



1995 ENGROSSED ASSEMBLY BILL 399

October 4, 1995 - Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT** *to repeal* 154.01 (7); *to amend* chapter 154 (title), 154.03 (1) (intro.),
2 154.03 (2), 154.15 (1) and 154.15 (2); *to create* 154.05 (1) (d), 154.11 (7) (d) and
3 154.11 (8) and (9) of the statutes; and *to affect* 1991 Wisconsin Act 84, section
4 19 (title), 1991 Wisconsin Act 84, section 19 and 1991 Wisconsin Act 84, section
5 19 (2); **relating to:** declarations to physicians.

Analysis by the Legislative Reference Bureau

Engrossment information

The text of Engrossed 1995 Assembly Bill 399 consists of the following documents adopted in the assembly on September 28, 1995: the bill as affected by Assembly Amendments 1, 4, 5, 6 and 7.

Content of Engrossed 1995 Assembly Bill 399:

Under current law, an adult of sound mind may voluntarily execute, under specified procedures, a declaration to physicians (commonly known as a living will), authorizing physicians to withhold or withdraw medication, life-sustaining procedures or feeding tubes if the person is in a terminal condition or a persistent vegetative state. The living will laws prohibit this withholding or withdrawal if doing so will cause the person executing the living will (the declarant) pain or reduce his or her comfort. Health care providers lawfully participating in actions authorized under a living will are immune from civil or criminal liability or from being charged with unprofessional conduct, except that a physician who refuses to comply with a living will and refuses or fails to make a good faith attempt to transfer the declarant to another physician who will comply may be charged with unprofessional conduct. A form model of a living will is statutorily set forth. The department of health and social services (DHSS) must prepare and provide copies of the statutory form model and certain other information to health care professionals, hospitals, nursing homes, county clerks, local bar associations and private persons.

This bill makes numerous changes to the living will statutes, including the following:

1. The bill changes the standard under which withholding or withdrawal of medications, life-sustaining procedures or feeding tubes is prohibited. Under the bill, the withholding or withdrawal may not be made if the declarant’s attending physician advises that doing so will cause the declarant pain or reduce his or her comfort, and the pain or discomfort cannot be alleviated through pain relief measures.

2. The bill authorizes the validity and enforceability of a valid living will from another state or jurisdiction, to the extent that the living will is consistent with Wisconsin law.

3. The bill requires a health care facility or provider that receives a copy of a living will to include the copy in the declarant’s medical record.

4. The bill permits a person to revoke his or her living will by executing a subsequent living will.

5. The bill shortens and revises the statutory living will form.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** Chapter 154 (title) of the statutes is amended to read:

2 **CHAPTER 154**

3 ~~**NATURAL DEATH**~~

4 **DECLARATIONS TO PHYSICIANS**

5 **SECTION 2.** 154.01 (7) of the statutes is repealed.

6 **SECTION 3.** 154.03 (1) (intro.) of the statutes is amended to read:

7 154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may
8 at any time voluntarily execute a declaration, which shall take effect on the date of
9 execution, authorizing the withholding or withdrawal of life-sustaining procedures
10 or of feeding tubes when the person is in a terminal condition or is in a persistent
11 vegetative state. A declarant may not authorize the withholding or withdrawal of
12 any medication, life-sustaining procedure or feeding tube if the declarant’s
13 attending physician advises that, in his or her professional judgment, the

1 withholding or withdrawal will cause the declarant pain or reduce the declarant's
2 comfort and the pain or discomfort cannot be alleviated through pain relief
3 measures. A declarant may not authorize the withholding or withdrawal of nutrition
4 or hydration that is administered or otherwise received by the declarant through
5 means other than a feeding tube unless the declarant's attending physician advises
6 that, in his or her professional judgment, the administration is medically
7 contraindicated. A declaration must be signed by the declarant in the presence of 2
8 witnesses. If the declarant is physically unable to sign a declaration, the declaration
9 must be signed in the declarant's name by one of the witnesses or some other person
10 at the declarant's express direction and in his or her presence; such a proxy signing
11 shall either take place or be acknowledged by the declarant in the presence of 2
12 witnesses. The declarant is responsible for notifying his or her attending physician
13 of the existence of the declaration. An attending physician who is so notified shall
14 make the declaration a part of the declarant's medical records. No witness to the
15 execution of the declaration may, at the time of the execution, be any of the following:

