



GOV. MSG. NO. 857

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 1379 HD2 SD2 CD1

On July 15, 2009, House Bill No. 1379, entitled "A Bill for an Act Relating to Physician Orders for Life Sustaining Treatment" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to create a means for individuals or their surrogates to provide evidence of their wishes regarding life sustaining treatment to health care providers through a standardized form.

I support measures that help individuals and their families make personal decisions about end of life care. The Physician Orders for Life Sustaining Treatment form created by this bill would give individuals an opportunity to be very specific about the course of medical attention they desire should they become gravely ill or incapacitated. In addition, this form has the potential to provide clear guidance to emergency care workers regarding what types of life sustaining treatment they should provide to a critically ill patient.

Whenever possible, decisions regarding end of life care should be made by individuals before they become ill or incapacitated. Making such decisions through an advance healthcare directive, living will, or another legal form provides friends and family members with clear guidance about the level of care one desires and can help alleviate some of the pain when a loved one is suffering.

While I can understand and support the intent of this legislation, I am concerned about provisions in the bill that allow a surrogate to make decisions on behalf of an incapacitated patient without the patient's knowledge or authorization. Specifically, the bill states that the Physician Orders for Life Sustaining Treatment form may be executed by a physician and a surrogate if the patient is incapacitated. I am concerned that this provision could lead to an abuse by a surrogate. In addition, it is unclear why the authors of the bill feel that a surrogate should be

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afforded the power to make life sustaining treatment decisions without authorization or appointment by the patient.

We must be cautious when legislating in areas that deal with such complex ethical questions. While it makes sense to give individuals the opportunity to make decisions about life sustaining treatments, it is questionable why government should give that same authority to surrogates who may not represent the patient's wishes.

For the foregoing reasons, I allowed House Bill No. 1379 to become law as Act 186, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE



1 "Physician orders for life-sustaining treatment form" means  
2 a form signed by a patient, or if incapacitated, by the  
3 patient's surrogate and the patient's physician, that records  
4 the patient's wishes and that directs a health care provider  
5 regarding the provision of resuscitative and life-sustaining  
6 measures. A physician orders for life-sustaining treatment form  
7 is not an advance health-care directive.

8 "Surrogate" shall have the same meaning as in section 327E-  
9 2.

10 **§ -2 Physician orders for life-sustaining treatment**  
11 **form; execution; explanation; compliance; revocation.** (a) The  
12 following may execute a form:

- 13 (1) The patient;
- 14 (2) The patient's physician; and
- 15 (3) The surrogate, but only if the patient:
- 16 (A) Lacks capacity; or
- 17 (B) Has designated that the surrogate is authorized  
18 to execute the form.

19 The patient's physician may medically evaluate the patient and,  
20 based upon the evaluation, may recommend new orders consistent  
21 with the most current information available about the  
22 individual's health status and goals of care. The patient's



1 physician shall consult with the patient or the patient's  
2 surrogate before issuing any new orders on a form. The patient  
3 or the patient's surrogate may choose to execute or not execute  
4 any new form. If a patient is incapacitated, the patient's  
5 surrogate shall consult with the patient's physician before  
6 requesting the patient's physician to modify treatment orders on  
7 the form. To be valid, a form shall be signed by the patient's  
8 physician and the patient, or the patient's physician and the  
9 patient's surrogate. At any time, a patient, or, if  
10 incapacitated, the patient's surrogate, may request alternative  
11 treatment that differs from the treatment indicated on the form.

12 (b) The patient's physician or a health care provider  
13 shall explain to the patient the nature and content of the form,  
14 including any medical intervention or procedures, and shall also  
15 explain the difference between an advance health-care directive  
16 and the form. The form shall be prepared by the patient's  
17 physician or a health care provider based on the patient's  
18 preferences and medical indications.

19 (c) Any health care provider, including the patient's  
20 physician, emergency medical services personnel, and emergency  
21 physicians shall comply with a properly executed and signed form  
22 and treat the patient according to the orders on the form;

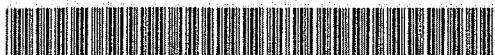


1 provided that compliance shall not be required if the orders on  
2 the form request medically ineffective health care or health  
3 care that is contrary to generally accepted health care  
4 standards.

5 (d) A patient having capacity, or, if the patient is  
6 incapacitated, the patient's surrogate, may revoke a form at any  
7 time and in any manner that communicates intent to revoke.

8 **§ -3 Immunity.** (a) No physician, health care  
9 professional, nurse's aide, hospice provider, home care  
10 provider, including private duty and medicare home health  
11 providers, emergency medical services provider, adult  
12 residential care home operator, skilled nursing facility  
13 operator, hospital, or person employed by or under contract with  
14 a hospital shall be subject to criminal prosecution, civil  
15 liability, or be deemed to have engaged in unprofessional  
16 conduct for:

17 (1) Carrying out in good faith, a decision regarding  
18 treatment orders, including cardiopulmonary  
19 resuscitation by or on behalf of a patient pursuant to  
20 orders in a form and in compliance with the standards  
21 and procedures set forth in this chapter; or



1 (2) Providing cardiopulmonary resuscitation to a patient  
2 for whom an order not to resuscitate has been issued  
3 on a form; provided the person reasonably and in good  
4 faith:

5 (A) Was unaware of the issuance of an order not to  
6 resuscitate; or

7 (B) Believed that any consent to treatment orders,  
8 including the order not to resuscitate, had been  
9 revoked or canceled.

10 (b) No person shall be subject to criminal prosecution or  
11 civil liability for consenting or declining to consent, in good  
12 faith and on behalf of a patient, to the issuance of an order  
13 not to resuscitate pursuant to this chapter.

14 § -4 Rules. The director of health may adopt rules in  
15 accordance with chapter 91 to carry out this chapter."

16 SECTION 2. This Act shall take effect upon its approval.

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII

