

**HOUSE . . . . . No. 1888**

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**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 adoption 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:	DATE ADDED:
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>1/18/2013</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 health care consumer rights and 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:

3 SECTION 2. As used in this section, the following terms shall have the following  
4 meanings, unless the context otherwise requires:--

5 “Adult”, an individual who is at least 18 years of age.

6 “Advance health care directive”, a health care proxy under chapter 201D or a durable  
7 power of attorney or other individual instruction relating to the provision of health care when an  
8 adult becomes incapacitated.

9 “Competent”, having the ability to understand and appreciate the nature and  
10 consequences of health care decisions, including the benefits and risks of and alternatives to  
11 proposed health care services, and to reach an informed decision.

12 “Health care decision-maker”, a health care agent appointed in a valid health care proxy  
13 under section 2 of chapter 201D, a person appointed in a durable power of attorney pursuant to  
14 [CITE]; or a judicially appointed guardian [CITE]

15 “Health care provider” or “provider”, any individual or organizational entity, licensed,  
16 certified, or otherwise authorized or permitted to provide health care or related personalized  
17 assistance in the ordinary course of business or professional practice. The term includes facilities

18 facility subject to section 70E of chapter 111, section 1 of chapter 201D, section 1 of chapter 6D,  
19 and section 1 of chapter 19D.

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

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

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

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

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

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

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

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

51 (c) Determine on admission whether the patient or resident has an advance health  
52 care directive and, if not, determine whether the patient or resident wishes to formulate one;

53 (d) Document their finding regarding the patient or resident's advance health care  
54 directive in a prominent part of the patient or resident's medical record and include a copy of  
55 relevant documents in the medical record;

56 (e) Incorporate the patient's or resident's informed health care decisions regarding  
57 these rights into treatment, care and services;

58 (f) Identify, clarify and periodically review, as part of the comprehensive care  
59 planning process, the patient's or resident's informed health care decisions and existing care  
60 instructions and document whether the patient or resident wishes to change or continue these  
61 decisions or instructions;

62 (g) Establish mechanisms for documenting and communicating the patient or  
63 resident's informed health care decisions to the interdisciplinary team;

64 (h) Identify and establish internal procedures meeting the standards required by  
65 section 15 of chapter 201D for handling situations in which a provider or employee thereof is  
66 permitted under applicable state or federal law to decline to honor a patient's or resident's  
67 informed health care decision;

68 (i) Educate their employees about the requirements of this act and ensure employees  
69 comply with the provider's written policies and procedures.

70 SECTION 4. (a) If a competent adult patient or resident, expresses directly or through  
71 an advance health care directive, an informed health care decision to refuse health care services,  
72 a provider who is aware of the patient's or resident's decision shall not treat a patient or resident  
73 against the patient or resident's wishes.

74 (b) If a patient or resident is not competent to make an informed health care decision, a  
75 lawful informed health care decision by the patient's or resident's authorized appointed health  
76 care decision-maker to refuse health care services is equally binding on the provider.

77 (c) A provider shall not transfer or discharge a patient or resident for refusing health care  
78 services unless the criteria for transfer or discharge outlined in chapter 201D are otherwise met.

79 SECTION 5. Unwanted medical treatment as defined in this section is not considered  
80 medically necessary and a provider shall not bill or seek reimbursement from payers, patients,  
81 residents, or an individual's estate.

82 SECTION 6. Health Care Consumer Disclosures

83 (a) To assist health care consumers to make fully informed decisions about their source of  
84 health care services, providers shall maintain and disclose to consumers and payers their written  
85 policies outlining the extent to which not honor advance health care directives or participate in

86 specific informed health care decisions based on individual or corporate objections. This Health  
87 Care Consumer Disclosure shall at minimum:

- 88 (i) include information about the Health Care Consumer Protection Act;
- 89 (ii) identify the state and federal legal authority permitting such objections;
- 90 (iii) identify the specific health care services in which they refuse to participate;
- 91 (iv) clarify any difference between corporate objections and those that may be raised  
92 by individual licensed providers who are employed or work on contract with the provider;
- 93 (v) describe the mechanism the provider will use to provide patients a referral to  
94 another provider or provider in the provider's service area who is willing to perform the specific  
95 health care service;
- 96 (vi) describe the provider's policies and procedures relating to transferring patients to  
97 other providers who will implement the health care decision;
- 98 (vii) inform consumers that the cost of such transfer will be borne by the transferring  
99 provider;
- 100 (viii) describe the internal and external consumer complaint processes available to  
101 persons affected by the provider's objections.

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

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

108 SECTION 7. Notwithstanding any other law, no health care provider meeting the medical  
109 standard of care shall be subject to criminal liability, civil liability, or be deemed to have  
110 engaged in unprofessional conduct, for carrying out in good faith an informed health care  
111 decision of a competent adult patient or resident pursuant to this chapter, even if the patient or  
112 resident's decision is to advance the time of death.

113 SECTION 8. Informed health care decisions in accordance with this chapter shall not  
114 for any purpose: (a) constitute suicide, assisting suicide, mercy killing, homicide, euthanasia,  
115 neglect or elder abuse under the law; (b) be grounds for housing discrimination or eviction; (c)  
116 affect the sale, procurement or issuance of a life insurance policy; or (d) modify the terms of,  
117 legally impair, or invalidate an existing life insurance policy.

118           SECTION 9. The director shall establish, in consultation with the state survey and  
119 certification agency a system through which individuals and their authorized appointed health  
120 care decision-makers may file complaints about a provider's non-compliance with the standards  
121 set forth in this chapter.

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