

State of Wisconsin



1995 Assembly Bill 399

Date of enactment: **March 22, 1996**

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1995 WISCONSIN ACT 168

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

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

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

CHAPTER 154
NATURAL DEATH
DECLARATIONS TO PHYSICIANS

SECTION 2. 154.01 (7) of the statutes is repealed.

SECTION 3. 154.03 (1) (intro.) of the statutes is 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 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 and the pain or discomfort cannot be alleviated through pain relief measures. A declarant may not authorize the withholding or withdrawal of nutrition or hydration that is admin-

istered or otherwise received by the declarant through means other than a feeding tube 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. 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 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 4. 154.03 (2) of the statutes is amended to read:

154.03 (2) The department 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

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant's county of residence. The department 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 easy to read, the type size may be no smaller than 10 point, and the declaration shall be in the following form, setting forth on the first page the wording before the ATTENTION statement and setting forth on the 2nd page the ATTENTION statement and remaining wording:

DECLARATION TO PHYSICIANS
(WISCONSIN LIVING WILL)

1. I, ..., being of sound mind, voluntarily state my desire that my dying may not be prolonged under the circumstances specified in this document. Under those circumstances, I direct that I be permitted to die naturally. 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 document as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences from this refusal.

2. 1. 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 ... YES, I want feeding tubes used if I have a terminal condition....

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

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

3. 2. 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 ... YES, I want life-sustaining procedures used if I am in a persistent vegetative state....

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

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

b. Check only one:

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

Do not use 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 feeding tubes:

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

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

If I you 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.

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

Signed

Date

Address

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

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

Signed

Date

Address

Date of birth

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

Witness

Witness

Witness signature

Date signed

Print name

Witness signature

Date signed

Print name

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

DIRECTIVES TO ATTENDING
PHYSICIAN

1. This document authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes when 2 physicians, one of whom is the attending physi-

cian, have personally examined and certified in writing that the patient has a terminal condition or is in a persistent vegetative state.

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

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

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

* * * * *

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

.....
.....
.....

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

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

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

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

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

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

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

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

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

SECTION 10. 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 **intentionally** withholds ~~personal~~ **actual** 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 11. 1991 Wisconsin Act 84, section 19 (title) is amended to read:

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

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

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

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

SECTION 14. Nonstatutory provisions; health and social services.

(1) **PRINTING AND DISTRIBUTION OF CERTAIN FORMS.** By the date that is 45 days after the effective date of this subsection, the department of health and social services shall prepare and provide copies for distribution of the form declaration and accompanying information under section 154.03 (2) of the statutes, as affected by this act.