16 **SECTION 4.** 154.03 (2) of the statutes is amended to read:

17 154.03 (2) The department shall prepare and provide copies of the declaration
18 and accompanying information for distribution in quantities to health care
19 professionals, hospitals, nursing homes, county clerks and local bar associations and
20 individually to private persons. The department shall include, in information
21 accompanying the declaration, at least the statutory definitions of terms used in the
22 declaration, statutory restrictions on who may be witnesses to a valid declaration,
23 a statement explaining that valid witnesses acting in good faith are statutorily
24 immune from civil or criminal liability, an instruction to potential declarants to read
25 and understand the information before completing the declaration and a statement

1 explaining that an instrument may, but need not be, filed with the register in probate
2 of the declarant's county of residence. The department may charge a reasonable fee
3 for the cost of preparation and distribution. The declaration distributed by the
4 department of health and social services shall be easy to read, the type size may be
5 no smaller than 10 point, and the declaration shall be in the following form, setting
6 forth on the first page the wording before the ATTENTION statement and setting
7 forth on the 2nd page the ATTENTION statement and remaining wording:

8 DECLARATION TO PHYSICIANS

9 (WISCONSIN LIVING WILL)

10 1. I,...., being of sound mind, voluntarily state my desire that my dying may not
11 be prolonged under the circumstances specified in this document. Under those
12 circumstances, I direct that I be permitted to die naturally. If I am unable to give
13 directions regarding the use of life-sustaining procedures or feeding tubes, I intend
14 that my family and physician honor this document as the final expression of my legal
15 right to refuse medical or surgical treatment and to accept the consequences from
16 this refusal.

17 2. 1. If I have a TERMINAL CONDITION, as determined by 2 physicians who
18 have personally examined me, I do not want my dying to be artificially prolonged and
19 I do not want life-sustaining procedures to be used. In addition, if I have such a
20 terminal condition, the following are my directions regarding the use of feeding tubes
21 (check only one):

22 a. Use YES, I want feeding tubes used if I have a terminal condition....

23 b. ~~Do not use~~ NO, I do not want feeding tubes used if I have a terminal
24 condition....

25 e. If I you have not checked either box, feeding tubes will be used.

1 3. ~~2.~~ If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
2 physicians who have personally examined me, the following are my directions
3 regarding the use of life-sustaining procedures and feeding tubes:

4 a. ~~Check only one:~~

5 Use ~~.... YES, I want~~ life-sustaining procedures used if I am in a persistent
6 vegetative state~~....~~.

7 ~~Do not use NO, I do not want~~ life-sustaining procedures used if I am in a
8 persistent vegetative state~~....~~.

9 If I you have not checked either box, life-sustaining procedures will be used.

10 b. ~~Check only one:~~

11 Use ~~feeding tubes if I am in a persistent vegetative state....~~

12 ~~Do not use~~ 3. If I am in a PERSISTENT VEGETATIVE STATE, as determined
13 by 2 physicians who have personally examined me, the following are my directions
14 regarding the use of feeding tubes:

15 ~~.... YES, I want~~ feeding tubes used if I am in a persistent vegetative state.

16 ~~.... NO, I do not want~~ feeding tubes used if I am in a persistent vegetative
17 state~~....~~.

18 If I you have not checked either box, feeding tubes will be used.

19 4. ~~By law, this document cannot be used to authorize: a) withholding or~~
20 ~~withdrawal of any medication, procedure or feeding tube if to do so would cause me~~
21 ~~pain or reduce my comfort; and b) withholding or withdrawal of nutrition or~~
22 ~~hydration that is administered to me through means other than a feeding tube~~
23 ~~unless, in my physician's opinion, this administration is medically contraindicated.~~

24 5. ~~If I have been diagnosed as pregnant and my physician knows of this~~
25 ~~diagnosis, this document has no effect during the course of my pregnancy.~~

1 Signed

2 Date

3 Address

4 If you are interested in more information about the significant terms used in
5 this document, see section 154.01 of the Wisconsin Statutes or the information
6 accompanying this document.

