

# Bill as Introduced

SB 170 - AS INTRODUCED

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 struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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

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

17 NEW HAMPSHIRE ADVANCE DIRECTIVE

18 NOTE: This form has two sections.

19 You may complete both sections, or only one section.

20 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  
28 my health care agent, I hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as alternate agent. (Please choose  
29 only one person. If you choose more than one alternate agent, they will have authority in priority of  
30 the order their names are listed.)

31 STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING

1 HEALTH CARE DECISIONS.

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

10 A. LIFE-SUSTAINING TREATMENT.

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

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

14 \_\_\_(a) life-sustaining treatment not be started, or if started, be discontinued.

15 -or-

16 \_\_\_(b) life-sustaining treatment continue to be given to me.

17 2. Whether near death or not, if I become permanently unconscious I authorize my agent to  
18 direct that:

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

20 \_\_\_a) life-sustaining treatment not be started, or if started, be discontinued.

21 -or-

22 \_\_\_(b) life-sustaining treatment continue to be given to me.

23 B. ~~MEDICALLY ADMINISTERED NUTRITION AND HYDRATION.~~

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

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

28 ~~\_\_\_(a) medically administered nutrition and hydration not be started or, if started, be~~  
29 ~~discontinued.~~

30 ~~-or-~~

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

33 ~~(If you fail to complete item B, your agent will not have the power to direct the withholding or~~  
34 ~~withdrawal of medically administered nutrition and hydration.)~~

35 C.} ADDITIONAL INSTRUCTIONS.

36 Here you may include any specific desires or limitations you deem appropriate, such as when or  
37 what life-sustaining treatment you would want used or withheld, or instructions about refusing any

1 specific types of treatment that are inconsistent with your religious beliefs or are unacceptable to you  
2 for any other reason. You may leave this question blank if you desire.

3 \_\_\_\_\_  
4 (attach additional pages as necessary)

5 I hereby acknowledge that I have been provided with a disclosure statement explaining the effect  
6 of this directive. I have read and understand the information contained in the disclosure statement.

7 The original of this directive will be kept at \_\_\_\_\_ and the following persons and institutions  
8 will have signed copies:

9 Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_

10 Principal's Signature: \_\_\_\_\_

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

13 THIS POWER OF ATTORNEY DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A  
14 NOTARY PUBLIC OR A JUSTICE OF THE PEACE.

15 We declare that the principal appears to be of sound mind and free from duress at the time the  
16 durable power of attorney for health care is signed and that the principal affirms that he or she is  
17 aware of the nature of the directive and is signing it freely and voluntarily.

18 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

19 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

20 STATE OF NEW HAMPSHIRE  
21 COUNTY OF \_\_\_\_\_

22 The foregoing durable power of attorney for health care was acknowledged before me this \_\_\_ day  
23 of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ ("the Principal"). \_\_\_\_\_

24 Notary Public/Justice of the Peace

25 My commission expires:

26 II. LIVING WILL

27 Declaration made this \_\_\_ day of \_\_\_\_\_, 20\_\_.

28 I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my  
29 dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

30 If at any time I should have an incurable injury, disease, or illness and I am certified to be near  
31 death or in a permanently unconscious condition by 2 physicians or a physician and an APRN, and 2  
32 physicians or a physician and an APRN have determined that my death is imminent whether or not  
33 life-sustaining treatment is utilized and where the application of life-sustaining treatment would  
34 serve only to artificially prolong the dying process, or that I will remain in a permanently  
35 unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be  
36 permitted to die naturally with only the administration of medication, the natural ingestion of food  
37 or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to

1 provide me with comfort care. I realize that situations could arise in which the only way to allow me  
2 to die would be to discontinue medically administered nutrition and hydration.

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

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

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

6 ~~\_\_\_(a) medically administered nutrition and hydration not be started or, if started, be~~  
7 ~~discontinued,~~

8 ~~-or-~~

9 ~~\_\_\_(b)]~~ even if all other forms of life-sustaining treatment have been withdrawn, medically  
10 administered nutrition and hydration continue to be given to me. \_\_\_\_\_

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

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

17 Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

18 Principal's Signature: \_\_\_\_\_

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

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

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

26 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

27 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

28 STATE OF NEW HAMPSHIRE  
29 COUNTY OF \_\_\_\_\_

30 The foregoing living will was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_, by  
31 \_\_\_\_\_ (the "Principal"). \_\_\_\_\_

32 Notary Public/Justice of the Peace

33 My commission expires:

34 3 Repeal. RSA 137-J:13, III, relative to medically administered nutrition and hydration, is  
35 repealed.

36 4 Effective Date. This act shall take effect January 1, 2014.

SB 170 - AS AMENDED BY THE SENATE

03/21/13 0852s

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.

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

13 137-J:20 Advance Directive; Durable Power of Attorney and Living Will; Form. An advance  
14 directive in its individual "Durable Power of Attorney for Health Care"; and "Living Will";  
15 components shall be in substantially the following form:

16 NEW HAMPSHIRE ADVANCE DIRECTIVE.

17 NOTE: This form has two sections.

18 You may complete both sections, or only one section.

19 I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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

26 In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as  
27 my health care agent, I hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as alternate agent. (Please choose  
28 only one person. If you choose more than one alternate agent, they will have authority in priority of  
29 the order their names are listed.)

30 STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING



1 HEALTH CARE DECISIONS.

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

10 A. LIFE-SUSTAINING TREATMENT.

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

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

14 \_\_\_(a) life-sustaining treatment not be started, or if started, be discontinued.

15 -or-

16 \_\_\_(b) life-sustaining treatment continue to be given to me.

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

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

20 \_\_\_a) life-sustaining treatment not be started, or if started, be discontinued.

21 -or-

22 \_\_\_(b) life-sustaining treatment continue to be given to me.

23 B. ~~[MEDICALLY ADMINISTERED NUTRITION AND HYDRATION.~~

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

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

28 ~~\_\_\_(a) medically administered nutrition and hydration not be started or, if started, be~~  
29 ~~discontinued.~~

30 -or-

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

33 ~~(If you fail to complete item B, your agent will not have the power to direct the withholding or~~  
34 ~~withdrawal of medically administered nutrition and hydration.)~~

35 C.] ADDITIONAL INSTRUCTIONS.

36 Here you may include any specific desires or limitations you deem appropriate, such as when or

1 what life-sustaining treatment you would want used or withheld, or instructions about refusing any  
2 specific types of treatment that are inconsistent with your religious beliefs or are unacceptable to you  
3 for any other reason. You may leave this question blank if you desire.

