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Text n°1

Law n° 2016-87 of February 2, 2016 establishing new rights for patients and for the terminally ill (1)

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The French National and Senate having passed the law set forth below,
The President of the Republic duly promulgates it.

Article 1

I. Article L. 1110-5 of the code on public health is hereby modified:

1° The first paragraph is hereby modified:

a) The first sentence is hereby modified:

-after the word: “to receive”, the following words are to be inserted: “throughout the territory, the treatments and”;

-after the word: “health”, the following words are to be inserted: “and the best possible relief of pain”;

b) In the second sentence after the words: “investigation or”, are to be inserted the following words: “treatment and”;

c) The following sentence is to be added:

“These provisions are applied without prejudice to the safety requirement by which each health product provider abides nor to the application of Title II of the present”:

2° The second to the last paragraphs are to be replaced by a paragraph phrased as follows:

“Every person has the right to a dignified end of life and to be accompanied with the best possible pain relief. Health professionals are to implement all available means for this right to be respected.”

- II. The initial and on-going training of doctors, pharmacists, nurses, assistant nurses, home helps, and clinical psychologists shall include teaching on palliative care.

Article 2

After article L. 1110-5 of the code of public health, the following article L. 1110-5-1 is to be inserted:

“Art. L. 1110-5-1. The procedures mentioned in article L. 1110-5 should not be implemented if they are the result of unreasonable obstinacy. When they appear useless or disproportionate or when they have no other effect than artificially prolonging life, they may be interrupted or not implemented according to the wishes of the patient or if the latter is not in a position to express his/her wishes, according to a collegial process which is set down through regulation.

“Artificial nutrition and hydration constitute treatment which can be stopped in accordance with the first paragraph of the present article”.

“When the procedures mentioned in the first two paragraphs of the present article are stopped or not begun, the doctor safeguards the dignity of the dying person and ensures his/her quality of life by providing the palliative care mentioned in article L. 1110-10”.

Article 3

After the same article L. 1110-5, the following article L. 1110-5-2 is to be inserted:

“Art. L. 1110-5-2. Upon the request of the patient to avoid all pain and not to undergo unreasonable obstinacy, deep and prolonged sedation bringing about an altered state of consciousness to be continued until death and combined with analgesia and the ending of all life-support systems, shall be implemented in the following cases:

1° When a patient suffers from a serious and incurable condition which is life-threatening in the short term and whose pain is non-responsive to treatment;

2° When the decision of a patient suffering from a serious and incurable condition to stop treatment has life-threatening consequences in the short term and could lead to unbearable pain.

When the patient cannot express his/her will and in keeping with the right to refuse unreasonable obstinacy mentioned in article L. 1110-5-1, in the case where the doctor stops life-support treatment and applies deep and prolonged sedation bringing about an altered state of consciousness to be continued until death and combined with analgesia.

Deep and prolonged sedation combined with analgesia mentioned in the present article shall be implemented according to the collegial process which is set down through regulation which allows the medical team to check in advance that the implementation

conditions provided for in the previous paragraphs have been met.

Upon the request of the patient, deep and prolonged sedation can be implemented at his/her home, in a health facility or in an establishment mentioned in paragraph of I of article L. 312-1 of the family and social action code.

The entire procedure which is followed is included in the medical records of the patient”.

Article 4

After the same article L. 1110-5, the following article L. 1110-5-3 is to be inserted:

“Art. L. 1110-5-3.- Every person has the right to receive treatment and care aimed at relieving his/her pain. This must, in all circumstances, be anticipated, taken into consideration, assessed and treated”.

“The doctor shall use all the sedatives and analgesics necessary to treat the intractable pain of a patient in an advanced or terminal stage, even if this could lead to the shortening of his/her life. The doctor must inform the patient without prejudice to paragraph 4 of article L. 1111-2, the designated support person provided for in article L. 1111-6, the family, or failing that, close friends of the patient. The procedure which is followed is noted in the medical records”.

“Every person shall be informed by the health professionals of the possibility of homecare as long as his/her condition allows it”.

Article 5

I. Article L. 1111-4 of the same code is to be modified with the following wording:

1° After the first paragraph, the following paragraph is to be inserted:

“Every person has the right to refuse or to not receive treatment. Nonetheless, the patient shall continue to be followed by the doctor especially regarding his/her palliative treatment”.

2° The second paragraph is to be worded in the following way:

“The doctor is obliged to respect the will of the person once that person has been informed of the consequences of his/her choices and of their seriousness. If, through his/her wish to refuse or to interrupt treatment, the person puts his/her life in danger, he/she must reiterate that decision within a reasonable time lapse. It is possible to address another member of the medical staff. The entire procedure is noted in the medical records of the patient. The doctor safeguards the dignity of the dying person and ensures the quality of the end of life by providing the palliative care mentioned in article L. 1110-10”.

