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Text n°41

Decree n° 2016-1067 of August 3, 2016 concerning the advance decisions provided for by Law n° 2016-87 of February 2, 2016 establishing new rights for patients and the terminally ill

NOR: AFSP1618421D

ELI:<https://www.legifrance.gouv.fr/eli/decret/2016/8/3/AFSP1618421D/jo/texte>

Alias: <https://www.legifrance.gouv.fr/eli/decret/2016/8/3/2016-1067/jo/texte>

Actors concerned: adults.

Objet: the drawing-up, revision, revocation and conservation of advanced decisions.

Entry into force: the law shall be enacted as of the day after its publication.

Note: The aim of the Decree is to detail the mechanisms for the drawing-up, revision and revocation of advanced decisions which have been written in the hypothesis that the persons would not be in a state to express their will.

It also details the mechanisms governing the conservation of such advance decisions.

References: the Decree has been taken in order to apply the Law n° 2016-87 of February 2, 2016 establishing new rights for patients and for the terminally ill. The provisions of the Public Health Code which have been modified by the present Decree may be consulted in the wording which results from this modification on the Légifrance internet site (<http://www.legifrance.gouv.fr>).

The Prime Minister,

Considering the report of the Minister of Social Affairs and Health and of the Minister of Justice,

Having regard to the Social Action and Family Code;

Having regard to the Public Health Code, especially its articles L. 1111-11 et R. 1111-30;

Having regard to Decree n° 2016-5 of January 5, 2016, establishing the National Centre for Palliative Care and for the End of Life;

Having regard to the opinion of the High Authority for Health dating from July 6, 2016;

Having regard to the opinion of the National Committee on Data Protection and Liberties dating from July 21, 2016;

Having regard to the referral made to the Government of New Caledonia dating from July 6, 2016;

Having regard to the referral made to the Government of French Polynesia dating from July 6, 2016;

Having listened to the Social Section of the *Conseil d'Etat* (French High Court),

Decrees

Article 1

Article R. 1111-17 of the Public Health shall be modified in the following way:

1° The first paragraph is to be replaced by the following provisions:

“Advance decisions mentioned in article L. 1111-11, refer to a document written, dated and signed by their author, who is an adult and has been duly identified by an indication of his/her last name, first name, date and place of birth. An adult under guardianship may draw up advance decisions with the authorization of a judge, or the family council, if one exists;

2° The second paragraph is to be replaced by the following provisions:

Advance decisions may, at any time, be revised or revoked. They are revised using the mechanisms as those provided for in the first paragraph regarding their drawing-up. In the case of the existence of several documents answering the conditions of validity, the last one drawn up shall be considered as the valid one.

Article 2

Article R. 1111-18 of the Public Health Code shall be replaced by the following provisions:

Art. R. 1111-18.-I.-The model mentioned in article L. 1111-11, following which advance decisions may be drawn up includes:

1° The following information:

a) The elements for identification mentioned in article R. 1111-17 concerning the author of the decisions;

b) The elements for identification of the designated support person mentioned in article L. 1111-6;

c) If necessary, the references concerning the necessary authorizations in the case of the guardianship measures mentioned in the last paragraph of article L. 1111-6;

d) If the patient is physically incapable of writing such advance decisions, the information concerning the two witnesses provided for in article R. 1111-17;

2° The will of the person concerning the medical decisions regarding the end of his/her life. These include the conditions of the continuation, the limiting, the ending or the refusal of treatment or medical procedures in the case where he/she were no longer able to express him/herself. The model allows the person to express his/her will according to one or other of the following cases:

a) In the case where the person is terminally ill, or knows that he/she is suffering from a serious condition, he/she expresses his/her will concerning a possible future situation and on the continuation, the limiting, the ending or the refusal of treatment or medical procedure, especially those taken in the framework of the condition;

b) In the case where the person does not consider that he/she is suffering from a serious condition, he/she expresses his/her will concerning a possible future situation and on the continuation, the limiting, the ending or the refusal of treatment or medical procedure, in the hypothesis where he/she would be the victim of a serious accident or suffering from a serious condition;

3° A section allowing the person to express his/her will concerning the possibility of receiving deep and prolonged sedation until death, in the framework of the hypotheses provided for by article L. 1110-5-2 and when the life supporting treatment has been stopped;

4° A section concerning the revision or the revocation of advance decisions.

II.-The model concerning advance decisions, whose content is in conformity with the provisions mentioned in I, is specified by a Ministerial Decree of the Minister for Health.

III.-Guidelines drawn up by the High Authority for Health to help the general public, health professionals and professionals in the medico-social and social fields, in the drawing-up of advance decisions, based on the model mentioned in II, may be consulted on the site of the High Authority for Health.

Article 3

Article R. 1111-19 of the Public Health Code is to be replaced by the following provisions:

Art. R. 1111-19.-I.-Advance decisions shall be conserved following mechanisms which shall allow them to be easily accessed by the doctor called upon to take a decision the limiting or

the ending of treatment in the framework of the collegial procedure set down by article R. 4127-37.