4 \_\_\_\_\_  
5 (attach additional pages as necessary)

6 I hereby acknowledge that I have been provided with a disclosure statement explaining the effect  
7 of this directive. I have read and understand the information contained in the disclosure statement.

8 The original of this directive will be kept at \_\_\_\_\_ and the following persons and institutions  
9 will have signed copies:

10 Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_

11 Principal's Signature: \_\_\_\_\_

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

14 THIS POWER OF ATTORNEY DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A  
15 NOTARY PUBLIC OR A JUSTICE OF THE PEACE.

16 We declare that the principal appears to be of sound mind and free from duress at the time the  
17 durable power of attorney for health care is signed and that the principal affirms that he or she is  
18 aware of the nature of the directive and is signing it freely and voluntarily.

19 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

20 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

21 STATE OF NEW HAMPSHIRE  
22 COUNTY OF \_\_\_\_\_

23 The foregoing durable power of attorney for health care was acknowledged before me this \_\_\_ day  
24 of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ ("the Principal"). \_\_\_\_\_

25 Notary Public/Justice of the Peace

26 My commission expires:

27 II. LIVING WILL

28 Declaration made this \_\_\_ day of \_\_\_\_\_, 20\_\_.

29 I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my  
30 dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

31 If at any time I should have an incurable injury, disease, or illness and I am certified to be near  
32 death or in a permanently unconscious condition by 2 physicians or a physician and an APRN, and 2  
33 physicians or a physician and an APRN have determined that my death is imminent whether or not  
34 life-sustaining treatment is utilized and where the application of life-sustaining treatment would  
35 serve only to artificially prolong the dying process, or that I will remain in a permanently  
36 unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be  
37 permitted to die naturally with only the administration of medication, the natural ingestion of food

1 or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to  
2 provide me with comfort care. I realize that situations could arise in which the only way to allow me  
3 to die would be to discontinue medically administered nutrition and hydration.

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

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

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

7 ~~\_\_\_(a) medically administered nutrition and hydration not be started or, if started, be~~  
8 ~~discontinued,~~

9 ~~-or-~~

10 ~~\_\_\_(b)]~~ even if all other forms of life-sustaining treatment have been withdrawn, medically  
11 administered nutrition and hydration continue to be given to me. \_\_\_\_\_

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

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

18 Signed this \_\_\_ day of \_\_\_\_\_, 2\_\_\_.

19 Principal's Signature: \_\_\_\_\_

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

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

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

27 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

28 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

29 STATE OF NEW HAMPSHIRE

30 COUNTY OF \_\_\_\_\_

31 The foregoing living will was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by  
32 \_\_\_\_\_ (the "Principal"). \_\_\_\_\_

33 Notary Public/Justice of the Peace

34 My commission expires:

35 3 Repeal. RSA 137-J:13, III, relative to medically administered nutrition and hydration, is  
36 repealed.

37 4 Effective Date. This act shall take effect January 1, 2014.

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.

SB 170 - FINAL VERSION

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

13-0865  
01/09

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

13 137-J:20 Advance Directive; Durable Power of Attorney and Living Will; Form. An advance  
14 directive in its individual "Durable Power of Attorney for Health Care"; and "Living Will";  
15 components shall be in substantially the following form:

16 NEW HAMPSHIRE ADVANCE DIRECTIVE

17 NOTE: This form has two sections.

18 You may complete both sections, or only one section.

19 I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

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

26 In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as  
27 my health care agent, I hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as alternate agent. (Please choose

1 only one person. If you choose more than one alternate agent, they will have authority in priority of  
2 the order their names are listed.)

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

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

13 A. LIFE-SUSTAINING TREATMENT.

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

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

17 \_\_\_(a) life-sustaining treatment not be started, or if started, be discontinued.

18 -or-

19 \_\_\_(b) life-sustaining treatment continue to be given to me.

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

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

23 \_\_\_a) life-sustaining treatment not be started, or if started, be discontinued.

24 -or-

25 \_\_\_(b) life-sustaining treatment continue to be given to me.

26 B. ~~[MEDICALLY ADMINISTERED NUTRITION AND HYDRATION.~~

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

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

31 ~~\_\_\_(a) medically administered nutrition and hydration not be started or, if started, be~~  
32 ~~discontinued.~~

33 -or-

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

36 ~~(If you fail to complete item B, your agent will not have the power to direct the withholding or~~

1 ~~withdrawal of medically administered nutrition and hydration.)~~

2 G.] ADDITIONAL INSTRUCTIONS.

3 Here you may include any specific desires or limitations you deem appropriate, such *as your*  
4 *preferences concerning medically administered nutrition and hydration*, when or what life-  
5 sustaining treatment you would want used or withheld, or instructions about refusing any specific  
6 types of treatment that are inconsistent with your religious beliefs or are unacceptable to you for any  
7 other reason. You may leave this question blank if you desire.

8 \_\_\_\_\_  
9 (attach additional pages as necessary)

10 I hereby acknowledge that I have been provided with a disclosure statement explaining the effect  
11 of this directive. I have read and understand the information contained in the disclosure statement.

12 The original of this directive will be kept at \_\_\_\_\_ and the following persons and institutions  
13 will have signed copies:

14 Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_

15 Principal's Signature: \_\_\_\_\_

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

18 THIS POWER OF ATTORNEY DIRECTIVE MUST BE SIGNED BY TWO WITNESSES OR A  
19 NOTARY PUBLIC OR A JUSTICE OF THE PEACE.

20 We declare that the principal appears to be of sound mind and free from duress at the time the  
21 durable power of attorney for health care is signed and that the principal affirms that he or she is  
22 aware of the nature of the directive and is signing it freely and voluntarily.

