

HOUSE No. 1888

The Commonwealth of Massachusetts

PRESENTED BY:

Cory Atkins

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for health care consumer rights and providing incentives and immunities for health care providers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>

HOUSE No. 1888

By Ms. Atkins of Concord, a petition (accompanied by bill, House, No. 1888) of Cory Atkins and others relative to providing for health care consumer rights and providing incentives and immunities for health care providers. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act providing for health care consumer rights and providing incentives and immunities for health care providers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 111 of the General Laws is hereby amended by inserting after
- 2 section 227 the following section:
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- 4 SECTION 2. As used in this section, the following terms shall have the following meanings,
- 5 unless the context otherwise requires:--
- 6
- 7 “Adult”, an individual who is at least 18 years of age.
- 8
- 9 “Advance health care directive”, a health care proxy under chapter 201D or a durable power of
- 10 attorney or other individual instruction relating to the provision of health care when an adult
- 11 becomes incapacitated.
- 12
- 13 “Competent”, having the ability to understand and appreciate the nature and consequences of
- 14 health care decisions, including the benefits and risks of and alternatives to proposed health care
- 15 services, and to reach an informed decision.
- 16
- 17 “Health care decision-maker”, a health care agent appointed in a valid health care proxy under
- 18 section 2 of chapter 201D, a person appointed in a durable power of attorney pursuant to [CITE];
- 19 or a judicially appointed guardian [CITE]
- 20
- 21 “Health care provider” or “provider”, any individual or organizational entity, licensed,

22 certified, or otherwise authorized or permitted to provide health care or related personalized
23 assistance in the ordinary course of business or professional practice. The term includes facilities
24 facility subject to section 70E of chapter 111, section 1 of chapter 201D, section 1 of chapter 6D,
25 and section 1 of chapter 19D.

26

27 “Informed health care decision” or “decision”, an act, omission or decision to accept or refuse
28 health care services that is based on an understanding and acknowledgement of the relevant facts
29 and is made after being fully informed by the attending health care provider of the patient’s
30 medical diagnosis and prognosis, all treatment options, potential risks and probable results. The
31 term includes a decision by: (a) a competent adult patient to request, refuse, discontinue,
32 withhold or withdraw life-prolonging treatment, nutrition and hydration, pain and symptom
33 management or palliative sedation, and (b) a terminally ill, competent adult patient to obtain a
34 prescription for medication the patient may choose to self-administer for a humane and dignified
35 death.

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37 “Patient”, a natural person receiving health care services from a health care provider.

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39 “Resident”, a natural person in a facility subject to section 70E of chapter 111, section 1 of
40 chapter 6D, and section 1 of chapter 19D.

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42 “Terminally ill” means having a terminal illness or condition which can reasonably be
43 expected to cause death within 6 months, whether or not treatment is provided.

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45 “Unwanted medical treatment”, health care services given to a patient or resident that conflicts
46 with the patient or resident’s informed health care decision to refuse, discontinue, withhold or
47 withdraw unwanted health care services expressed directly or through an advance health care
48 directive or the lawful instruction of the patient or resident’s authorized appointed health care
49 decision-maker.

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51 SECTION 3. Health care providers shall ensure compliance with the requirements of this
52 chapter, applicable state and federal law (whether statutory or as recognized by the courts) and
53 related regulations protecting a patient’s or resident’s right to make informed health care
54 decisions, including the right to accept or refuse treatment, the right to receive information about
55 palliative care and end-of-life options, the right to formulate advance health care directives, and
56 the right to refuse to participate in experimental research. At a minimum, providers shall:

57 (a) Develop, maintain, and implement written policies and procedures that delineate the
58 provider’s advance care planning procedures and the actions the provider takes to promote and
59 implement the patients’ or residents’ rights pursuant to this chapter ;

60 (b) Provide oral and written information about corporate policies and procedures required by
61 this chapter to patients, residents and their authorized appointed health care decision-makers;

