

1991 Assembly Bill 559

Date of enactment: **November 25, 1991**
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1991 WISCONSIN ACT 84

AN ACT *to repeal* 154.03 (1m); *to renumber and amend* 154.03 (1) and 154.07 (1); *to amend* 154.01 (2), 154.01 (5) (b), 154.01 (6), 154.03 (2), 154.07 (2), 154.11 (1), (2), (4) and (5), 154.15 (2), 155.20 (5) and 155.70 (3); and *to create* 154.01 (2g), 154.01 (2m), 154.01 (5m), 154.03 (1) (a) to (d), 154.07 (1) (b), 154.11 (5m) and 154.11 (7) (c) of the statutes, **relating to:** changing certain living will and power of attorney for health care requirements.

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

SECTION 1. 154.01 (2) of the statutes is amended to read:

154.01 (2) “Declaration” means a written, witnessed document voluntarily executed by the declarant under s. 154.03 (1), but is not limited in form or substance to that provided in s. 154.03 (2). ~~Only the original declaration is a valid instrument.~~

SECTION 2. 154.01 (2g) of the statutes is created to read:

154.01 (2g) “Department” means the department of health and social services.

SECTION 3. 154.01 (2m) of the statutes is created to read:

154.01 (2m) “Feeding tube” means a medical tube through which nutrition or hydration is administered into the vein, stomach, nose, mouth or other body opening of a qualified patient.

SECTION 4. 154.01 (5) (b) of the statutes is amended to read:

154.01 (5) (b) The provision of ~~fluid maintenance and nutritional support~~ nutrition or hydration.

SECTION 5. 154.01 (5m) of the statutes is created to read:

154.01 (5m) “Persistent vegetative state” means a condition that reasonable medical judgment finds constitutes complete and irreversible loss of all of the functions of the cerebral cortex and results in a complete, chronic

and irreversible cessation of all cognitive functioning and consciousness and a complete lack of behavioral responses that indicate cognitive functioning, although autonomic functions continue.

SECTION 6. 154.01 (6) of the statutes is amended to read:

154.01 (6) “Qualified patient” means a declarant who has been diagnosed and certified in writing to be afflicted with a terminal condition or to be in a persistent vegetative state by 2 physicians, one of whom is the attending physician, who have personally examined the declarant.

SECTION 8g. 154.03 (1) of the statutes is renumbered 154.03 (1) (intro.) and amended to read:

154.03 (1) (intro.) Any person of sound mind and 18 years of age or older may at any time voluntarily execute a declaration, ~~which shall take effect on the date of execution,~~ authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition, ~~which shall take effect on the date of execution or is in a persistent vegetative state.~~ A declarant may not authorize the withholding or withdrawal of any medication, life-sustaining procedure or feeding tube if the declarant’s attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the declarant pain or reduce the declarant’s comfort. A declarant may not authorize the withholding or withdrawal of nutrition or hydration that is administered or otherwise received by the declarant through means other than a feeding tube

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unless the declarant's attending physician advises that, in his or her professional judgment, the administration is medically contraindicated. A declaration must be signed by the declarant in the presence of 2 witnesses. If the declarant is physically unable to sign a declaration, the declaration must be signed in the declarant's name by one of the witnesses or some other person at the declarant's express direction and in his or her presence; such a proxy signing shall either take place or be acknowledged by the declarant in the presence of 2 witnesses. ~~Witnesses may not be related to the declarant by blood or marriage or entitled to any portion of the estate of the declarant upon his or her decease under any will of the declarant. The attending physician, the attending nurse or the attending medical staff, an employe of the attending physician or an employe of the inpatient health care facility in which the declarant is a patient who is a health care provider under s. 146.81 (1) and is involved in the medical care of that patient or any person with a claim against any portion of the estate of the declarant upon his or her death at the time of the execution of the declaration may not be a witness to a declaration. The declarant is responsible for notifying his or her attending physician of the existence of the declaration. An attending physician who is so notified shall make the original declaration a part of the declarant's medical records. No witness to the execution of the declaration may, at the time of the execution, be any of the following:~~

SECTION 8m. 154.03 (1) (a) to (d) of the statutes are created to read:

154.03 (1) (a) Related to the declarant by blood, marriage or adoption.

(b) Have knowledge that he or she is entitled to or has a claim on any portion of the declarant's estate.

(c) Directly financially responsible for the declarant's health care.

(d) An individual who is a health care provider, as defined in s. 155.01 (7), who is serving the declarant at the time of execution, an employe of the health care provider or an employe of an inpatient health care facility in which the declarant is a patient.

SECTION 8r. 154.03 (1m) of the statutes is repealed.

SECTION 9. 154.03 (2) of the statutes is amended to read:

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

declarants to read and understand the information before completing the declaration. The department of health and social services may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health and social services shall be in the following form:

DECLARATION TO PHYSICIANS

~~Declaration made this day of (month), (year).~~

1. I, ..., being of sound mind, ~~wilfully and voluntarily~~ state my desire that my dying may not be artificially prolonged if I have an incurable injury or illness certified to be a terminal condition by 2 physicians who have personally examined me, one of whom is my attending physician, and if the physicians have determined that my death is imminent, so that the application of life-sustaining procedures would serve only to prolong artificially the dying process under the circumstances specified in this document. Under these those circumstances, I direct that life-sustaining procedures be withheld or withdrawn and that I be permitted to die naturally, ~~with only:~~

a. ~~The continuation of nutritional support and fluid maintenance; and~~

b. ~~The alleviation of pain by administering medication or other medical procedure.~~

2. If I am unable to give directions regarding the use of life-sustaining procedures or feeding tubes, I intend that my family and physician honor this declaration document as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences from this refusal.