II.-Consequently, the advance decisions can be included and kept, upon the decision of the person who drew them up, in his/her shared medical records in the section set aside for this purpose and mentioned in g of 1° of article R. 1111-30. This automatically means being included in the register provided for by article L. 1111-11. The person may also decide to mention only the information concerning the existence of such decisions as well as the place where they have been kept and the details of the person who is the custodian. When the advance decisions are included in the shared medical records, a reminder of their existence is regularly addressed to their author.

The mechanisms concerning the authentication, the conservation and the access to and revision of, the advance decisions as well as the necessary guarantees for their confidentiality are those provided for concerning the shared medical records mentioned in Section 4 of the present Chapter.

III.-The advance decisions may also be kept:

1° By a local doctor, either a general practitioner or any other doctor chosen by the person who drew them up;

2° In the case of hospitalization, in the medical records mentioned in article R. 1112-2;

3° In the case of admission to a medico-social facility, in the healthcare file mentioned in 8° of article D. 312-158 of the Code on Social Action and Families.

In these cases, the advance decisions fall within the scope of the provisions of articles L. 1110-4 and L. 1110-4-1 regarding the confidentiality of information concerning the person cared for by a health professional as well as that of the conditions governing the exchange, the sharing and the security of such information.

IV.-When the advance decisions are kept in one of the files mentioned in II and III of the present article, the persons identified in application of b and d of article R. 1111-18 shall be informed by the author of such decisions of the inclusion of the details concerning them.

V.-Advance decisions may also be kept by their author or be passed on by the author to the designated support person mentioned in article L. 1111-6, to a member of the family or to a close friend. In such a case, their existence, the place where they are kept and the details of the person who keeps them, may be mentioned, with the agreement of their author, in the shared medical records, in the file created by the local doctor, in the file established according to article R. 1112-2 of the present code or in the file corresponding to the model file mentioned in article D. 312-158 of the Social Action and Family Code.

The identification elements of the person holding the advance decisions shall be his/her last name, first name and address. This person shall be informed by the author of the advance decisions of his/her inclusion in one of the files mentioned in the previous paragraph.

VI.-Every health or medico-social facility shall enquire of every person it cares for, if such advance decisions exist. The medical records set down in article R. 1112-2 of the present

code or the file based on the model file mentioned in 8° of article D. 312-158 of the Social Action and Family Code refers, if the case applies, to this fact as well as to the personal details of the person who holds them.

VII.- The National Centre for Palliative Care and for the End of Life, in the framework of the missions it has been asked to carry out by Decree n° 2016-5 of January 5, 2016, published information documents concerning the possibility of drawing up advance decisions and the concrete access to the model mentioned in article R. 1111-18.

Article 4

Article R. 1111-20 of the same code is to be replaced by the following provisions:

Art. R. 1111-20.-In case where it is envisaged to take a decision concerning the limiting or the ending of treatment in application of article L. 1111-4, and unless the advance decisions are not already in his/her possession, the doctor shall consult the shared medical records. In the case of the non-existence of advance decisions included or recorded in the medical records or in the shared medical records, he/she shall seek for the existence and the place where they are kept, of the advance decisions with the designated support person, with the family, or with a close friend, or if necessary, with the general practitioner of the patient or with the doctor who sent him/her the patient.

Article 5

I.-Title IV of Book V of the first part of the Public Health Code is to be modified in the following way:

1° This Title is entitled: "New Caledonia and French Polynesia".

2° A first Chapter worded in the following way shall be inserted:

First Chapter:

The protection of people as regards health

Art. R. 1541-1.-Articles R. 1111-17 to R. 1111-20 are applicable in New Caledonia and in French Polynesia, in the wording which results from Decree n° 2016-1067 of August 3, 2016, with the exception of III of article R. 1111-18, subject to the following adaptations:

1° For article R. 1111-17, the last sentence of the first paragraph is not applicable in New Caledonia;

2° The c of 1° of article R. 1111-18 is not applicable in New Caledonia;

3° Article R. 1111-19 is to be replaced by the following provisions:

Art. R. 1111-19.-Advance decisions are to be conserved according to mechanisms so as to

make them accessible for the doctor who is called upon to take a decision regarding the limiting or the ending of treatment, in the framework of the collegial procedure set down in Article R. 4127-37-1.

Advance decisions may also be kept by their author or be passed on by the author to the designated support person mentioned in article L. 1111-6, to a member of the family or to a close friend. In such a case, their existence, the place where they are kept and the details of the person who keeps them, may be mentioned, with the agreement of their author, in the medical records,

II.-In the same Book V of the first part of the same code, the phrase: "Title V : New Caledonia and French Polynesia" shall be deleted and Chapter V of this Title shall of this deleted Title shall be included in Chapter IV.

Article 6

The Minister for Social Affairs and Health, the Minister of Justice and the Minister for Overseas Communities are responsible, each in their own area, for the implementation of the present Decree, which shall be published in the Official Journal of the French Republic".

Signed, August 3, 2016

Manuel Valls,
By the Prime Minister

Minister of Social Affairs and Health,
Marisol Touraine

Minister of Justice,
Jean-Jacques Urvoas

Minister for Overseas Communities,
George Pau-Langevin