23 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

24 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

25 STATE OF NEW HAMPSHIRE  
26 COUNTY OF \_\_\_\_\_

27 The foregoing durable power of attorney for health care was acknowledged before me this \_\_\_ day  
28 of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ ("the Principal"). \_\_\_\_\_

29 Notary Public/Justice of the Peace

30 My commission expires:

31 II. LIVING WILL

32 Declaration made this \_\_\_ day of \_\_\_\_\_, 20\_\_.

33 I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my  
34 dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

35 If at any time I should have an incurable injury, disease, or illness and I am certified to be near  
36 death or in a permanently unconscious condition by 2 physicians or a physician and an APRN, and 2  
37 physicians or a physician and an APRN have determined that my death is imminent whether or not

1 life-sustaining treatment is utilized and where the application of life-sustaining treatment would  
2 serve only to artificially prolong the dying process, or that I will remain in a permanently  
3 unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be  
4 permitted to die naturally with only the administration of medication, the natural ingestion of food  
5 or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to  
6 provide me with comfort care. I realize that situations could arise in which the only way to allow me  
7 to die would be to discontinue medically administered nutrition and hydration.

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

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

10 ~~(Initial beside your choice of (a) or (b))~~

11 ~~\_\_\_(a) medically administered nutrition and hydration not be started or, if started, be~~  
12 ~~discontinued,~~

13 ~~-or-~~

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

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

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

22 Signed this \_\_\_ day of \_\_\_\_\_, 2\_\_\_.

23 Principal's Signature: \_\_\_\_\_

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

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

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

31 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

32 Witness: \_\_\_\_\_ Address: \_\_\_\_\_

33 STATE OF NEW HAMPSHIRE

34 COUNTY OF \_\_\_\_\_

35 The foregoing living will was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by  
36 \_\_\_\_\_ (the "Principal"). \_\_\_\_\_

37 Notary Public/Justice of the Peace



SB 170 – FINAL VERSION

- Page 5 -

1 My commission expires:

2 3 Repeal. RSA 137-J:13, III, relative to medically administered nutrition and hydration, is  
3 repealed.

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

# Amendments

Sen. Gilmour, Dist. 12  
March 6, 2013  
2013-0779s  
01/09

Amendment to SB 170

1 Amend the introductory paragraph of RSA 137-J:20, A, 2 as inserted by section 2 of the bill by  
2 replacing it with the following:

3

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



Health, Education and Human Services  
March 12, 2013  
2013-0852s  
01/05

Amendment to SB 170

1 Amend the introductory paragraph of RSA 137-J:20, A, 2 as inserted by section 2 of the bill by  
2 replacing it with the following:

3

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

# Committee Minutes

**SENATE CALENDAR NOTICE  
HEALTH, EDUCATION & HUMAN SERVICES**

Senator Nancy Stiles Chairman  
 Senator John Reagan V Chairman  
 Senator Peggy Gilmour  
 Senator Molly Kelly  
 Senator Andy Sanborn

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: February 21, 2013**

**HEARINGS**

**Tuesday**

**3/5/2013**

**HEALTH, EDUCATION & HUMAN SERVICES**

**LOB 103**

**10:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

<p>10:00 AM SB171                  10:15 AM SB170                  11:00 AM SB173                  11:30 AM SB194-FN</p>	<p>relative to the council for children and adolescents with chronic health conditions.                  relative to advance directives pertaining to life-sustaining treatment.                  relative to criminal background checks for individuals volunteering or applying for employment at licensed child care facilities.                  requiring the department of health and human services to implement the Medicaid family planning expansion.</p>
--	---

**Sponsors:**

**SB171**

Sen. Andrew Hosmer  
 Sen. Peggy Gilmour

Rep. Sharon Nordgren  
 Rep. Laurie Harding

Sen. Molly Kelly  
 Sen. Martha Fuller Clark

Sen. John Reagan

**SB170**

Sen. Peggy Gilmour  
 Rep. Rick Watrous

Rep. Laurie Harding

Sen. Bette Lasky

Rep. Lucy Weber

**SB173**

Sen. Nancy Stiles  
 Sen. Jeb Bradley  
 Rep. Mary Gile

Sen. Bette Lasky  
 Rep. Patricia Lovejoy

Sen. Martha Fuller Clark  
 Rep. Carolyn Gargas

Sen. John Reagan  
 Rep. Timothy Copeland

**SB194-FN**

Sen. Bob Odell  
 Rep. Laurie Harding

Sen. Nancy Stiles  
 Rep. Susan Emerson

Sen. Peggy Gilmour  
 Rep. Neal Kurk

Rep. Sharon Nordgren

# HEALTH, EDUCATION, AND HUMAN SERVICES COMMITTEE

## Hearing Report

*Michael Ciccio, Legislative Aide*

**SB 170** -- *relative to advance directives pertaining to life-sustaining treatment.*

Hearing Date: 03/05/13

Time Opened: 10:15

Time Closed: 10:58

**Members of the Committee Present:** Senators Stiles, Reagan, Kelly, Gilmour, and Sanborn

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

---

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

**Who supports the bill:** Senator Gilmour, Senator Lasky, Senator Reagan, Rep. Harding, Mike Rollo, Rep. Watrous, Janice McDermott, Janet Monahan, Gina Balkus, Shawn LaFrance, Rev. Dales, Carol Stamatakis, and Patrick Clary

**Who opposes the bill:** Rep. Peterson and Ellen Kolb

### **Summary of testimony presented in support:**

#### **Senator Gilmour:**

- SB 170 will clarify the definition of "life sustaining treatment" and will take out some of the confusion out of NH's advance directive law.
- One of the most important ways we can receive the care we want at the end of our life if we are unable to speak for ourselves is to be clear about what we want by having conversations with our family members and completing our own advance directives.
- People base these wishes on their life experience, their value system, and their personal faith.
- NH requires the declaration of our wishes for life sustaining treatment in two different sections.
- The separate section for medically administered nutrition and hydration is considered confusing by people completing the advanced directive and by health care professionals.
- There is even more confusion among "snow birds" who believe they have accurately completed their documents in another State when they are bound to complete this separate section in NH.
- This proposed change will still allow anyone to indicate their wishes around nutrition and/or hydration, and to restrict the authority of their durable power of attorney for health care.
- In response to questions from the committee Senator Gilmour stated:

- The bill would remove the current form in the statute. Any hospital could have the form in the bill or could have or something very similar.
- This bill would not impact people who need advanced nutrition and hydration regularly.
- This legislation will not affect your already previously executed advance directives.

