

MODEL STARVATION AND DEHYDRATION OF PERSONS WITH DISABILITIES PREVENTION ACT Revised January 2006

Section 1. **Short Title**

This act shall be known and may be cited as the [STATE NAME] “Starvation and Dehydration of Persons with Disabilities Prevention Act”.

Section 2. **Definitions**

A. “Hydration” means fluids administered by way of the gastrointestinal tract or intravenously.

B. “Nutrition” means sustenance administered by way of the gastrointestinal tract or intravenously.

C. “Person legally incapable of making health care decisions” means any person who:

1. Has been declared legally incompetent to make decisions affecting medical treatment or care, or
2. In the reasonable judgment of the attending physician, is unable to make decisions affecting medical treatment or other health care services, or
3. Is a minor.

D. “Physician” means a physician licensed by [relevant state statute].

E. “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

Section 3. **Presumption of Nutrition and Hydration Sufficient to Sustain Life**

A. It shall be presumed that every person legally incapable of making health care decisions has directed his or her health care providers to provide him or her with nutrition and hydration to a degree

that is sufficient to sustain life.

B. No guardian, surrogate, public or private agency, court, or any other person shall have the authority to make a decision on behalf of a person legally incapable of making health care decisions to withhold or withdraw hydration or nutrition from such a person except in the circumstances and under the conditions specifically provided for in Section 4 of this act.

Section 4. Presumption of Nutrition and Hydration, When Inapplicable

The presumption pursuant to Section 3 of this act shall not apply:

A. To the extent that, in reasonable medical judgment, the medical condition of the person legally incapable of making health care decisions is such that the provision of nutrition or hydration would not contribute to sustaining that person's life or to providing comfort to that person.

B. If the person executed a directive in accordance with [state advance directive statute] specifically authorizing the withholding or withdrawal of nutrition and/or hydration, to the extent the authorization applies.

Section 5. Civil Remedies

A. A cause of action for injunctive relief may be maintained against any person who is reasonably believed to be about to violate or who is in the course of violating this act, or to secure a court determination, notwithstanding the position of a guardian or surrogate, whether there is clear and convincing evidence that the person legally incapable of making health care decisions, when legally capable of making such decisions, gave express and informed consent to withdrawing or withholding hydration or nutrition in the applicable

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circumstances.

B. The action may be brought by any person who is:

- (a) The spouse, parent, child, or sibling of the person;
- (b) A current or former health care provider of the person;
- (c) A legally appointed guardian of the person;
- (d) The state protection and advocacy agency, or
- (e) A public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

C. Pending the final determination of the court, it shall direct that nutrition and hydration be provided unless it determines that Section 4A is applicable.