7 ATTENTION: You and the 2 witnesses must sign the document at the same
8 time.

9 Signed Date

10 Address Date of birth

11 I know ~~believe that~~ the person signing this document personally and I believe
12 ~~him or her to be~~ is of sound mind. I am an adult and am not related to the person
13 signing this document by blood, marriage or adoption, ~~and~~ I am not entitled to and
14 do not have a claim on any portion of the persons's estate and am not otherwise
15 restricted by law from being a witness.

16 Witness

17 Witness

18 Witness signature Date signed

19 Print name

20

21 Witness signature Date signed

22 Print name

23 This document is executed as provided in chapter 154, Wisconsin Statutes.

24 DIRECTIVES TO ATTENDING

25 PHYSICIAN

1 1. This document authorizes the withholding or withdrawal of life-sustaining
2 procedures or of feeding tubes when 2 physicians, one of whom is the attending
3 physician, have personally examined and certified in writing that the patient has a
4 terminal condition or is in a persistent vegetative state.

5 2. The choices in this document were made by a competent adult. Under the
6 law, the patient's stated desires must be followed unless you believe that withholding
7 or withdrawing life-sustaining procedures or feeding tubes would cause the patient
8 pain or reduced comfort and that the pain or discomfort cannot be alleviated through
9 pain relief measures. If the patient's stated desires are that life-sustaining
10 procedures or feeding tubes be used, this directive must be followed.

11 3. If you feel that you cannot comply with this document, you must make a good
12 faith attempt to transfer the patient to another physician who will comply. Refusal
13 or failure to make a good faith attempt to do so constitutes unprofessional conduct.

14 4. If you know that the patient is pregnant, this document has no effect during
15 her pregnancy.

16 * * * * *

17 The person making this living will may use the following space to record the
18 names of those individuals and health care providers to whom he or she has given
19 copies of this document:

20

21

22

23 **SECTION 5.** 154.05 (1) (d) of the statutes is created to read:

24 154.05 (1) (d) By executing a subsequent declaration.

1 **SECTION 7.** 154.11 (7) (d) of the statutes is created to read:

2 154.11 (7) (d) Nothing in this chapter, except par. (b), may be construed to
3 render invalid a declaration that was validly executed under this chapter before the
4 effective date of this paragraph [revisor inserts date].

5 **SECTION 8.** 154.11 (8) and (9) of the statutes are created to read:

6 154.11 (8) **INCLUSION IN MEDICAL RECORD.** Upon receipt of a declaration, a health
7 care facility, as defined in s. 155.01 (6), or a health care provider, as defined in s.
8 155.01 (7), shall, if the declarant is a patient of the health care facility or health care
9 provider, include the declaration in the medical record of the declarant.

10 **(9) DECLARATION FROM OTHER JURISDICTION.** A valid document that authorizes
11 the withholding or withdrawal of life-sustaining procedures or of feeding tubes and
12 that is executed in another state or jurisdiction in compliance with the law of that
13 state or jurisdiction is valid and enforceable in this state to the extent that the
14 document is consistent with the laws of this state.

15 **SECTION 9.** 154.15 (1) of the statutes is amended to read:

16 154.15 (1) Any person who ~~wilfully~~ intentionally conceals, cancels, defaces,
17 obliterates or damages the declaration of another without the declarant's consent
18 may be fined not more than \$500 or imprisoned not more than 30 days or both.

19 **SECTION 10.** 154.15 (2) of the statutes is amended to read:

20 154.15 (2) Any person who, with the intent to cause a withholding or
21 withdrawal of life-sustaining procedures or feeding tubes contrary to the wishes of
22 the declarant, illegally falsifies or forges the declaration of another or conceals a
23 declaration revoked under s. 154.05 (1) (a) or (b) or any responsible person who
24 intentionally withholds ~~personal~~ actual knowledge of a revocation under s. 154.05
25 shall be fined not more than \$10,000 or imprisoned not more than 10 years or both.

