

1999 ASSEMBLY BILL 297

April 22, 1999 – Introduced by Representatives BOYLE, CARPENTER, POCAN and TRAVIS, cosponsored by Senators RISSER and JAUCH. Referred to Committee on Health.

1 **AN ACT** *to amend* 979.01 (1) (intro.); and *to create* 16.009 (2) (p), 146.82 (2) (a)
2 8m., chapter 156 and 979.01 (1g) of the statutes; **relating to:** permitting
3 certain individuals to make written requests for medication for the purpose of
4 ending their lives, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill permits an individual who is of sound mind, is not incapacitated, is at least 18 years of age, is a resident of Wisconsin and has a terminal disease to request voluntarily, in writing, his or her attending physician for medication for the purpose of ending his or her life in a humane and dignified manner. The bill authorizes the individual's attending physician to issue a prescription for the medication if specified requirements are met. Further, the bill creates a statutory request form for medication and requires that the department of health and family services (DHFS) prepare and provide copies of the request form for distribution to certain facilities, associations and persons.

The bill establishes the following requirements that must be met before an individual's attending physician may issue a prescription in response to the individual's request for medication:

1. First, the requester must make the request orally. Then, not fewer than 15 days later, the requester must again request the medication, using a valid request form that is substantially in the form specified in the bill, is in writing, is signed in the presence of three qualified witnesses and dated by the requester, is made voluntarily and is filed in the requester's patient health care record. After the

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request is filed, the requester must make a second oral request of his or her attending physician for the medication.

2. The requester's attending physician must determine that the requester meets the requirements for making the request; must inform the requester of his or her diagnosis and prognosis, the probable results of taking the prescribed medication and the alternatives to doing so; must refer the requester to a consulting physician for review and must, if the requester may be suffering from a psychiatric or psychological disorder, refer the requester to a psychiatrist or psychologist for review; must, in the requester's patient health care record, document certain information and certify that requirements have been met regarding the request; must ask the requester to inform his or her next of kin about the request; must inform the requester that the request is revocable and offer him or her the opportunity to revoke it; and must report information about the request to DHFS on a form prescribed by DHFS.

3. A consulting physician to whom the requester is referred must medically confirm the attending physician's diagnosis and determination that the requester meets the requirements for making the request. Any psychologist or psychiatrist to whom the requester is referred by the attending or consulting physician must determine and certify in writing that the requester is not suffering from a psychiatric or psychological disorder that causes impaired judgment or from a depression that causes impaired judgment.

The bill specifies that, if the requester is a patient in a health care facility, at least one of the witnesses to the written request for medication must be a patients' advocate designated by the board on aging and long-term care. The bill also specifies procedures by which a requester may revoke a request for medication and provides that making a request for medication does not revoke or otherwise modify a living will or health care power of attorney that a requester may have. The bill provides that making a request for medication does not constitute attempted suicide and that taking medication under a fulfilled request does not constitute suicide. The bill establishes penalties for certain actions with regard to the request for medication, but prohibits a health care facility or health care provider from being charged with a crime, being held civilly liable or being charged with unprofessional conduct for failing to fulfill a request (except that an attending physician who refuses to fulfill a request and fails to make a good faith attempt to transfer the requester to another physician who will fulfill the request may be charged with unprofessional conduct), for fulfilling a valid request or for acting contrary to or failing to act on a revocation of a request unless the health care facility or health care provider has actual knowledge of the revocation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 16.009 (2) (p) of the statutes is created to read:

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1 dignified manner, that is based on an appreciation of the relevant facts and is made
2 after having been fully informed by the attending physician of all of the following:

3 (a) The individual's medical diagnosis.

4 (b) The individual's prognosis.

5 (c) The potential risks associated with taking the medication to be prescribed.

6 (d) The probable result of taking the medication to be prescribed.

7 (e) The feasible alternatives, including comfort care, care of a hospice and pain
8 control.

9 **(9)** "Multipurpose senior center" has the meaning given in s. 155.01 (9).

10 **(10)** "Patient health care records" has the meaning given in s. 146.81 (4).

11 **(11)** "Physician" has the meaning given in s. 448.01 (5).

12 **(12)** "Request for medication" means a document made under the requirements
13 of s. 156.05.