3° After the word: “liable”, the end of the fifth paragraph is to be worded as follows: “to lead to death, cannot be carried out without respecting the collegial procedure mentioned in article L. 1110-5-1 and the advance decisions, or failing this without consulting the

designated support person provided for in article L. 1111-6, the family, or close friends of the patient. The reasoned decision for limiting or for stopping treatment shall be included in the medical records”.

II.-In the first sentence of V of article L. 2131-1 of the same code, the word: “third” is replaced by the word “fourth”.

Article 6

Article L. 1111-10 of the same code is repealed.

Article 7

In the heading to the 2nd section of the 1st chapter of the first title of the first book of the first part of the same code, after the word: “will”, the following words are to be inserted “of the patients who refuse treatment and”.

Article 8

Article L. 1111-11 of the same code is to worded in the following way:

“Art. L. 1111-11.- Every adult can draw up advance decisions in anticipation of the case where, one day, they would not be in a state to express their will. Such advance decisions express the will of the person regarding the end of his/her life concerning the conditions of the continuing, the limiting, the stopping or the refusal of treatment or medical procedures.

They can be revised or revoked at any moment and by any means. They can be worded according to a model whose contents has been set down by a Decree of the *Conseil d’Etat* (French High Court), following an opinion provided by the High Authority on Health. This model provides for a situation in which the person concerned may or may not know that he/she has a life-threatening condition at the time of drawing up the document.

Advanced decisions must be followed by the doctor in every case of investigation, procedure or treatment, except in an emergency situation requiring the necessary time for a complete assessment of the case and when the advanced decisions seem entirely inappropriate or inconsistent with the medical condition.

The decision to refuse the implementation of advanced decisions, felt by the doctor to be entirely inappropriate or inconsistent with the medical condition, shall be taken according to a collegial process which is set down through regulation and is noted in the medical records. It is made known to the designated support person appointed by the patient, or failing that, the family or close friends of the patient.

A Decree of the *Conseil d’Etat*, following an opinion provided by the National Commission on Data Protection and Liberties, sets down the conditions for informing patients and the conditions concerning the validity, confidentiality and filing of advanced decisions. Advanced decisions are specifically kept on a national register which has been automatically processed in accordance with the Law n° 78-17 of January 6, 1978 concerning data, files and liberties. Once such decisions have been recorded in this register, their author is regularly kept aware of their existence.

The doctor in charge of the file informs his/her patients of the possibility of, and the conditions for, drawing up advanced decisions.

In the case where a person is the subject of guardianship, according to Chapter II of Title XI of the first book of the Civil Code, he/she may draw up advanced directives with the authorization of the judge or the family council, if it has been constituted. The guardian cannot help nor represent the person at this time. “

Article 9

Article L. 1111-6 of the same code is worded in the following way:

“Art. L. 1111-6.- Every adult may designate a support person who may be a family member, a close friend or the doctor. This person will be consulted in the case where the patient him/herself is not in a state to express his/her will or to receive the necessary information for this purpose. This person takes into account the will of the patient. Their attestation takes precedence over all other attestation. This designation is written and co-signed by the designated person. It can be revised or revoked at any time.

If the patient so wishes, he/she may be accompanied by the designated support person in all procedures and at all medical appointments so that the support person may help the patient in taking decisions.

During any form of hospitalization in a health facility, a proposal is made to patients to designate a support person in the conditions laid down by this article. This designation is valid for the entire length of hospitalization unless the patient decides otherwise.

In the case of patient follow-up, the attending doctor ensures that the patient is informed of the possibility of designating a support person and if necessary proposes to him/her to designate such a person.

In the case where a person is the subject of guardianship, according to Chapter II of Title XI of the first book of the Civil Code, he/she may designate a support person with the authorization of the judge or the family council, if it has been constituted. In the case where the support person has been designated prior to the application of guardianship, the family council or if necessary, the judge, may confirm the designation of this person or may revoke that designation.”

Article 10

Article L. 1111-12 of the same code is to be worded in the following way:

“Art. L. 1111-12.- When a patient in an advanced or terminal stage of a serious and incurable condition, whatever the cause, is not in a state to express his/her will, the doctor is obliged to enquire as to the will previously expressed by the patient. In the absence of the advanced decisions mentioned in article L. 1111-11, he shall ask for an attestation from the designated support person, or failing that for an attestation from any member of

the family or from close friends.”

Article 11

Article L. 1111-13 of the same code is repealed

Article 12

Article L. 1412-1-1 is to be modified in the following way:

1° The first paragraph is to be completed by a sentence with the following wording: “The advice of the relevant standing committees and of the Parliamentary Office for the Evaluation of Scientific and Technological Choices shall include an evaluation of the advisability for the Government to seek, in the conditions set down in article L. 121-10 of the Code for the Environment, the support of the National Commission for Public Debate”.

