

2003 SENATE BILL 169

May 14, 2003 – Introduced by Senators RISSER and CARPENTER, cosponsored by Representatives BOYLE, SHERMAN, POCAN and BERCEAU. Referred to Committee on Judiciary, Corrections and Privacy.

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

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

1. The requester must first make the request orally. Then, not fewer than 15 days later, the requester must again, voluntarily, 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, and is filed in the requester's patient health care record. After the request is filed, the

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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. However, the bill also 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.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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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) (q) of the statutes is created to read:

2 16.009 (2) (q) Designate patients' advocates under s. 156.19.

3 **SECTION 2.** 146.82 (2) (a) 8m. of the statutes is created to read:

4 146.82 (2) (a) 8m. To the department under s. 156.07 (8) (g). The release of a
5 patient health care record under this subdivision shall be limited to the information
6 requested by the department under s. 156.25.

7 **SECTION 3.** Chapter 156 of the statutes is created to read:

8

CHAPTER 156

9

DEATH WITH DIGNITY

10 **156.01 Definitions.** In this chapter:

11 **(1)** "Attending physician" means a physician who has primary responsibility
12 for the care of a requester and treatment of the requester's terminal disease.

13 **(2)** "Comfort care" means palliative care, as defined in s. 50.90 (3), or supportive
14 care, as defined in s. 50.90 (4).

15 **(3)** "Consulting physician" means a physician who is qualified by specialty or
16 experience to make a professional diagnosis and prognosis with respect to the
17 requester's disease.

18 **(4)** "Department" means the department of health and family services.

19 **(5)** "Health care facility" has the meaning given in s. 155.01 (6).

20 **(6)** "Health care provider" has the meaning given in s. 155.01 (7).

21 **(7)** "Hospice care" has the meaning given in s. 50.94 (1) (a).

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1 **(8)** “Incapacity” means the inability to receive and evaluate information
2 effectively or to communicate decisions to such an extent that the individual lacks
3 the capacity to manage his or her health care decisions.

4 **(9)** “Informed decision” means a determination by an individual, to request and
5 obtain medication under a prescription so as to end his or her life in a humane and
6 dignified manner, that is based on the individual’s appreciation of the relevant facts
7 and is made after the individual has been fully informed by the attending physician
8 of all of the following:

9 (a) The individual’s medical diagnosis.

10 (b) The individual’s prognosis.

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

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

13 (e) The feasible alternatives to the decision, including comfort care, hospice
14 care, and pain control.

15 **(10)** “Multipurpose senior center” has the meaning given in s. 155.01 (9).

16 **(11)** “Patient health care records” has the meaning given in s. 146.81 (4).

17 **(12)** “Physician” has the meaning given in s. 448.01 (5).

18 **(13)** “Prescription” has the meaning given in s. 450.01 (19).

19 **(14)** “Requester” means an individual who requests medication under the
20 requirements of this chapter for the purpose of ending his or her life in a humane and
21 dignified manner.

22 **(15)** “Request for medication” means a document made under the requirements
23 of s. 156.05.

24 **(16)** “Residence” has the meaning given in s. 46.27 (1) (d).

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1 **(17)** “Responsible person” means the attending physician, a health care
2 professional working with the requester, an inpatient health care facility in which
3 the requester is located, or the requester’s spouse, child, parent, brother, sister,
4 grandparent, or grandchild.

5 **(18)** “Social worker” means a person certified as a social worker, advanced
6 practice social worker, independent social worker, or independent clinical social
7 worker under s. 457.08.

8 **(19)** “Terminal disease” means an incurable and irreversible disease that has
9 been diagnosed by an individual’s attending physician, has been medically
10 confirmed, and will, within reasonable medical judgment, cause death within 6
11 months.

12 **156.03 Authorization to make request.** An individual who is of sound mind,
13 has attained age 18, has residence in this state, does not have incapacity, and has a
14 terminal disease may voluntarily make a request for medication for the purpose of
15 ending his or her life in a humane and dignified manner. An individual for whom an
16 adjudication of incompetence and appointment of a guardian of the person is in effect
17 under ch. 880 is presumed not to be of sound mind for purposes of this section.

18 **156.05 Valid request for medication; requirements. (1)** A valid request
19 for medication shall be, for the purposes of s. 156.03, all of the following:

20 (a) In writing.

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

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

24 (d) Made voluntarily.

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

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1 (f) Filed in the requester's patient health care record in the custody of the
2 requester's attending physician and, if the requester is an inpatient of a health care
3 facility, in the requester's patient health care record in the custody of the health care
4 facility.