14 **(13)** "Requester" means an individual who requests medication under the
15 requirements of this chapter for the purpose of ending his or her life in a humane and
16 dignified manner.

17 **(14)** "Residence" has the meaning given in s. 46.27 (1) (d).

18 **(15)** "Responsible person" means the attending physician, a health care
19 professional working with the requester, an inpatient health care facility in which
20 the requester is located or the requester's spouse, child, parent, brother, sister,
21 grandparent or grandchild.

22 **(16)** "Social worker" means a person certified as a social worker, advanced
23 practice social worker, independent social worker or independent clinical social
24 worker under s. 457.08.

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1 **(17)** “Terminal disease” means an incurable and irreversible disease that has
2 been diagnosed by an individual’s attending physician and medically confirmed and
3 that will, within reasonable medical judgment, cause death within 6 months.

4 **156.03 Authorization to make request.** An individual who is of sound mind,
5 has attained age 18, has residence in this state, does not have incapacity and has a
6 terminal disease may voluntarily make a request for medication for the purpose of
7 ending his or her life in a humane and dignified manner. An individual for whom an
8 adjudication of incompetence and appointment of a guardian of the person is in effect
9 under ch. 880 is presumed not to be of sound mind for purposes of this section.

10 **156.05 Valid request for medication; requirements. (1)** A valid request
11 for medication shall be, for the purposes of s. 156.03, all of the following:

12 (a) In writing.

13 (b) Dated and signed by the requester or, at the express direction and in the
14 presence of the requester, by an individual who has attained age 18.

15 (c) Signed in the presence of 3 witnesses who meet the requirements of sub. (2).

16 (d) Made voluntarily.

17 (e) Substantially in the form specified in s. 156.15.

18 (f) Filed in the requester’s patient health care record in the custody of the
19 requester’s attending physician and, if the requester is an inpatient of a health care
20 facility, in the requester’s patient health care record in the custody of the health care
21 facility.

22 **(2)** (a) A witness to the making of a valid request for medication shall be an
23 individual who has attained age 18. No witness to the making of a valid request for
24 medication may, at the time of the witnessing, be any of the following:

25 1. Related to the requester by blood, marriage or adoption.

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1 2. An individual who has knowledge that he or she is entitled to or has a claim
2 on any portion of the requester's estate.

3 3. Directly financially responsible for the requester's health care.

4 4. An individual who is a health care provider who is serving the requester at
5 the time of the witnessing; an employe, other than a chaplain or a social worker, of
6 the health care provider; or an employe, other than a chaplain or a social worker, of
7 a health care facility in which the requester is a patient.

8 (b) If a requester is a resident of a nursing home or community-based
9 residential facility, at least one of the witnesses to the request shall be a patients'
10 advocate designated under s. 156.19.

11 **156.07 Attending physician; responsibilities and limitations.** The
12 attending physician shall do all of the following:

13 **(1)** Determine whether the requester has a terminal disease, does not have
14 incapacity and is making a request under s. 156.03 voluntarily.

15 **(2)** Inform the requester of all of the following:

16 (a) The requester's medical diagnosis.

17 (b) The requester's prognosis.

18 (c) The potential risks associated with taking the medication to be prescribed.

19 (d) The probable result of taking the medication to be prescribed.

20 (e) The feasible alternatives to taking the medication to be prescribed,
21 including comfort care, care of a hospice and pain control.

22 **(3)** Refer the requester to a consulting physician to meet the requirements of
23 s. 156.09.

24 **(4)** Refer the requester for review and counseling if this is determined to be
25 appropriate under s. 156.11.

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1 **(5)** Ask the requester to notify his or her next of kin with respect to the request.

2 **(6)** Inform the requester that he or she may revoke the request at any time;
3 explain the methods of revocation that are specified under s. 156.17 (1); and offer the
4 requester an opportunity to revoke the request at the time, if any, that the requester
5 makes a 2nd oral request under s. 156.13 (3) (c).

6 **(7)** Before writing a prescription in response to a request for medication, verify
7 that all of the following have occurred:

8 (a) The requester has fulfilled the requirements of s. 156.13 (3).