2° The second paragraph is to be completed by the following words: “by highlighting the scientific elements essential to the correct understanding of the issues surrounding the envisaged reform”.

Article 13

I.-Articles 1 to 11 of the present law are applicable in Wallis and Futuna with the following adaptation:

In II of article 1, the words “assistant nurses, home helps and clinical psychologists” are to be deleted.

II.-After the second paragraph of article L. 1521-1 of the Public Health Code, an additional second paragraph (2bis) is to be inserted with the following wording:

“2° bis the last sentence of the first paragraph of article L. 1110-5 is to be worded thus:

“These provisions are applicable without prejudice to article L. 1521-5”.

III.-Articles 1 to 11 of the present law, with the exception of II of article 1, are applicable in New Caledonia and in French Polynesia.

IV.-Article L. 1541-2 of the Public Health Code is to be completed by IV which is to be worded in the following way:

“IV.-Regarding their application in these two communities:

a) The last sentence of the first paragraph of article L. 1110-5 is to be worded in the following way: “These provisions are applicable without prejudice to article L. 1541-4.”;

« b) The penultimate paragraph of article L. 1110-5-2 is to be worded in the following way:

“Upon the request of the patient and after consultation with a doctor, deep and prolonged sedation combined with analgesia mentioned in the present article shall be implemented at the patient’s home or in a place set aside for this purpose by the relevant local health and social services authorities. “

V.-Article L. 1541-3 of the same code is to be worded in the following way:

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1° In II, a paragraph entitled “3° bis” is to be inserted and worded in the following way:

“3° bis The third paragraph of article L. 1111-6 is to be deleted;”

2° IV and V worded in the following way, are to be added:

« IV.-The last paragraph of article L. 1111-6 is not applicable in New Caledonia.

« V.-Article L. 1111-11 is applicable in these two communities with the following adaptations:

“1° At the end of the second sentence of the second paragraph, the following words are to be deleted “taken after consultation with the High Authority for Health”;

“2° The last paragraph is not applicable in New Caledonia”

Article 14

I.-At the time of the examination of the law governing the financing of social security, the Government shall file a report every year to the Parliament. This report shall assess the conditions of the application of the present law as well as the policy concerning the development of palliative care in health facilities mentioned in 6° of I of article L. 312-1 of the Family and Social Action Code, as well as at home.

II.-Article 15 of Law n° 2005-370 of April 22, 2005 concerning the rights of patients and end of life is repealed.

The present Law shall be enforced as a Law of the state.

Paris, February 2, 2016.

François Hollande
President of the Republic:

Prime Minister,
Manuel Valls

Minister of Justice,

Jean-Jacques Urvoas

Minister of Social Affairs, Health and Women's Rights,
Marisol Touraine

Minister for Overseas Communities,
George Pau-Langevin

Secretary of State in charge of Family, Childhood, Elderly People and Autonomy,
Laurence Rossignol

(1) Preparatory Work: Law n° 2016-87.

National Assembly:

Members' Bill n° 2512;

Report by Mr. Alain Claeys and Mr. Jean Leonetti, for the Social Affairs Committee n° 2585;

Discussion on March 10 and 11, 2015, passed on March 17, 2015 (TA n° 486).

Senate:

Members' Bill passed by the National Assembly, n° 348 (2014-2015);

Report by Mr. Michel Amiel and Mr. Gérard Dériot, for the Social Affairs Committee, n° 467 (2014-2015);

Opinion given by Mr. François Pillet, for the Law Committee, n° 506 (2014-2015);

Text from the committee n° 468 (2014-2015);

Discussion June 16, 17 and 23 2015 and rejection June 23, 2015 (TA n° 116, 2014-2015) :

Members' Bill rejected by the Senate, n° 2887;

Report by Mr. Alain Claeys and Mr. Jean Leonetti, for the Social Affairs Committee, n° 3091;

Discussion on October 5 and 6, 2015 passed on October 6, 2015 (TA n° 592).

Senate:

Members' Bill passed with modifications of the National Assembly on second reading, n° 12 (2015-2016);

Report by Mr. Michel Amiel and Mr. Gérard Dériot, for the Social Affairs Committee, n° 103 (2015-2016);

Opinion given by Mr. François Pillet, for the Law Committee, n° 106 (2015-2016);

Text from the committee, n° 104 (2015-2016);

Discussion and passed, October 29, 2015 (TA n° 30, 2015-2016).

National Assembly:

Members' Bill, modified by the Senate on second reading;

Report by Mr. Alain Claeys, for the Joint Committee, n° 3402;

Discussion and passed January 27, 2016 (TA n° 665).

Senate:

Report by M. Gérard Dériot, for the Joint committee, n° 306 (2015-2016) ;

Text from the committee n° 307 (2015-2016);

Discussion and passed, January 27, 2016 (TA n° 72, 2015-2016).