

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

286N0636

HOUSE BILL NO. 1269

Introduced by: Representatives Rausch, Hackl, Hunt, Koistinen, Novstrup (Al), and Wick
and Senators Duenwald, Apa, Greenfield, Napoli, and Schmidt (Dennis)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to health care decisions
2 by attorneys-in-fact or agents.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 59-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The terms defined in § 34-12D-1 have the same meaning in §§ 59-7-2.1 to 59-7-8, inclusive.

7 Section 2. That § 59-7-2.5 be amended to read as follows:

8 59-7-2.5. The attorney-in-fact or agent may make any health care decisions for the principal
9 which the principal could make individually if ~~he~~ the principal had decisional capacity.
10 ~~However, all such decisions shall be made in accordance with accepted medical practice.~~
11 Whenever making any health care decision for the principal, the attorney-in-fact or agent shall
12 ~~consider the recommendation of the attending physician;~~ implement the decision that the
13 principal would have made if the principal then had decisional capacity, if known, and if the
14 decision the principal would have made is not known, the decision that would be in the best
15 interest of the principal, taking into account the information and recommendations provided by



1 the attending physician.

2 Section 3. That § 59-7-8 be amended to read as follows:

3 59-7-8. ~~A~~ Subject to the provisions of section 4 of this Act, a physician or other ~~healthcare~~
4 health care provider acting in reliance on a health care decision by an attorney-in-fact or agent
5 whom the physician or ~~healthcare~~ health care provider believes in good faith is authorized by
6 this chapter to make a health care decision for the principal or a physician or other ~~healthcare~~
7 health care provider declining to act in reliance on a health care decision by an attorney-in-fact
8 or agent whom the physician or ~~healthcare~~ health care provider believes in good faith is not
9 authorized by this chapter to make a health care decision for the principal is not subject to
10 criminal prosecution, civil liability or professional disciplinary action on the ground that the
11 attorney-in-fact or agent either had or did not have authority to make a health care decision or
12 for disclosing to the attorney-in-fact or agent medical records or other information.

13 A physician or other ~~healthcare~~ health care provider who in good faith believes that the
14 principal has or does not have decisional capacity under § 59-7-2.6 is not subject to criminal
15 prosecution, civil liability or professional disciplinary action for making that determination.

16 Section 4. That chapter 59-7 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 In any case of dispute between a physician or other health care provider and an attorney-in-
19 fact or agent, or in any case of dispute among different persons claiming to be the incapacitated
20 person's attorney-in-fact or agent, the physician or other health care provider shall comply with
21 orders issued by a court of competent jurisdiction, and pending issuance of such orders, shall
22 provide the patient treatment, nutrition, and hydration if denial would, in reasonable medical
23 judgment, be likely to result in or hasten the death of the patient.