**Shawn LaFrance: NH Health Care Decisions Coalition**

- The NH Health Care Decisions Coalition supports SB 170.
- The bill would simplify the law in the statutes and the advanced directives form.
- The current law carves out medically administered hydration and nutrition from other medical interventions that may sustain life such as, mechanical ventilation and renal dialysis. This carve out makes advance care planning more difficult.
- They conducted a survey with health care professionals and others who assist in advance directives and the results showed “confusion” was the word people used most. It was cited by two-thirds of the respondents.
- They support anyone making personal choices on their advance directives.
- In response to questions from the committee Mr. LaFrance stated:
  - This new law would not affect previously filed advanced directives.

**Janice McDermott: NH Hospice and Palliative Care Organization.**

- This bill amends the current forms and makes it easier to make decisions without being confused.
- Families don’t understand the forms and hesitate to fill them out.
- We think it is medically responsible to pass this Bill.
- We need to promote ease in filling out this form.

**Randolph Dales: Diocese of NH**

- In the 1980’s he co-founded a hospice program in Southern Carroll County.
- In the early 1990’s, he realized in his faith community there were many elderly didn’t have family members or others close by to assist them. So they developed kitchen table advocates to talk to people about advanced directives, living wills, and durable power of attorney.
- People really don’t understand the complexities of these issues. They don’t know what hydration could do. Medically administered hydration does not provide comfort as the body is shutting down.
- Nothing in this bill prevents someone from having a drink of water or receiving a swab to provide comfort around the mouth. This bill deals with when your veins are shutting down.
- He believes this is a simplification; it allows us teach us all the issues involved more clearly.
- He gets advised by his lawyer to update his advanced directives every 5 years.

**Carol Stamatakis: ED council of developmental disabilities**

- Advance directives are best understood as a legal vehicle to allow people to make their own decisions and ensure those decisions are followed.



- This is different than guardianship law which is for people who never had the ability to make decisions. Guardianships are governed by the probate court.
- Back in 1985, NH enacted a Living Will statute. It did not allow a person to delegate decision making to anyone else. In 1991, we passed a statute of durable powers of attorney. In 2007, this legislature passed a law combining durable attorney of health care and living will. This law included the ability to have “do not resuscitate orders”.
- This current Bill changes one piece of the law that both providers and individuals see as confusing.
- A National organization viewed NH advanced directives as one of the more confusing.
- In the definition of life sustaining treatment it limits treatments to only include a person has a terminal condition or who is permanently unconscious. So it would not apply to an individual who needs medically administered nutrition and hydration for daily use.
- In response to questions from the committee Ms. Stamatakis stated:
  - This bill amends advanced directives; we are making it clear that medically administered nutrition and hydration is one of many kinds of treatment that can prolong a person’s life artificially. It is not legally different than any other types of treatment.

**Patrick Clary: Family Doctor**

- He endorses the statements from the hospital association and the hospice organization.
- One of his Primary Care colleagues said she has yet to see a single one of these forms filled out that was consistent with a persons wishes.
- The part Senator Gilmour wishes to change is the most confusing piece.
- Patients very frequently chose that they want medical administered fluids given to them, but the patient says that is not what they meant.
- Less than 30% of patients have advanced directives. If they are simplified they expect 80-90% to have advanced directives.
- They are most commonly completed in attorney’s offices because attorneys charge for them. You get what you pay for. The attorneys don’t have clinical insight. The forms from attorney’s offices are often inconsistent with the patient’s wishes.
- The current language is too confusing to stand.

**Bob Dunn: Devine Millimet, Roman Catholic Bishop of Manchester.**

- One suggestion Diocese made was to add “there is no hope of benefit” in Line 16, page 2.

**Summary of testimony presented in opposition:**

**Rep. Lenette Peterson:**

- This Bill seeks to make substantial changes to law pertaining to advance directives and living Wills.
- The sponsor seeks re-define medically administered nutrition and hydration as life sustaining treatment.
- There are many disabled individuals who live on medically administered nutrition and hydration.

- In a hospital if someone fails to pass the swallow test, then they are put on medically administered nutrition and hydration. This then becomes classified as a life sustaining treatment as opposed to a person's way of nutrition.
- Will insurance companies fail to cover these treatments for someone in need because it is now considered a life sustaining treatment?
- The change removes choice for NH residents.
- You would only be allowed to use the form in statute, therefore NH patients would have to choose between an all or nothing model.
- Our law already allows people to have a choice.
- This is a bait in switch for NH Residents. Nowhere on the form does it mention that medically administered nutrition and hydration are life sustaining treatments.

**Action:** The Committee took the bill under advisement

**MJC**

Date hearing report completed: 03.07.13

# Speakers









# Testimony



## Health, Education and Human Services Committee

### Testimony on SB170

March 5, 2013

Thank you Madam Chair and members of the committee. For the record, I am Senator Peggy Gilmour, representing Senate District 12, 3 wards in Nashua, and the towns of Hollis, Brookline, Mason, New Ipswich, and Rindge.

I am here to ask your support for SB 170, which will clarify the definition of "life sustaining treatment" and take some of the confusion out of NH's "legalize" sounding Advance Directive law.

I have spent most of my career working with the elderly and those preparing for life's end. One of the most important ways we as humans can chart our own course is to be clear about what we want at the end of our life in the event we are unable to speak for ourselves. And, one of the best gifts we can give our families is to have that conversation with them, and complete our legal Advance Directives...i.e. the documents that say "I am directing, in advance, my wishes." Most base those wishes on life experience, their own and their families' value system, their faith.

Our NH Statute has been cumbersome, in that we require the declaration of our wishes for Life Sustaining Treatment in two different sections. We must indicate our wishes around Medically Administered Nutrition and Hydration... for example being fed by a tube into our stomach if we are unconscious...separately from other forms of "Life Sustaining Treatment" such as a ventilator or mechanical respiration, kidney dialysis etc. that can artificially postpone death. This separation increases the complexity of the decision-making process for people who want to forego invasive treatments when there is no hope of benefit.