9 (b) No fewer than 48 hours have elapsed since the requester made a written
10 request for medication.

11 (c) The requester has made an informed decision.

12 **(8)** Document or file all of the following in the requester's patient health care
13 record:

14 (a) All oral and written requests for medication that are made by the requester.

15 (b) The attending physician's diagnosis of and prognosis for the requester and
16 determination as to whether the requester is incapacitated, is acting voluntarily and
17 has made an informed decision.

18 (c) The consulting physician's diagnosis of and prognosis for the requester and
19 determination as to whether the requester is incapacitated, is acting voluntarily and
20 has made an informed decision.

21 (d) A certification of the outcome and determinations made during any review
22 and counseling for which the requester was referred under s. 156.11.

23 (e) The attending physician's offer of an opportunity to revoke the request for
24 medication, as required under sub. (6).

25 (f) Evidence of a revocation, if made, as specified in s. 156.17 (2).

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1 (g) A certification as to whether the requirements of this chapter are met and
2 indicating the steps taken to fulfill the request for medication, including a notation
3 of any medication that is prescribed. The attending physician shall report the
4 information under this paragraph to the department on a form prescribed by the
5 department. Any information reported to the department under this paragraph that
6 could identify the requester, the attending physician, the consulting physician or the
7 psychiatrist or psychologist to whom referral was made under s. 156.11, if any, is
8 confidential and may not be disclosed by the department except under an
9 investigation of an alleged violation of this chapter. The report of information under
10 this paragraph is not a violation of any person's responsibility for maintaining the
11 confidentiality of patient health care records under s. 146.82.

12 (9) If the attending physician refuses to act as the attending physician in
13 complying with the requester's request for medication under this chapter, the
14 attending physician shall make a good faith attempt to transfer the requester's care
15 and treatment to another physician who will act as the attending physician under
16 this chapter and will comply with the requester's request for medication. If a
17 transfer is made, the attending physician to whom the requester's care and
18 treatment is transferred shall comply with the requirements of this section.

19 **156.09 Consulting physician.** Before an attending physician may fulfill a
20 request for medication under this chapter, a consulting physician shall examine the
21 requester and his or her relevant patient health care records and shall medically
22 confirm the attending physician's determinations that the requester suffers from a
23 terminal disease, does not have incapacity, is making a request for medication
24 voluntarily and has made an informed decision.

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1 **156.11 Referral for review and counseling.** If in the opinion of the
2 attending physician or the consulting physician a requester may be suffering from
3 a psychiatric or psychological disorder, including depression, that causes impaired
4 judgment, the attending physician or consulting physician shall refer the requester
5 for review and counseling to a physician specializing in psychiatry or a licensed
6 psychologist, as defined in s. 455.01 (4). No request for medication may be fulfilled
7 under this chapter unless the physician specializing in psychiatry or the
8 psychologist, to one of whom referral was made, determines and certifies in writing
9 that the requester is not suffering from a psychiatric or psychological disorder,
10 including depression, that causes impaired judgment. The certification, if any, shall
11 be filed in the requester’s patient health care record under s. 156.07 (8).

12 **156.13 Requester rights, responsibilities and limitations. (1)** No
13 requester may receive a prescription for medication that fulfills a request for
14 medication under this chapter unless he or she has made an informed decision.

15 **(2)** No requester may be required to notify his or her next of kin regarding his
16 or her request for medication, and no request for medication may be denied because
17 the requester has failed to notify his or her next of kin.

18 **(3)** In order to receive a prescription under a request for medication, a
19 requester shall do all of the following:

20 (a) Orally make a request of his or her attending physician for medication for
21 the purpose of ending his or her life.

22 (b) No fewer than 15 days after orally making the request under par. (a), make
23 a request for medication that meets the requirements of s. 156.05.

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1 (c) After making a request for medication under par. (b), make a 2nd oral
2 request of his or her attending physician for medication for the purpose of ending his
3 or her life.