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

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

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

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

12 4. An individual who is a health care provider who is serving the requester at
13 the time of the witnessing; an employee, other than a chaplain or a social worker, of
14 the health care provider; or an employee, other than a chaplain or a social worker,
15 of a health care facility in which the requester is a patient.

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

19 **156.07 Attending physician; responsibilities and limitations.** The
20 attending physician shall do all of the following:

21 (1) Determine whether or not the requester has a terminal disease, has
22 incapacity, and is making a request under s. 156.03 voluntarily.

23 (2) If the requester has a terminal disease, does not have incapacity, and is
24 making a request under s. 156.03 voluntarily, inform the requester of all of the
25 following:

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- 1 (a) The requester’s medical diagnosis.
- 2 (b) The requester’s prognosis.
- 3 (c) The potential risks associated with taking the medication to be prescribed.
- 4 (d) The probable result of taking the medication to be prescribed.
- 5 (e) The feasible alternatives to taking the medication to be prescribed,
6 including comfort care, hospice care, and pain control.
- 7 **(3)** Refer the requester to a consulting physician to meet the requirements of
8 s. 156.09.
- 9 **(4)** Refer the requester for review and counseling if the referral is determined
10 to be appropriate under s. 156.11.
- 11 **(5)** Ask the requester to notify his or her next of kin with respect to the request.
- 12 **(6)** Inform the requester that he or she may revoke the request at any time;
13 explain the methods of revocation that are specified under s. 156.17 (1); and offer the
14 requester an opportunity to revoke the request at the time, if any, that the requester
15 makes a 2nd oral request under s. 156.13 (3) (c).
- 16 **(7)** Before writing a prescription in response to a request for medication, verify
17 that all of the following have occurred:
- 18 (a) The requester has fulfilled the requirements of s. 156.13 (3).
- 19 (b) No fewer than 48 hours have elapsed since the requester made a written
20 request for medication.
- 21 (c) The requester has made an informed decision.
- 22 **(8)** Document or file all of the following in the requester’s patient health care
23 record:
- 24 (a) All oral and written requests for medication that are made by the requester.

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

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

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

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

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

12 (g) A certification as to whether the requirements of this chapter are met and
13 indicating the steps taken to fulfill the request for medication, including a notation
14 of any medication that is prescribed. The attending physician shall report the
15 information under this paragraph to the department on a form prescribed by the
16 department. Any information reported to the department under this paragraph that
17 could identify the requester, the attending physician, the consulting physician, or the
18 psychiatrist or psychologist to whom referral was made under s. 156.11, if any, is
19 confidential and may not be disclosed by the department except under an
20 investigation of an alleged violation of this chapter. The report of information under
21 this paragraph is not a violation of any person's responsibility for maintaining the
22 confidentiality of patient health care records under s. 146.82.

23 **(9)** If the attending physician refuses to act as the attending physician in
24 complying with the requester's request for medication under this chapter, the
25 attending physician shall make a good faith attempt to transfer the requester's care

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1 and treatment to another physician who will act as the attending physician under
2 this chapter and will comply with the requester's request for medication. If a
3 transfer is made, the attending physician to whom the requester's care and
4 treatment is transferred shall comply with the requirements of this section.

5 **156.09 Consulting physician.** Before an attending physician may fulfill a
6 request for medication under this chapter, a consulting physician shall examine the
7 requester and his or her relevant patient health care records and shall medically
8 confirm the attending physician's determinations that the requester suffers from a
9 terminal disease, does not have incapacity, is making a request for medication
10 voluntarily, and has made an informed decision.

11 **156.11 Referral for review and counseling.** If in the opinion of the
12 attending physician or the consulting physician a requester may be suffering from
13 a psychiatric or psychological disorder, including depression, that causes impaired
14 judgment, the attending physician or consulting physician shall refer the requester
15 for review and counseling to a physician specializing in psychiatry or a licensed
16 psychologist, as defined in s. 455.01 (4). No request for medication may be fulfilled
17 under this chapter unless the physician specializing in psychiatry or the
18 psychologist, to one of whom referral was made, determines and certifies in writing
19 that the requester is not suffering from a psychiatric or psychological disorder,
20 including depression, that causes impaired judgment. The certification, if any, shall
21 be filed in the requester's patient health care record under s. 156.07 (8).

22 **156.13 Requester rights, responsibilities, and limitations. (1)** No
23 requester may receive a prescription for medication that fulfills a request for
24 medication under this chapter unless he or she has made an informed decision.

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

4 **(3)** To receive a prescription under a request for medication, a requester shall
5 do all of the following:

6 (a) Orally request his or her attending physician for medication for the purpose
7 of ending his or her life.