This separate section for Medically Administered Nutrition & Hydration is described as confusing by those completing the NH Advance Directive and among health professionals/others who help guide people in the advance directive process. It has particularly created confusion for those relocating to NH or those "snow birds" who believe they have been compliant in creating their documents, and find that in NH they are bound to "recomplete" this separate section.

This proposed change will still allow anyone to indicate their wishes around nutrition and/or hydration, and to restrict the authority of their Durable Power of Attorney for Health Care ...that person authorized to speak for them...regarding decisions related to instituting, withholding or withdrawing Medically Administered Nutrition & Hydration.

Talking about our own death, or with family members about theirs, is very difficult for most Americans. In fact, a study by the National Hospice and Palliative Care Organization showed that Americans would rather talk to their children about sex and drugs than talk with their aging parents about death! Our job is to help people with this, to make a process that promotes advance planning for what each of us will encounter...our death. SB 170 does not make this human task easy....but it makes the process simpler, clears up confusion, and still offers the individual to make their end of life wishes known.

I am happy to answer any questions, but there are others behind me who currently work in the field, and who will be happy to tell you how SB170 will help.

**Senate Health, Education and Human Services Committee**

**March 5, 2013**

**SB 170 – relative to advance directives and life sustaining treatment**

**Testimony**

Madame Chair and members of the Committee. My name is Shawn LaFrance and I am Executive Director of the Foundation for Healthy Communities. I am here today in my role as coordinator of the NH Health Care Decisions Coalition. The NH Healthcare Decisions Coalition is a statewide group of individuals and organizations that work together to encourage people to think about their future health care decisions and support systems that facilitate conversations about these issues. We have worked since 1999 to support advance care planning.

The Coalition supports SB 170. This proposed change will simplify the statutory language and form used to communicate the care preferences of people who complete a written advance directive. The current law “carves-out” medically administered hydration and nutrition from other medical interventions that may sustain life such as mechanical ventilation, renal dialysis, etc. This “carve-out” makes the advance care planning process more complicated.

Our support is based on more than a decade of experience leading educational programs throughout the state in ‘Respecting Choices’. “Respecting Choices” is an approach that assists people in understanding the importance of advance care planning. Last fall, we conducted a statewide survey of health care professionals and others who assist people with advance directives. “Confusion” was the word cited most often, by more than two-thirds of respondents, in regard to the current language about medically administered nutrition. The repetitive language related to life sustaining treatments within the current advance directive was indicated as a problem and a barrier for a people who want to complete an advance directive. SB 170 addresses this problem.

We fully support the ability of anyone completing an advance directive to provide specific guidance based on their unique medical circumstance, religious beliefs or other factors to their Durable Power of Attorney Healthcare or health care professionals. The proposed change to the advance directive will still provide a place for this specific guidance to be clearly written by a person making their advance directive choices.

Individuals who assist others with advance care planning or provide medical care are eager to help people think and communicate their health care choices. SB 170 will simplify this important process and help support more people to understand and complete an advance directive.

## Ciccio, Michael

---

**From:** Gilmour, Peggy  
**Sent:** Sunday, March 10, 2013 8:39 AM  
**To:** Diane Coleman; Woodburn, Jeff; Forrester, Jeanie; Bradley, Jeb; Watters, David; NH.Sen.Pierce@gmail.com; Cataldo, Sam; Hosmer, Andrew; Odell, Bob; Sanborn, Andy; Kelly, Molly; Bragdon, Peter; Lasky, Bette; Carson, Sharon; Larsen, Sylvia; Boutin, David; Reagan, John; Soucy, Donna; Rausch, James; dalas@leg.nh.us; Clark, Martha Fuller; Morse, Chuck; Prescott, Russell; Stiles, Nancy  
**Cc:** slafrance@healthynh.com  
**Subject:** RE: Letter regarding SB 170 pertaining to advance directives

Dear Diane,

Thank you for your email regarding NH Senate Bill 170. I would like to address some of the concerns you have raised. SB 170 will not undermine the ability of people with disabilities and all other people in New Hampshire to choose to receive medically administered hydration and nutrition. Everyone will continue to have the choice of this form of life sustaining treatment and others such as mechanical ventilation, dialysis, etc. when facing a life threatening advanced illness. Our State law is designed to be neutral and not persuade individuals to make certain choices about their medical treatments.

Your email mentions concerns about "informed consent" and I would recommend you refer to RSA 151 where New Hampshire law addresses "informed consent" as a part of the NH Patient' Bill of Rights. Also, your letter discusses issues related to people with disabilities and the New Hampshire guardianship law, RSA 464, addresses unique concerns to protect the rights of the disabled.

I have spent my career working with those at life's end, and currently serve with with organizations that care for those with disabilities and chronic mental illness. I would do nothing to jeopardize individual rights or choice.

I understand you have spoken to Dr. Ira Byock from DHMC regarding this. He speaks highly of you and your efforts on behalf of Not Dead Yet. I hope his words of support for SB 170 were helpful as well.

Sincerely,

Peggy Gilmour

---

**From:** Diane Coleman [dcoleman@notdeadyet.org]  
**Sent:** Tuesday, March 05, 2013 9:13 PM  
**To:** Woodburn, Jeff; Forrester, Jeanie; Bradley, Jeb; Watters, David; NH.Sen.Pierce@gmail.com; Cataldo, Sam; Hosmer, Andrew; Odell, Bob; Sanborn, Andy; Kelly, Molly; Bragdon, Peter; Gilmour, Peggy; Lasky, Bette; Carson, Sharon; Larsen, Sylvia; Boutin, David; Reagan, John; Soucy, Donna; Rausch, James; dalas@leg.nh.us; Clark, Martha Fuller; Morse, Chuck; Prescott, Russell; Stiles, Nancy  
**Subject:** Letter regarding SB 170 pertaining to advance directives

Dear Senator:

I am writing to you on behalf of Not Dead Yet, a national disability rights group with members in New Hampshire. Among other issues, our organization works to ensure that the law of "informed consent" governs the implementation of the right to refuse unwanted medical treatment.

The purpose of this letter is to express opposition to SB 170, "An Act relative to advance directives pertaining to life-sustaining treatment."  
In our view, SB 170 undermines "informed consent" with respect to the provision of tube feeding and/or intravenous fluids.