4 **156.15 Request for medication; form.** The department shall prepare and
5 provide copies of a request for medication and accompanying information for
6 distribution in quantities to health care providers, hospitals, nursing homes,
7 multipurpose senior centers, county clerks and local bar associations and
8 individually to private persons. The department shall include, in information
9 accompanying the copy of the request for medication, at least the statutory
10 definitions of terms used in the request for medication, statutory restrictions on who
11 may be witnesses to a valid request for medication and a statement explaining that
12 valid witnesses acting in good faith are statutorily immune from civil or criminal
13 liability. The request for medication distributed by the department shall be in the
14 following form:

15 REQUEST FOR MEDICATION

16 TO END MY LIFE IN A HUMANE

17 AND DIGNIFIED MANNER

18 I,, am an adult of sound mind and am a resident of Wisconsin.

19 I am suffering from, which my attending physician has determined is a
20 terminal disease and which has been medically confirmed by a consulting physician.

21 I have been fully informed of my diagnosis, prognosis, the nature of medication
22 to be prescribed and potential associated risks, the expected result, and the feasible
23 alternatives, including comfort care, hospice care and pain control.

24 I request that my attending physician prescribe medication that will end my life
25 in a humane and dignified manner.

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1 INITIAL ONE OF THE FOLLOWING 3 STATEMENTS:

2 I have informed my family members of my decision and taken their opinions
3 into consideration.

4 I have decided not to inform my family of my decision.

5 I have no family to inform of my decision.

6 I understand that I have the right to revoke this request at any time.

7 I understand the full import of this request and I expect to die when I take the
8 medication to be prescribed.

9 I make this request voluntarily and without reservation, and I accept full moral
10 responsibility for my actions.

11 Signed:

12 Dated:

13 STATEMENT AND SIGNATURES

14 OF WITNESSES

15 I know the requester personally or I have received proof of his or her identity
16 and I believe him or her to be of sound mind and at least 18 years of age. I believe
17 that the requester makes this request voluntarily. I am at least 18 years of age, am
18 not related to the requester by blood, marriage or adoption and am not directly
19 financially responsible for the requester's health care. I am not a health care
20 provider who is serving the requester at this time, an employe of the health care
21 provider, other than a chaplain or a social worker, or an employe, other than a
22 chaplain or a social worker, of a health care facility in which the requester is a
23 patient. To the best of my knowledge, I am not entitled to and do not have a claim
24 on the requester's estate.

25 Witness No. 1:

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1 (print) Name:

2 Address:

3 Signature:

4 Witness No. 2:

5 (print) Name:

6 Address:

7 Signature:

8 Witness No. 3:

9 (print) Name:

10 Address:

11 Signature:

12 If the requester is a patient in a health care facility, at least one of the above
13 witnesses must be a patients' advocate designated by the board on aging and
14 long-term care. A patients' advocate who is a witness should print "patients'
15 advocate" after the printing of his or her name above.

16 **156.17 Revocation of request for medication. (1)** A requester may revoke
17 his or her request for medication at any time by doing any of the following:

18 (a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying
19 the request for medication or directing another in the presence of the requester to
20 destroy, in the same manner, the request for medication.

21 (b) Executing a statement, in writing, that is signed and dated by the requester,
22 expressing the requester's intent to revoke the request for medication.

23 (c) Orally expressing the requester's intent to revoke the request for
24 medication, in the presence of 2 witnesses.

25 (d) Making a subsequent request for medication.

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1 **(2)** The requester’s health care provider shall, upon notification of revocation
2 of the requester’s request for medication, record in the requester’s medical record the
3 time, date and place of the revocation and the time, date and place, if different, of the
4 notification to the health care provider of the revocation.

5 **156.19 Designation or patients’ advocates.** The board on aging and
6 long-term care shall designate staff of the long-term care ombudsman program as
7 patients’ advocates. A person so designated shall serve as a witness to a request for
8 medication of a requester who is a patient or resident of a nursing home or
9 community-based residential facility, as required under s. 156.05 (2) (b), and shall
10 speak on behalf of the requester to ensure that his or her needs or wants are
11 communicated to and addressed by his or her attending physician.

12 **156.21 Duties and immunities. (1)** No health care facility or health care
13 provider may be charged with a crime, held civilly liable or charged with
14 unprofessional conduct for any of the following:

15 (a) Failing to fulfill a request for medication, except that failure of an attending
16 physician to fulfill a request for medication constitutes unprofessional conduct if the
17 attending physician refuses or fails to make a good faith attempt to transfer the
18 requester’s care and treatment to another physician who will act as attending
19 physician under this chapter and fulfill the request for medication.

