act 368

333.5658 Prescription of controlled substance; immunity from administrative and civil liability.

Sec. 5658. A physician who, as part of a medical treatment plan for a patient with reduced life expectancy due to advanced illness, prescribes for that patient a controlled substance that is included in schedules 2 to 5 under part 72 and that is a narcotic drug is immune from administrative and civil liability based on prescribing the controlled substance if the prescription is given in good faith and with the intention to treat a patient with reduced life expectancy due to advanced illness or alleviate the patient's pain, or both, and all of the following are met:

- (a) The prescription is for a legitimate legal and professionally recognized therapeutic purpose.
- (b) Prescribing the controlled substance is within the scope of practice of the physician.
- (c) The physician holds a valid license under article 7 to prescribe controlled substances.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 237, Eff. Jan. 8, 2002.

Popular name: Act 368

333.5659 Life insurer, health insurer, or health care payment or benefits plan; prohibited acts.

Sec. 5659. A life insurer, a health insurer, or a health care payment or benefits plan shall not do 1 or more of the following because a patient with reduced life expectancy due to advanced illness, the patient's patient surrogate, or the patient advocate has made a decision to refuse or discontinue a medical treatment as a result of information received as required under this part:

- (a) Refuse to provide or continue coverage or benefits to the patient within the scope and level of coverage

or benefits of an existing policy, certificate, or contract.

(b) Limit the amount of coverage or benefits available to the patient within the scope and level of coverage or benefits of an existing policy, certificate, or contract.

(c) Charge the patient a different rate for coverage or benefits under an existing policy, certificate, or contract.

(d) Consider the terms of an existing policy, certificate, or contract to have been breached or modified.

(e) Invoke a suicide or intentional death exemption or exclusion in a policy, certificate, or contract covering the patient.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 237, Eff. Jan. 8, 2002.

Popular name: Act 368

333.5660 Scope of part; limitation.

Sec. 5660. This part does not do the following:

(a) Impair or supersede a legal right a parent, patient, patient advocate, legal guardian, or other individual may have to consent to or refuse medical treatment on behalf of another.

(b) Create a presumption about the desire of a patient who has reduced life expectancy due to advanced illness to receive or refuse medical treatment, regardless of the ability of the patient to participate in medical treatment decisions.

(c) Limit the ability of a court making a determination about a decision of a patient who has reduced life expectancy due to advanced illness to take into consideration all of the following state interests:

(i) The preservation of life.

(ii) The prevention of suicide.

(iii) The protection of innocent third parties.

(iv) The preservation of the integrity of the medical profession.

(d) Condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997;—Am. 2001, Act 237, Eff. Jan. 8, 2002.

Popular name: Act 368

333.5661 Fraud resulting in death of patient; violation as felony; penalty.

Sec. 5661. (1) An individual shall not, by fraud, cause or attempt to cause a patient, patient surrogate, or patient advocate to make a medical treatment decision that results in the death of the patient with the intent to benefit financially from the outcome of the medical treatment decision. As used in this subsection, "fraud" means a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, that deceives and is intended to deceive another so that he or she acts upon it to his or her legal injury.

(2) An individual who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

History: Add. 1996, Act 594, Eff. Mar. 31, 1997.

Popular name: Act 368