Current New Hampshire law protects the general public, including but not limited to people

with disabilities, by separating the choice to receive or refuse various forms of life-sustaining treatment from the choice to receive or refuse tube feeding and/or intravenous fluids.

This distinction is important for at least four reasons. First, everyone needs food and fluids to live, but many non-terminal health conditions related to swallowing prevent safe oral ingestion. Second, people who need tube feeding on a long-term basis are disabled (such as by developmental disability, neuromuscular disability or brain injury), and protection of this group is subject to a variety of laws to prevent discrimination. Third, many people with an uncertain prognosis may depend on tube feeding and intravenous fluids temporarily and then recover, but removing food and fluids at that stage cuts off the potential for recovery and creates a self-fulfilling prophesy resulting in death. Finally, many people need assistance from another person to eat orally (e.g. people with dementia, cerebral palsy, quadriplegia), yet there may be insufficient paid staff to feed people in some settings. In fact, in nursing facilities, many people are placed on tube feeding for this reason alone. Each of these factors argues in favor of the separate treatment that current New Hampshire law gives to "medically administered nutrition and hydration."

SB 170 redefines "life-sustaining treatment" to include "medically administered nutrition and hydration" and removes any specific reference to "medically administered nutrition and hydration" from the New Hampshire form for the Durable Power of Attorney for Health Care. While the form includes a place where "additional instructions" may be inserted, nothing suggests topics or issues that one might wish to address there. The form will presumably be presented to patients in various contexts in accordance with federal law, but patients will be "on their own" if they want to go beyond just checking the box for or against "life-sustaining treatment" and try to fill in the blanks under "additional instructions".

In her March 5th testimony, the chief sponsor of SB 170, Senator Peggy Gilmour, attempted to justify the proposed change by stating, "This separate section for Medically Administered Nutrition & Hydration is described as confusing by those completing the NH Advance Directive and among health professionals/others who help guide people in the advance directive process." This purported "confusion" is a very thin justification, and raises questions about what underlying issues led to this bill. If health care professionals and others who guide people in the advance directive process have trouble explaining tube feeding, a relatively simple treatment that's been around for over 100 years, how are they managing to talk about ventilators and dialysis? The current New Hampshire form itself explains, "I realize that situations could arise in which the only way to allow me to die would be to not start or to discontinue medically administered nutrition and hydration." Perhaps the real issue is that professionals are having trouble convincing people to choose to forego food and fluids by tube if that is "the only way to allow me to die"? In any case, no evidence was offered that people are harmed by the current law, which requires individuals to make a simple choice by checkmark.

While SB 170 allows individuals to write in a specific provision relating to food and fluids by tube, it reduces the information provided to the individual, undermines informed consent, and actually shifts the burden to the individual to know and articulate their wishes. Unless the individual is unusually knowledgeable, food and fluids by tube will be swept up in the all-or-nothing, yay-or-nay check box that applies to other treatments that fall under the increasingly pejorative term "life support."

For the reasons stated above, we urge you to reject SB 170.

Sincerely,

Diane Coleman, JD, MBA  
President/CEO  
Not Dead Yet  
497 State Street  
Rochester, NY 14608  
708-420-0539 C  
www.notdeadyet.org

## Ciccio, Michael

---

**From:** Daniel C. Itse [itseh@comcast.net]  
**Sent:** Saturday, March 09, 2013 12:58 PM  
**To:** Reagan, John; Andy Sanborn; Stiles, Nancy  
**Subject:** SB170

Nancy, John and Andy,

I wish to advocate as stridently as possible against SB170.

As someone who has had to make the decision regarding medically administered food and hydration, no one of average intelligence should have any difficulty understanding the issue. Medically administered food or hydration requires is nutrition or hydration other than by swallowing and requires a nurse to administer and a physician to prescribe. It is vastly different from medical treatment.

Medical treatment is a chemical or therapy administered because the individual is injured or diseased, and would not otherwise be necessary.

Nutrition and hydration are something that every person on the face of earth requires. They need to be medically administered when by reason of injury or disease a physician considers it dangerous or impossible for them to receive nutrition or hydration unaided.

Consider the language of the bill:

You have a cancer patient who is no longer receiving anything other than pain relief and medically administered nutrition and hydration. This wording would allow them to be deprived of nutrition and hydration in order to hasten death. Keep in mind that dehydration is one of the most slow and painful ways of dying.

When Jarrod was in the hospital as infant and they were advocating that we withhold nutrition and hydration they told us it was impossible for him to last more than 24 hr to 72 hr. Two years later when a similar event happened to another infant in our church, the parents acquiesced, being told the same thing. That little boy took 9 days of deprivation for him to die.

I am sure that if family and friends had not held a constant vigil, it would only have taken a little more than 24 hr.

Dan

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

If at any time I should have an incurable injury, disease, or illness and I am certified to be near death or in a permanently unconscious condition by 2 physicians or a physician and an APRN, and 2 physicians or a physician and an APRN have determined that my death is imminent whether or not life-sustaining treatment is utilized and where the application of life-sustaining treatment would serve only to artificially prolong the dying process, or that I will remain in a permanently unconscious condition, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, the natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide me with comfort care. I realize that situations could arise in which the only way to allow me to

die would be to discontinue medically administered nutrition and hydration.



(603) 225-5597  
(800) 639-1949  
Fax (603) 225-5817  
Eight Green Street, #2  
Concord  
New Hampshire  
03301-4012

February 5, 2013

Senator Nancy Stiles  
Chairman  
Senate Health and Education Committee  
Legislative Office Building  
Concord, NH 03301

**Re: SB 170, relative to advance directives pertaining to life-sustaining treatment**

Senator Stiles:

On behalf of New Hampshire's home care agencies and the clients they serve, I urge you and your fellow Committee Members to vote in favor of SB 170. This bill will amend sections of New Hampshire's advance directive statute so that "medically administered nutrition and hydration" is covered in the broad context of other types of life-sustaining treatment.