20 (b) In the absence of actual knowledge of a revocation, fulfilling a request for
21 medication that is in compliance with this chapter.

22 (c) Acting contrary to or failing to act on a revocation of a request for medication,
23 unless the health care facility or health care provider has actual knowledge of the
24 revocation.

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1 **(2)** In the absence of actual notice to the contrary, a health care facility or health
2 care provider may presume that a requester was authorized to make his or her
3 request for medication under the requirements of this chapter and that the request
4 for medication is valid.

5 **(3)** (a) No person who acts in good faith as a witness to a request for medication
6 under this chapter may be held civilly or criminally liable for a death that results
7 from taking medication under a fulfilled request for medication under this chapter.

8 (b) Paragraph (a) does not apply to a person who acts as a witness in violation
9 of s. 156.05 (2) (a).

10 **156.23 General provisions. (1)** (a) The making of a request for medication
11 under this chapter does not, for any purpose, constitute attempted suicide. Taking
12 medication under a fulfilled request for medication under this chapter does not, for
13 any purpose, constitute suicide.

14 (b) Paragraph (a) does not prohibit an insurer from making a determination
15 that a requester has attempted suicide or committed suicide if the requester has so
16 acted, apart from the request for medication.

17 **(2)** The making of a request for medication under this chapter does not revoke
18 or otherwise modify a power of attorney for health care or living will that the
19 requester may have executed.

20 **(3)** No individual may be required to make a request for medication as a
21 condition for receipt of health care or admission to a health care facility. The making
22 of a request for medication is not a bar to the receipt of health care or the admission
23 to a health care facility.

24 **(4)** A request for medication that is in its original form or is a legible photocopy
25 or electronic facsimile copy is presumed to be valid.

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1 **(5)** Nothing in this chapter may be construed to condone, authorize, approve
2 or permit any affirmative or deliberate act to end life other than through taking
3 medication that is prescribed under a request for medication as provided in this
4 chapter.

5 **156.25 Record review.** The department shall annually examine a sampling
6 of patient health care records of requesters for whom medication was prescribed as
7 requested under a request for medication and about whom the department has
8 received information under s. 156.07 (8) (g).

9 **156.27 Penalties. (1)** Any person who wilfully conceals, cancels, defaces,
10 obliterates or damages the request for medication of another without the requester's
11 consent may be fined not more than \$500 or imprisoned for not more than 30 days
12 or both.

13 **(2)** Any person who, with the intent to cause a requester to take medication that
14 is prescribed under a request for medication contrary to the wishes of the requester,
15 illegally falsifies or forges the request for medication of another or conceals a
16 revocation under s. 156.17 (1) (a) or (b) shall be fined not more than \$10,000 or
17 imprisoned for not more than 10 years or both.

18 **(3)** Any responsible person who, with the intent to cause a requester to take
19 medication that is prescribed under a request for medication contrary to the wishes
20 of the requester, conceals personal knowledge of a revocation under s. 156.17 shall
21 be fined not more than \$10,000 or imprisoned for not more than 10 years or both.

22 **SECTION 4.** 979.01 (1) (intro.) of the statutes is amended to read:

23 979.01 **(1)** (intro.) All Except as provided in sub. (1g), all physicians, authorities
24 of hospitals, sanatoriums, institutions (public and private), convalescent homes,
25 authorities of any institution of a like nature, and other persons having knowledge

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1 of the death of any person who has died under any of the following circumstances,
2 shall immediately report such death to the sheriff, police chief, medical examiner or
3 coroner of the county wherein such death took place, and the sheriff or police chief
4 shall, immediately upon notification, notify the coroner or the medical examiner and
5 the coroner or medical examiner of the county where death took place, if the crime,
6 injury or event occurred in another county, shall report such death immediately to
7 the coroner or medical examiner of that county:

8 **SECTION 5.** 979.01 (1g) of the statutes is created to read:

9 979.01 **(1g)** Subsection (1) does not apply to a death that results from taking
10 medication under a fulfilled request for medication that is in accordance with the
11 requirements of ch. 156.

12 (END)