

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

409N0183

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 75 - 02/23/2007

Introduced by: Senators Hunhoff, Heidepriem, Knudson, Koetzle, and Turbak and
Representatives Feinstein, Cutler, Gillespie, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding living wills.

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

3 Section 1. That § 34-12D-1 be amended to read as follows:

4 34-12D-1. Terms used in this chapter mean:

5 (1) "Attending physician," the physician who has primary responsibility for the treatment
6 and care of the patient;

7 (2) "Declaration," a writing executed in accordance with the requirements of § 34-12D-2;

8 (3) "~~Health-care~~ Health care provider," any ~~person who is licensed, certified, or~~
9 ~~otherwise authorized by law to administer health care in the ordinary course of~~
10 ~~business or practice of a profession, including any person employed by or acting for~~
11 ~~any such authorized person~~ licensed health care facility or any person, corporation,
12 or organization licensed, certified, or otherwise authorized or permitted by law to
13 administer health care;

14 (4) "Life-sustaining treatment," any medical procedure or intervention that, when
15 administered to a ~~qualified~~ patient, will serve only to postpone the moment of death



1 or to maintain the patient in a condition of permanent unconsciousness. The term
 2 does not include the provision of appropriate care to maintain comfort, hygiene and
 3 human dignity, the oral administration of food and water, or the administration of any
 4 medication or other medical procedure deemed necessary to alleviate pain;

5 (5) "Person," an individual, corporation, business trust, estate, trust, limited liability
 6 company, partnership, association, joint venture, government, governmental
 7 subdivision, or agency, or any other legal or commercial entity;

8 (6) "Physician," an individual licensed to practice medicine in this state;

9 (7) ~~"Qualified patient," an adult individual who has executed a declaration and who has
 10 been determined by the attending physician and one other physician to be in a
 11 terminal condition;~~

12 ~~—(8)—~~ "Terminal condition," an incurable and irreversible condition such that, in accordance
 13 with accepted medical standards, ~~will cause death within a relatively short time~~ death
 14 is imminent if life-sustaining treatment is not administered, or a coma or other
 15 condition of permanent unconsciousness that, in accordance with accepted medical
 16 standards, will last indefinitely without significant improvement and in which the
 17 individual is unable to communicate verbally or nonverbally, demonstrates no
 18 purposeful movement or motor ability, and is unable to interact purposefully with
 19 environmental stimulation.

20 Section 2. That § 34-12D-3 be amended to read as follows:

21 34-12D-3. A declaration may, but need not, be in the following form:

22 LIVING WILL DECLARATION

23 This is an important legal document. ~~This document~~ A living will directs the medical
 24 treatment you are to receive in the event you are in a terminal condition and are unable to

1 participate in your own medical decisions ~~and you are in a terminal condition~~. This document
2 living will may state what kind of treatment you want or do not want to receive.

3 ~~This document can control whether you live or die~~. Prepare this document living will
4 carefully. If you use this form, read it completely. You may want to seek professional help to
5 make sure the form does what you intend and is completed without mistakes.

6 This ~~document will remain~~ living will remains valid and in effect until and unless you
7 revoke it. Review this ~~document~~ living will periodically to make sure it continues to reflect your
8 wishes. You may amend or revoke this ~~document~~ living will at any time by notifying your
9 physician and other ~~health-care~~ health care providers. You should give copies of this ~~document~~
10 living will to your ~~physician and your family, your physician, and your health care facility~~. This
11 form is entirely optional. If you choose to use this form, please note that the form provides
12 signature lines for you, the two witnesses whom you have selected, and a notary public.

13 TO MY FAMILY, PHYSICIANS HEALTH CARE PROVIDER, AND ALL THOSE
14 CONCERNED WITH MY CARE:

15 I, _____ ~~willfully and voluntarily make this declaration as a directive to be followed if I am~~
16 ~~in a terminal condition and become unable to participate in decisions regarding my medical care~~
17 direct you to follow my wishes for care if I am in a terminal condition, my death is imminent,
18 and I am unable to communicate my decisions about my medical care.