The Granite State Home Health Association promotes advanced care planning by individuals as a means to ensure that their values and preferences are respected. Our member agencies provide education about advance directives. Our providers know from experience that New Hampshire's statutes and forms are cumbersome and often difficult for individuals to understand and execute. New Hampshire's statute differs from most other states in that it distinguishes "medically administered nutrition and hydration" from other forms of life-sustaining treatment. The required questions regarding medically-administered nutrition and hydration create confusion. New Hampshire's statutory requirements also limit providers' ability to honor the advance directives of patients who have forms that were executed in other states.

SB 170 will simplify New Hampshire's advance directives forms. At the same time, it will maintain an individual's ability to document any additional end-of-life wishes, religious preferences and treatment limitations.

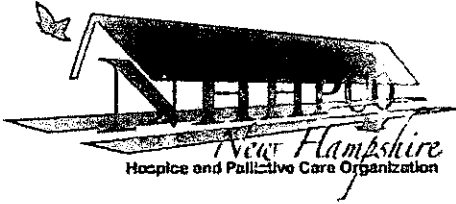
Please recommend SB 170 as "ought to pass."

Respectfully,

Gina Balkus  
Chief Executive Officer

cc: Senate Health and Education Committee Members





125 Airport Road Concord NH 03301

603 415 4298 /www.nhhpco.org

**Testimony in support of SB 170**  
**"AN ACT relative to advance directives pertaining to life-sustaining treatment"**

**March 5, 2013**

**Presented by Janice McDermott, Executive Director, N.H. Hospice & Palliative Care Org.**

On behalf of New Hampshire Hospice and Palliative Care Organization (NHHPCO), a non-profit, 501© (3) charitable organization which represents residents of New Hampshire living with life limiting illness, as well as providers of hospice and palliative care services.

NHHPCO promotes access to quality palliative care and hospice services to meet the unique healthcare needs of each individual needing care in a manner that is consistent with a patient and family's wishes. We participate on the NH Healthcare Decisions Coalition because of these shared values. It is through the Coalition meetings which include representatives of many healthcare settings that this legislation was requested.

SB 170 is asking to amend the current state statute, chapter 137 – J, addressing "Written Directives for Medical Decision Making..." in an effort to simplify the definition of "Life Sustaining Treatment" to include Medically Administered Nutrition & Hydration.

We urge you to support the amendment for the following reasons:

- The current statute separates *Medically Administered Nutrition & Hydration* from other forms of "Life Sustaining Treatment" (e.g., ventilator or mechanical respiration, kidney dialysis, etc.) that can artificially postpone death when a patient is near death. This paperwork mandate increases the complexity of the decision-making process for people who want to avoid burdensome treatments that have no hope of benefit.
- There is significant confusion reported by people who have completed the NH Advance Directive about this separate section for *Medically Administered Nutrition & Hydration*. Health professionals and others who help guide people in the advance directive process have shared the need for reducing the burden of our complicated forms.
- This proposed change will still allow anyone to restrict the authority of their Durable Power of Attorney for Health Care regarding decisions related to withholding or withdrawing *Medically Administered Nutrition & Hydration*.

In summary, we believe that passing this legislation will go a long way to help residents of New Hampshire be able to more easily put Advanced Directive documents in place that can be legally honored if needed and reduce the burden of difficult decision making at a time of crisis for family members or designated decision makers.

~~We strongly support this proposed commission.~~

Thank you for the opportunity to comment on this legislation.

MADLINE E. GERKEN,MD

117 Edgerly School Rd

Meredith, NH 03253

March 4, 2013

Testimony in support of SB 170

I have lived and practiced medicine in New Hampshire since 1982 as a medical oncologist and more recently in hospice and palliative medicine.

During that time it has been my privilege to care for many people near the end of life. I have worked with many people who have recognized the necessity of developing public policies to ease the burden of advanced illness. It was my pleasure to know Senator Susan McLane in her work with the Living Will Society and her efforts in developing Advance Directives. I also served with Senator Peggy Gilmour as Co chair of the NH Partnership for End of Life Care which was part of the Robert Wood Johnson grant to develop trained volunteers to help people create their own advance care plans ( Respecting Choices) which continues today.

The changes proposed in SB 170 will clarify the choices people may want to make to help their families and health care providers care for them as they would want at end of life. The separation of medically administered food and fluid from other aspects of life supporting care suggests that there is something fundamentally different about artificial nutrition from other life prolonging treatments. There is not such a distinction. All medical treatments throughout life offer benefits and burdens which must be analysed and weighed according to the circumstances and individuals goals and beliefs. Intravenous fluids, TPN ( total parenteral nutrition) and feeding tubes offer treatment choices the benefits of which vary widely in differing individual circumstances. For example, TPN may be life-saving as part of an aggressive surgical approach to maximize the chance of a curing a cancer. People who have lost the function of the upper GI tract in the curative treatment of head and neck or esophageal cancer may be sustained by tube feedings indefinitely.

Testimony in support of SB 170

However, the circumstances are significantly different near the end of life. Loss of appetite normally occurs in all people as they approach end of life except for those who die of a sudden calamity. Weight loss is especially prominent in cancer, HIV disease, and dementia where it occurs as part of the illness and cannot be easily reversed. Much research has been done in hopes of improving outcomes with artificially supplied food and fluids. They have generally shown little symptomatic benefit and do little to halt or slow down approaching death. Alternatively, burdens of management of TPN and decreasing tolerance of enteral feeding (tube feedings) increase. These things may also be said for each of the interventions listed in the first choices on advanced directives such as renal dialysis and ventilator support.

However, to many people the ravages of advancing disease and approaching death coupled with decreasing appetite and eating suggest that the individual is "starving to death". Artificial food and support recovery but there is little evidence that either prolong lives or improves quality near the end of life. Quality of life is particularly individual. This is another way that advance directives honor an individual's rights and ease the burden of decision making by family, friends and health care providers.

I am old enough that I saw many patients in my training in the 60's and 70's who bore black tattoos on the inner aspects of their wrists. We knew without asking that these were holocaust survivors. One of my fellow residents was born in a concentration camp and early malnutrition had left him skinny for life. The concept of deliberately withholding food is abhorrent to all. Everyone should be offered food and fluids in the choice and amount they desire including (especially) at the end of life. Sometimes this leads to increase risk of aspiration and other medical issues but the benefits and burdens can only be decided on an individual basis.