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

a. Use feeding tubes if I have a terminal condition

b. Do not use feeding tubes if I have a terminal condition

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

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

a. Check only one:

Use life-sustaining procedures if I am in a persistent vegetative state

Do not use life-sustaining procedures if I am in a persistent vegetative state

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

b. Check only one:

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Use feeding tubes if I am in a persistent vegetative state

Do not use feeding tubes if I am in a persistent vegetative state

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

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

~~3. 5.~~ If I have been diagnosed as pregnant and my physician knows of this diagnosis, this declaration document has no effect during the course of my pregnancy.

~~4. This declaration takes effect immediately.~~

~~I understand this declaration and I am emotionally and mentally competent to make this declaration.~~

Signed

Date

Address

I know the declarant person signing this document personally and I believe him or her to be of sound mind. I am not related to the declarant person signing this document by blood or marriage or adoption, and am not entitled to and do not have a claim on any portion of the declarant's persons's estate under any will of the declarant. I am neither the declarant's attending physician, the attending nurse, the attending medical staff nor an employe of the attending physician or of the inpatient health care facility in which the declarant may be a patient and I have no claim against the declarant's estate at this time, except that, if I am not a health care provider who is involved in the medical care of the declarant, I may be an employe of the inpatient health care facility regardless of whether or not the facility may have a claim against the estate of the declarant and am not otherwise restricted by law from being a witness.

Witness

Witness

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

SECTION 10. 154.07 (1) of the statutes is renumbered 154.07 (1) (a), and 154.07 (1) (a) 1., as renumbered, is amended to read:

154.07 (1) (a) 1. Participating in the withholding or withdrawal of life-sustaining procedures or feeding tubes under this chapter.

SECTION 11. 154.07 (1) (b) of the statutes is created to read:

154.07 (1) (b) 1. No person who acts in good faith as a witness to a declaration under this chapter may be held civilly or criminally liable for participating in the with-

holding or withdrawal of life-sustaining procedures or feeding tubes under this chapter.

2. Subdivision 1 does not apply to a person who acts as a witness in violation of s. 154.03 (1).

SECTION 12. 154.07 (2) of the statutes is amended to read:

154.07 (2) EFFECT OF DECLARATION. The desires of a qualified patient who is competent supersede the effect of the declaration at all times. If a qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures or feeding tubes a declaration executed under this chapter is presumed to be valid. The declaration of a qualified patient who is diagnosed as pregnant by the attending physician has no effect during the course of the qualified patient's pregnancy. For the purposes of this chapter, a physician or inpatient health care facility may presume in the absence of actual notice to the contrary that a person who executed a declaration was of sound mind at the time.

SECTION 13. 154.11 (1), (2), (4) and (5) of the statutes are amended to read:

154.11 (1) SUICIDE. The withholding or withdrawal of life-sustaining procedures or feeding tubes from a qualified patient under this chapter does not, for any purpose, constitute suicide. Execution of a declaration under this chapter does not, for any purpose, constitute attempted suicide.

(2) LIFE INSURANCE. Making a declaration under s. 154.03 may not be used to impair in any manner the procurement of any policy of life insurance, and may not be used to modify the terms of an existing policy of life insurance. No policy of life insurance may be impaired in any manner by the withholding or withdrawal of life-sustaining procedures or feeding tubes from an insured qualified patient.

(4) OTHER RIGHTS. This chapter does not impair or supersede any person's legal right or responsibility to withhold or withdraw life-sustaining procedures or feeding tubes.

(5) INTENT. Failure to execute a declaration under this chapter creates no presumption that the person consents to the use or withholding of life-sustaining procedures or feeding tubes in the event of that the person suffers from a terminal condition or is in a persistent vegetative state.

SECTION 14. 154.11 (5m) of the statutes is created to read:

154.11 (5m) VALID DECLARATION. A declaration that is in its original form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

SECTION 15. 154.11 (7) (c) of the statutes is created to read:

154.11 (7) (c) A declaration under s. 154.03 (2), 1989 stats., that is executed before, on or after the effective date of this paragraph [revisor inserts date], and that is not

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subsequently revoked or has not subsequently expired is governed by the provisions of ch. 154, 1989 stats.

SECTION 16. 154.15 (2) of the statutes is amended to read:

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

SECTION 17. 155.20 (5) of the statutes is amended to read:

155.20 (5) The health care agent shall act in good faith consistently with the desires of the principal as expressed in the power of attorney for health care instrument or as otherwise specifically directed by the principal to the health care agent at any time. The health care agent shall act in good faith consistently with any valid declaration executed by the principal under ch. 154,

except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed by the principal under ch. 154. In the absence of a specific directive by the principal or if the principal's desires are unknown, the health care agent shall, in good faith, act in the best interests of the principal in exercising his or her authority.

SECTION 18. 155.70 (3) of the statutes is amended to read:

155.70 (3) This chapter does not apply to, ~~and may not be considered to supersede,~~ the provisions of a valid declaration executed under ch. 154, except that the provisions of a principal's valid power of attorney for health care instrument supersede any directly conflicting provisions of a valid declaration executed under ch. 154 for a declarant who is that principal.

SECTION 19. Initial applicability. This act first applies to declarations executed under chapter 154 of the statutes and powers of attorney for health care instruments executed under chapter 155 of the statutes on the effective date of this SECTION.