- 62 (c) Determine on admission whether the patient or resident has an advance health care
- 63 directive and, if not, determine whether the patient or resident wishes to formulate one;
- 64 (d) Document their finding regarding the patient or resident's advance health care directive
- 65 in a prominent part of the patient or resident's medical record and include a copy of relevant
- 66 documents in the medical record;
- 67 (e) Incorporate the patient's or resident's informed health care decisions regarding these
- 68 rights into treatment, care and services;
- 69 (f) Identify, clarify and periodically review, as part of the comprehensive care planning
- 70 process, the patient's or resident's informed health care decisions and existing care instructions
- 71 and document whether the patient or resident wishes to change or continue these decisions or
- 72 instructions;
- 73 (g) Establish mechanisms for documenting and communicating the patient or resident's
- 74 informed health care decisions to the interdisciplinary team;
- 75 (h) Identify and establish internal procedures meeting the standards required by section 15 of
- 76 chapter 201D for handling situations in which a provider or employee thereof is permitted under
- 77 applicable state or federal law to decline to honor a patient's or resident's informed health care
- 78 decision;
- 79 (i) Educate their employees about the requirements of this act and ensure employees comply
- 80 with the provider's written policies and procedures.

81 SECTION 4. (a) If a competent adult patient or resident, expresses directly or through an

82 advance health care directive, an informed health care decision to refuse health care services, a

83 provider who is aware of the patient's or resident's decision shall not treat a patient or resident

84 against the patient or resident's wishes.

85 (b) If a patient or resident is not competent to make an informed health care decision, a lawful

86 informed health care decision by the patient's or resident's authorized appointed health care

87 decision-maker to refuse health care services is equally binding on the provider.

88 (c) A provider shall not transfer or discharge a patient or resident for refusing health care

89 services unless the criteria for transfer or discharge outlined in chapter 201D are otherwise met.

90 SECTION 5. Unwanted medical treatment as defined in this section is not considered

91 medically necessary and a provider shall not bill or seek reimbursement from payers, patients,

92 residents, or an individual's estate.

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94 SECTION 6. Health Care Consumer Disclosures

95 (a) To assist health care consumers to make fully informed decisions about their source of

96 health care services, providers shall maintain and disclose to consumers and payers their written

97 policies outlining the extent to which not honor advance health care directives or participate in

98 specific informed health care decisions based on individual or corporate objections. This Health

99 Care Consumer Disclosure shall at minimum:

- 100 (i) include information about the Health Care Consumer Protection Act;
- 101 (ii) identify the state and federal legal authority permitting such objections;

- 102 (iii) identify the specific health care services in which they refuse to participate;
- 103 (iv) clarify any difference between corporate objections and those that may be raised by
- 104 individual licensed providers who are employed or work on contract with the provider;
- 105 (v) describe the mechanism the provider will use to provide patients a referral to another
- 106 provider or provider in the provider's service area who is willing to perform the specific health
- 107 care service;
- 108 (vi) describe the provider's policies and procedures relating to transferring patients to other
- 109 providers who will implement the health care decision;
- 110 (vii) inform consumers that the cost of such transfer will be borne by the transferring provider;
- 111 (viii) describe the internal and external consumer complaint processes available to persons
- 112 affected by the provider's objections.

113 (b) The Health Care Consumer Disclosure shall be given:

- 114 (i) to any person upon request;
- 115 (ii) to a patient or resident or their authorized appointed health care decision-maker prior to
- 116 enrollment with a carrier or assignment to attending health care practitioner, at the time of
- 117 admission, or at the time of initial receipt of health care services;
- 118 (iii) to health care consumers on the provider's Internet website.

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120 SECTION 7. Notwithstanding any other law, no health care provider meeting the medical

121 standard of care shall be subject to criminal liability, civil liability, or be deemed to have

122 engaged in unprofessional conduct, for carrying out in good faith an informed health care

123 decision of a competent adult patient or resident pursuant to this chapter, even if the patient or

124 resident's decision is to advance the time of death.

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126 SECTION 8. Informed health care decisions in accordance with this chapter shall not for any

127 purpose: (a) constitute suicide, assisting suicide, mercy killing, homicide, euthanasia, neglect or

128 elder abuse under the law; (b) be grounds for housing discrimination or eviction; (c) affect the

129 sale, procurement or issuance of a life insurance policy; or (d) modify the terms of, legally

130 impair, or invalidate an existing life insurance policy.

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132 SECTION 9. The director shall establish, in consultation with the state survey and certification

133 agency a system through which individuals and their authorized appointed health care decision-

134 makers may file complaints about a provider's non-compliance with the standards set forth in

135 this chapter.

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137 SECTION 10. Compliance with sections 3 through 6 shall be a condition of state licensure or

138 certification.

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