19 With respect to any life-sustaining treatment, I direct the following:

20 (Initial only one of the following ~~optional directives if you agree~~ options. If you do not agree
21 with ~~any~~ either of the following ~~directives~~ options, space is provided below for you to write your
22 own ~~directives~~ instructions.):

23 ~~_____ NO LIFE-SUSTAINING TREATMENT. I direct that no life-sustaining treatment be~~
24 ~~provided. If life-sustaining treatment is begun, terminate it.~~

1 ~~___ TREATMENT FOR RESTORATION. Provide life-sustaining treatment only if and for~~
2 ~~so long as you believe treatment offers a reasonable possibility of restoring to me the ability to~~
3 ~~think and act for myself.~~

4 ~~___ TREAT UNLESS PERMANENTLY UNCONSCIOUS. If you believe that I am~~
5 ~~permanently unconscious and are satisfied that this condition is irreversible, then do not provide~~
6 ~~me with life-sustaining treatment, and if life-sustaining treatment is being provided to me,~~
7 ~~terminate it. If and so long as you believe that treatment has a reasonable possibility of restoring~~
8 ~~consciousness to me, then provide life-sustaining treatment.~~

9 ~~___ MAXIMUM TREATMENT. Preserve my life as long as possible, but do not provide~~
10 ~~treatment that is not in accordance with accepted medical standards as then in effect.~~

11 ~~___ (Artificial nutrition and hydration is food and water provided by means of a nasogastric tube~~
12 ~~or tubes inserted into the stomach, intestines, or veins. If you do not wish to receive this form~~
13 ~~of treatment, you must initial the statement below which reads: "I intend to include this~~
14 ~~treatment, among the 'life-sustaining treatment' that may be withheld or withdrawn.")~~

15 ___ If my death is imminent or I am permanently unconscious, I choose not to prolong my life.
16 If life sustaining treatment has been started, stop it, but keep me comfortable and control my
17 pain.

18 ___ Even if my death is imminent or I am permanently unconscious, I choose to prolong my
19 life.

20 ___ I choose neither of the above options, and here are my instructions should I become
21 terminally ill and my death is imminent or I am permanently unconscious:

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Artificial Nutrition and Hydration: food and water provided by means of a tube inserted into the stomach or intestine or needle into a vein.

With respect to artificial nutrition and hydration, I ~~wish to make clear that~~ direct the following:

(Initial only one)
~~___ I intend to include this treatment among the "life-sustaining treatment" that may be withheld or withdrawn.~~

~~___ I do not intend to include this treatment among the "life-sustaining treatment" that may be withheld or withdrawn.~~

~~(If you do not agree with any of the printed directives and want to write your own, or if you want to write directives in addition to the printed provisions, or if you want to express some of your other thoughts, you can do so here).~~

___ If my death is imminent or I am permanently unconscious, I do not want artificial nutrition and hydration. If it has been started, stop it.

___ Even if my death is imminent or I am permanently unconscious, I want artificial nutrition and hydration.

Date: _____

1 (your signature)

2 _____

3 (your address)

(type or print your signature)

4

5 The declarant voluntarily signed this document in my presence.

6 Witness _____

7 Address _____

8 Witness _____

9 Address _____

10 On this the _____ day of _____, _____, the declarant, _____, and
11 witnesses _____, and _____ personally appeared before the undersigned officer
12 and signed the foregoing instrument in my presence. Dated this _____ day of _____,
13 _____.

14 _____ Notary Public

15 My commission expires: _____.

16 Section 3. That § 34-12D-5 be amended to read as follows:

17 34-12D-5. A living will declaration becomes operative when the declarant is determined by
18 the attending physician ~~and one other physician~~ to be in a terminal condition ~~and, death is~~
19 imminent, and the declarant is no longer able to ~~make decisions regarding administration of~~
20 ~~life-sustaining treatment. If the declaration becomes operative, the attending physician and other~~
21 ~~health-care providers shall act in accordance with the declaration or comply with the transfer~~
22 ~~requirements of § 34-12D-11~~ communicate decisions about medical care.

