

AN ACT

ENTITLED, An Act to revise certain provisions regarding health care decisions by agents.

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

Section 1. That § 59-7-2.5 be amended to read as follows:

59-7-2.5. The attorney-in-fact or agent may make any health care decisions for the principal which the principal could make individually if the principal had decisional capacity. However, all such decisions shall be made in accordance with accepted medical standards. Whenever making any health care decision for the principal, the attorney-in-fact or agent shall consider the recommendation of the attending physician, the decision that the principal would have made if the principal then had decisional capacity, if known, and the decision that would be in the best interest of the principal.

Section 2. That § 59-7-2.7 be amended to read as follows:

59-7-2.7. The attorney-in-fact or agent may not authorize the withholding or withdrawal of comfort care from the principal. The attorney-in-fact or agent may authorize that artificial nutrition or hydration be withheld or withdrawn if one or more of the following exist:

- (1) Artificial nutrition or hydration is not needed for comfort care or the relief of pain and the attending physician reasonably believes that the principal's death is imminent; or
- (2) Artificial nutrition or hydration cannot be physically assimilated by the principal; or
- (3) The burden of providing artificial nutrition or hydration outweighs its benefit, provided that the determination of burden refers to the provision of artificial nutrition or hydration itself and not to the quality of the continued life of the principal; or
- (4) There is clear and convincing evidence that the principal expressed the desire that artificial nutrition or hydration be withheld, or refused artificial nutrition or hydration prior to the loss of decisional capacity; or
- (5) The principal expressed in the document creating the power of attorney that artificial

nutrition or hydration be withheld; or

- (6) The principal expressly authorized, in the writing creating the power of attorney, the attorney-in-fact or agent to direct the withholding of artificial nutrition or hydration.

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

59-7-8. A physician or other health care provider as defined in subdivision 34-12C-1(5) acting in reliance on a health care decision by an attorney-in-fact or agent whom the physician or health care provider believes in good faith is authorized by this chapter to make a health care decision for the principal or a physician or other health care provider declining to act in reliance on a health care decision by an attorney-in-fact or agent whom the physician or health care provider believes in good faith is not authorized by this chapter to make a health care decision for the principal is not subject to criminal prosecution, civil liability, or professional disciplinary action on the ground that the attorney-in-fact or agent either had or did not have authority to make a health care decision or for disclosing to the attorney-in-fact or agent medical records or other information.

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

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I certify that the attached Act
originated in the

SENATE as Bill No. 76

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 76

File No. _____

Chapter No. _____

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

STATE OF SOUTH DAKOTA,
SS.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State