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

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

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

23 REQUEST FOR MEDICATION

24 TO END MY LIFE IN A HUMANE

25 AND DIGNIFIED MANNER

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

2 I am suffering from, which my attending physician has determined is a
3 terminal disease and the terminality of which has been medically confirmed by a
4 consulting physician.

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

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

10 INITIAL ONE OF THE FOLLOWING 3 STATEMENTS:

11 I have informed my family members of my decision and have taken their
12 opinions into consideration.

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

14 I have no family to inform of my decision.

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

16 I understand the full import of this request, and I expect to die when I take the
17 medication to be prescribed.

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

20 Signed:

21 Dated:

22 STATEMENT AND SIGNATURES

23 OF WITNESSES

24 I know the requester personally or I have received proof of his or her identity
25 and I believe him or her to be of sound mind and at least 18 years of age. I believe

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1 that the requester makes this request voluntarily. I am at least 18 years of age, am
2 not related to the requester by blood, marriage, or adoption, and am not directly
3 financially responsible for the requester's health care. I am not a health care
4 provider who is an individual and is serving the requester at this time, an employee
5 of a health care provider who is serving the requester at this time, other than a
6 chaplain or a social worker, or an employee, other than a chaplain or a social worker,
7 of a health care facility in which the requester is a patient. To the best of my
8 knowledge, I am not entitled to and do not have a claim on the requester's estate.

9 Witness No. 1:

10 (print) Name:

11 Address:

12 Signature:

13 Witness No. 2:

14 (print) Name:

15 Address:

16 Signature:

17 Witness No. 3:

18 (print) Name:

19 Address:

20 Signature:

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

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

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

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

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

10 (d) Making a subsequent request for medication.

11 **(2)** The requester's health care provider shall, upon notification of revocation
12 of the requester's request for medication, record in the requester's medical record the
13 time, date, and place of the revocation and the time, date, and place, if different, of
14 the notification to the health care provider of the revocation.

15 **156.19 Designation of patients' advocates.** The board on aging and
16 long-term care shall designate staff of the long-term care ombudsman program as
17 patients' advocates. A person so designated shall serve as a witness to a request for
18 medication of a requester who is a patient or resident of a nursing home or
19 community-based residential facility, as required under s. 156.05 (2) (b), and shall
20 speak on behalf of the requester to ensure that his or her needs or wants are
21 communicated to and addressed by his or her attending physician.

22 **156.21 Duties and immunities. (1)** No health care provider that is not an
23 individual and no health care facility may be held civilly liable and no health care
24 provider who is an individual may be charged with a crime, held civilly liable, or
25 charged with unprofessional conduct for any of the following:

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1 (a) Failing to fulfill a request for medication, except that failure of an attending
2 physician to fulfill a request for medication constitutes unprofessional conduct if the
3 attending physician refuses or fails to make a good faith attempt to transfer the
4 requester's care and treatment to another physician who will act as attending
5 physician under this chapter and fulfill the request for medication.

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

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

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

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

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

20 **156.23 General provisions. (1)** (a) The making of a request for medication
21 under this chapter does not, for any purpose, constitute attempted suicide. Taking
22 medication under a fulfilled request for medication under this chapter does not, for
23 any purpose, constitute suicide.

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

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

7 (3) No individual may be required to make a request for medication as a
8 condition for receipt of health care or admission to a health care facility. The making
9 of a request for medication is not a bar to the receipt of health care or the admission
10 to a health care facility.

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

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

17 **156.25 Record review.** The department shall annually examine a sampling
18 of patient health care records of requesters for whom medication was prescribed as
19 requested under a request for medication and about whom the department has
20 received information under s. 156.07 (8) (g).

21 **156.27 Penalties. (1)** Any person who willfully conceals, cancels, defaces,
22 obliterates, or damages the request for medication of another without the requester's
23 consent may be fined not more than \$500 or imprisoned for not more than 30 days
24 or both.

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

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

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

11 979.01 **(1)** (intro.) All Except as provided in sub. (1t), all physicians, authorities
12 of hospitals, sanatoriums, public and private institutions, convalescent homes,
13 authorities of any institution of a like nature, and other persons having knowledge
14 of the death of any person who has died under any of the following circumstances,
15 shall immediately report the death to the sheriff, police chief, medical examiner, or
16 coroner of the county where the death took place:

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

18 979.01 **(1t)** Subsection (1) does not apply to a death that results from taking
19 medication under a fulfilled request for medication that is in accordance with the
20 requirements of ch. 156.

21 **SECTION 6. Initial applicability.**

22 **(1) REQUESTS FOR MEDICATION; PENALTIES.** The treatment of section 156.27 of the
23 statutes first applies to requests for medication made under the requirements of

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1 chapter 156 of the statutes, as created by this act, on the effective date of this
2 subsection.

3 (END)