
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 408 OF 2018

MS DEIDRE CARTER

NOTICE OF INTENT TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT NATIONAL HEALTH AMENDMENT BILL, 2018

Ms Deidre Carter, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the National Health Amendment Bill, 2018, in Parliament. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

“Dying is a natural and inevitable part of life. Unless we die an unnatural death, we will go through a natural dying process. For some, it will be peaceful and dignified; for others it will be filled with pain, distress and suffering. We do not know which it will be.”¹

Any competent person may foresee the possibility of becoming incompetent when they enter the terminal phase of the dying process, and may wish to control their healthcare decision-making as they are able to do when they are competent. Advance health care directives are designed to enable competent persons to express their preferences and give instructions about such possible future situations.

The National Health Act, 2003 (Act No. 61 of 2003) (“the Act”), does, to an extent, contain provisions regarding advance health care directives in that in one provision of the Act, a “living will” is inferred and in another, provision is made for the appointment of a substitute healthcare decision-maker. However, it is argued that these provisions, while a step in the right direction, are inadequate for a number of reasons. These reasons, *inter alia*, include that a “living will” is not expressly recognised; the purpose, scope and format of these advance health care directives are not explicitly set out; it is not clear whether they may, in certain circumstances be overridden by family or medical practitioners; whether persons acting upon the directives are immune from civil and criminal prosecutions; and how to deal with a situation where two substitute decision-makers disagree about the treatment the patient should receive.

The National Health Amendment Bill, 2018 (“the Draft Bill”), will therefore provide for legal recognition, legal certainty and legal enforceability regarding advance health care directives such as the living will and the durable power of attorney for healthcare.

¹ Landman, WA “*End-of-life decisions, ethics and the law: A case for statutory legal clarity and reform in South Africa*”, Ethics Institute of South Africa, 2012.

The Draft Bill will, *inter alia*:

- provide for and clarify the legal status of two types of advance health care directives, namely, a “living will” and a “durable power of attorney for healthcare”;
- set out the purpose, scope and format for these advance health care directives and provide for the resolution of disputes related to these directives;
- clarify whether a “living will” or a substitute decision-maker’s decision may be overridden by a medical practitioner or family members in any circumstances; and
- clarify whether someone acting upon these directives is immune from criminal and civil prosecutions.

The Bill may, after introduction, be obtained from:

The Congress of the People (COPE)

PO Box 15, Cape Town, 8000

Attention: Mr Rodger Ferguson

Telephone: 021 403 8898

Facsimile: 086 415 1002

E-mail: dcarter@parliament.gov.za

Interested parties and institutions are invited to submit written representations on the proposed content of the Draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, P O Box 15, Cape Town 8000 or e-mailed to speaker@parliament.gov.za and copied to dcarter@parliament.gov.za