23 Section 4. That § 34-12D-8 be amended to read as follows:

24 34-12D-8. A declarant may revoke a declaration at any time and in any manner without

1 regard to the declarant's mental or physical condition. A revocation is effective upon
2 communication to the ~~attending physician or other health-care~~ health care provider. The
3 ~~attending physician or health-care~~ health care provider shall make the revocation a part of the
4 declarant's medical record.

5 Section 5. That § 34-12D-9 be amended to read as follows:

6 34-12D-9. This chapter does not affect the responsibility of ~~the attending physician or other~~
7 ~~health-care~~ any health care provider to provide treatment, ~~including orally or artificially~~
8 ~~administered nutrition and hydration~~, when necessary to alleviate pain or to provide for the
9 patient's comfort, hygiene, or human dignity.

10 Section 6. That § 34-12D-11 be amended to read as follows:

11 34-12D-11. A ~~physician or other health-care~~ health care provider need not participate in the
12 withdrawal or withholding of life-sustaining treatment. However, a ~~physician or other~~
13 ~~health-care~~ health care provider electing for any reason not to participate in the withholding or
14 withdrawal of life-sustaining treatment shall make a reasonable effort to locate and to transfer
15 the declarant to a physician or ~~health-care~~ health care provider willing to honor the declaration.

16 Section 7. That § 34-12D-12 be amended to read as follows:

17 34-12D-12. If an individual's declaration contains a directive to provide treatment or
18 artificial nutrition and hydration under any circumstances, any ~~physician or health-care~~ health
19 care provider who has responsibility for the treatment and care of the individual must provide
20 the directed treatment or artificial nutrition and hydration in those circumstances so long as it
21 is technically feasible. A ~~physician or health-care~~ health care provider who objects to providing
22 such treatment may instead transfer the individual to a ~~physician or health-care~~ health care
23 provider willing to honor the declaration, but must continue to provide the treatment or care
24 until the transfer is effectuated.

1 Section 8. That § 34-12D-13 be amended to read as follows:

2 34-12D-13. A ~~physician or other health-care~~ health care provider is not subject to civil or
3 criminal liability or to ~~discipline for unprofessional conduct~~ professional disciplinary action for
4 giving effect to a declaration, absent actual knowledge of its revocation, for determining that
5 a terminal condition does or does not exist or for declining to give effect to a declaration under
6 § 34-12D-11.

7 Section 9. That § 34-12D-14 be amended to read as follows:

8 34-12D-14. Death resulting from the withdrawal or withholding of life-sustaining treatment
9 in accordance with this chapter does not constitute, for any purpose, a suicide on the part of the
10 declarant or a homicide on the part of the attending physician or other ~~health-care~~ health care
11 providers.

12 Section 10. That § 34-12D-19 be amended to read as follows:

13 34-12D-19. This chapter does not require a physician or other ~~health-care~~ health care
14 provider to take action contrary to ~~reasonable~~ accepted medical standards.

15 Section 11. That § 34-12D-21 be amended to read as follows:

16 34-12D-21. In the absence of actual knowledge to the contrary, a ~~physician or other~~
17 ~~health-care~~ health care provider may assume that a declaration complies with this chapter and
18 is valid.

19 Section 12. That § 34-12D-29 be amended to read as follows:

20 34-12D-29. For the purposes of §§ 34-12D-23 to 34-12D-28, inclusive, the term, licensed
21 health care professional, means any physician, surgeon, podiatrist, osteopath, physician
22 assistant, nurse, certified nurse practitioner, certified nurse midwife, clinical nurse specialist,
23 certified registered nurse anesthetist, dentist, or pharmacist licensed pursuant to Title 36.