Directives regarding medically administered nutrition and fluids should be made in the same medical context in Advanced Directives as other medical interventions. Individual preferences regarding eating and drinking should remain a personal issue to be offered within individual limits at the end of life.

Thank you for your attention to this very important matter.

Madeline E. Gerken, MD

Health, Education and Human Services Committee  
Senate Bill 170 "Relative to Advance Directives Pertaining to Life-  
Sustaining Treatment"  
March 5, 2013

In Favor of Bill—  
I Endorse the NHHA statement

Patrick Clary, MD  
550 Lincoln Avenue  
Portsmouth NH 03801  
Email [PLCLARY@AOL.COM](mailto:PLCLARY@AOL.COM)  
Cellphone 603-969-0815

Board Certified in Family Practice and in  
Hospice and Palliative Medicine  
Currently Medical Director of:

Riverside Rest Home  
Rockingham VNA Hospice  
Exeter Hospital Palliative Care Service

NH License #7489 (issued January 5, 1987)

Graduate of Georgetown University School of Medicine with MD 1979  
Residency at Brookdale University Medical Center affiliate of SUNY  
Downstate 1979-1982

Public Health Officer in Brooklyn, NY 1982-1986

Member NH Medical Society, AMA, NH Hospice and Palliative Care  
Organization (past president of Board), Academy of Hospice and Palliative  
Medicine

Publications in New England Journal of Medicine, Journal of the American  
Medical Association, American Family Physician, Patient Care, Journal of  
Pain and Symptom Management, and Journal of Palliative Medicine



**SENATE HEALTH, EDUCATION & HUMAN SERVICES COMMITTEE**

**March 5, 2013**

**SB 170, relative to advance directives pertaining to life-sustaining treatment**

**Testimony**

Madam Chair and members of the Committee. My name is Leslie Melby and I am the VP for State Government Relations of the New Hampshire Hospital Association, representing 23 of our state's community hospitals as well as all of our specialty hospitals.

The New Hampshire Hospital Association (NHHA) supports SB 170 so that patients can more easily express their wishes for their end-of-life care. By amending RSA 137-J, the definition of "life-sustaining treatment" will include "medically administered nutrition and hydration." This would simplify decision-making for patients who are near death and want to avoid the types of treatment that are burdensome and essentially have no benefit.

This will also help to lessen the confusion among health care providers who are helping to guide people as they navigate the advance directive process. Most importantly, it will help residents of our state and their families more easily complete the Advance Directive documents, thereby enabling them to carry out their intended wishes.

We therefore urge you to find SB 170 "ought to pass."

Thank you.

# Committee Report

---

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: 03.12.13

THE COMMITTEE ON Health, Education and Human Services  
to which was referred Senate Bill 170

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

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:   5-0

AMENDMENT # 0852s

Senator Peggy Gilmour  
For the Committee

Michael Ciccio 271-3093

## New Hampshire General Court - Bill Status System

**Docket of SB170**

Docket Abbreviations

**Bill Title:** relative to advance directives pertaining to life-sustaining treatment.*Official Docket of SB170:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/31/2013	S	<b>Introduced</b> and Referred to Health, Education & Human Services
2/21/2013	S	Hearing: 3/5/13, Room 103, LOB, 10:15 a.m.; <b>SC10</b>
3/13/2013	S	Committee Report: Ought to Pass with Amendment <b>#2013-0852s</b> , 3/21/13; <b>SC12</b>
3/21/2013	S	Committee Amendment 0852s, AA, VV;
3/21/2013	S	<b>Ought to Pass with Amendment</b> 0852s, MA, VV; OT3rdg;
3/27/2013	H	Introduced and Referred to Health, Human Services and Elderly Affairs; <b>HJ31</b> , PG.1076
4/3/2013	H	Public Hearing: 4/16/2013 10:00 AM LOB 205
4/11/2013	H	Executive Session: 4/23/2013 10:00 AM LOB 205
4/23/2013	H	Committee Report: Ought to Pass with Amendment #1303h for May 8 (Vote 19-0; CC); <b>HC36</b> , PG.1196
4/23/2013	H	Proposed Committee Amendment <b>#2013-1303h</b> ; <b>HC36</b> , PG.1221
5/8/2013	H	Removed from Consent Calendar (Rep Peterson); <b>HJ41</b> , PG.1386
5/8/2013	H	Amendment #1303h: AA VV; <b>HJ41</b> , PG.1412
5/8/2013	H	Lay on the Table (Rep Itse): MF <b>RC</b> 125-209; <b>HJ41</b> , PG.1412-1414
5/8/2013	H	<b>Ought to Pass with Amendment</b> #1303h: MA DIV 244-90; <b>HJ41</b> , PG.1412-1414
5/30/2013	S	Sen. Stiles Moved Concur with House Amendment 1303h, MA, VV
6/5/2013	H	Enrolled Bill Amendment #2083e Adopted; <b>HJ49</b> , PG.1656
6/12/2013	S	Enrolled Bill Amendment <b>#2013-2083e</b> Adopted
6/12/2013	H	Enrolled Bill Amendment #2180e Adopted [Recess of 6/5/13]; <b>HJ49</b> , PG.1654
6/12/2013	S	Enrolled Bill Amendment <b>#2013-2180e</b> Adopted, VV
6/26/2013	H	Enrolled
6/26/2013	S	Enrolled
7/12/2013	S	Signed by the Governor on 07/12/2013; Chapter 0224; Effective 01/01/2014

NH House

NH Senate



# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB 170 ✓ ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- ✓ DOCKET (Submit only the latest docket found in Bill Status)
- ✓ COMMITTEE REPORT
- ✓ CALENDAR NOTICE
- ✓ HEARING REPORT
- ✓ HANDOUTS FROM THE PUBLIC HEARING
- ✓ PREPARED TESTIMONY AND OTHER SUBMISSIONS
- ✓ SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

✓ - AMENDMENT # 0779s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
✓ - AMENDMENT # 0852s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

✓ AS INTRODUCED      ✓ AS AMENDED BY THE HOUSE  
✓ FINAL VERSION      ✓ AS AMENDED BY THE SENATE

\_\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): \_\_\_\_\_

DATE DELIVERED TO SENATE CLERK 7/23/13

Michael Ellis  
BY COMMITTEE AIDE