



1995 ASSEMBLY BILL 399

May 24, 1995 - Introduced by Representatives HUBER, KLUSMAN, MEYER, ZUKOWSKI, KUNICKI, GOETSCH, OLSEN, WASSERMAN, CULLEN, NOTESTEIN, SCHNEIDERS, CARPENTER, LA FAVE, ROBSON, KRUG, AINSWORTH, GRONEMUS, R. YOUNG, HANSON, SPRINGER, RYBA, ALBERS, WIRCH, BOCK, BOYLE and MURAT, cosponsored by Senators ROSENZWEIG, RUDE, HUELSMAN, MOEN, PLEWA, BURKE, BRESKE, DECKER, DARLING, CHVALA, SHIBILSKI and PANZER. Referred to Committee on Health.

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), 154.07 (1m),
3 154.11 (7) (d) and 154.11 (8) and (9) of the statutes; and **to affect** 1991
4 Wisconsin Act 84, section 19 (title), 1991 Wisconsin Act 84, section 19 and 1991
5 Wisconsin Act 84, section 19 (2); **relating to:** declarations to physicians.

Analysis by the Legislative Reference Bureau

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

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

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

16 154.03 (2) The department shall prepare and provide copies of the declaration
17 and accompanying information for distribution in quantities to health care
18 professionals, hospitals, nursing homes, county clerks and local bar associations and
19 individually to private persons. The department shall include, in information
20 accompanying the declaration, at least the statutory definitions of terms used in the
21 declaration, statutory restrictions on who may be witnesses to a valid declaration,
22 a statement explaining that valid witnesses acting in good faith are statutorily
23 immune from civil or criminal liability, an instruction to potential declarants to read
24 and understand the information before completing the declaration and a statement
25 explaining that an instrument may, but need not be, filed with the register in probate

1 of the declarant's county of residence. The department may charge a reasonable fee
2 for the cost of preparation and distribution. The declaration distributed by the
3 department of health and social services shall be easy to read, the type size may be
4 no smaller than 10 point, and the declaration shall be in the following form, setting
5 forth on the first page the wording before the ATTENTION statement and setting
6 forth on the 2nd page the ATTENTION statement and remaining wording:

7 DECLARATION TO PHYSICIANS

8 (WISCONSIN LIVING WILL)

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

16 2. 1. If I have a TERMINAL CONDITION, as ~~determined by 2 physicians who~~
17 ~~have personally examined me,~~ I do not want my dying to be artificially prolonged and
18 I do not want life-sustaining procedures to be used. In addition, if I ~~have such a~~
19 ~~terminal condition,~~ the following are my directions regarding the use of feeding tubes
20 (~~check only one~~):

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

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

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

1 Date

2 Address

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

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

8 Signed Date

9 Address Date of birth

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

15 Witness

16 Witness

17 Witness signature Date signed

18 Print name

19

20 Witness signature Date signed

21 Print name

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

23 DIRECTIVES TO ATTENDING

24 PHYSICIAN

SECTION 4

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 to do so
7 would cause the patient pain or reduced comfort despite the administration of pain
8 relief medication. If you feel that you cannot comply with this document, you must
9 make a good faith attempt to transfer the patient to another physician who will
10 comply.

11 3. If you know that the patient is pregnant, this document has no effect during
12 her pregnancy.

13 * * * * *

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

17
18
19

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

21 154.05 (1) (d) By executing a subsequent declaration.

22 **SECTION 6.** 154.07 (1m) of the statutes is created to read:

1 154.07 **(1m)** DUTY. A physician who refuses to comply with a declaration shall
2 make a good faith attempt to transfer the declarant to another physician who will
3 comply.

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

5 154.11 **(7)** (d) Nothing in this chapter, except par. (b), may be construed to
6 render invalid a declaration that was validly executed under this chapter before the
7 effective date of this paragraph [revisor inserts date].

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

9 154.11 **(8)** INCLUSION IN MEDICAL RECORD. Upon receipt of a declaration, a health
10 care facility, as defined in s. 155.01 (6), or a health care provider, as defined in s.
11 155.01 (7), shall, if the declarant is a patient of the health care facility or health care
12 provider, include the declaration in the medical record of the declarant.

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

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

19 154.15 **(1)** Any person who ~~wilfully~~ intentionally conceals, cancels, defaces,
20 obliterates or damages the declaration of another without the declarant's consent
21 may be fined not more than \$500 or imprisoned not more than 30 days or both.

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

23 154.15 **(2)** Any person who, with the intent to cause a withholding or
24 withdrawal of life-sustaining procedures or feeding tubes contrary to the wishes of
25 the declarant, illegally falsifies or forges the declaration of another or conceals a

1 declaration revoked under s. 154.05 (1) (a) or (b) or any responsible person who
2 intentionally withholds personal actual knowledge of a revocation under s. 154.05
3 shall be fined not more than \$10,000 or imprisoned not more than 10 years or both.

4 **SECTION 11.** 1991 Wisconsin Act 84, section 19 (title) is amended to read:

5 [1991 Wisconsin Act 84] Section 19 (title) **Initial applicability and**
6 **applicability.**

7 **SECTION 12.** 1991 Wisconsin Act 84, section 19 is renumbered 1991 Wisconsin
8 Act 84, section 19 (1).

9 **SECTION 13.** 1991 Wisconsin Act 84, section 19 (2) is created to read:

10 [1991 Wisconsin Act 84] Section 19 (2) Notwithstanding subsection (1) and
11 section 154.11 (7) (c) of the statutes, the treatment of section 154.11 (5m) of the
12 statutes applies to any declarations executed under chapter 154 of the statutes,
13 regardless of the date of execution.

14 **SECTION 14. Nonstatutory provisions; health and social services.**

15 (1) PRINTING AND DISTRIBUTION OF CERTAIN FORMS. By the date that is 30 days
16 after the effective date of this subsection, the department of health and social
17 services shall prepare and provide copies for distribution of the form declaration and
18 accompanying information under section 154.03 (2) of the statutes, as affected by
19 this act.

20 **(END)**