

2007 ASSEMBLY BILL 298

April 30, 2007 – Introduced by Representatives BOYLE, BERCEAU and POCAN, cosponsored by Senators RISSER, JAUCH and CARPENTER. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to repeal* 979.01 (1r); *to amend* 979.01 (1) (intro.) and 979.01 (1g); and
2 *to create* 16.009 (2) (q), 146.82 (2) (a) 8m., chapter 156 and 979.01 (1j) of the
3 statutes; **relating to:** permitting certain individuals to make written requests
4 for medication for the purpose of 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, medication from his or her attending physician for the purpose of ending the individual's 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 orally ask his or her attending physician for the medication. 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

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health care record. After the request is filed, the requester must orally ask of his or her attending physician a second time 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 valid 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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1 **(8)** “Informed decision” means a decision by an individual, to request and
2 obtain medication under a prescription so as to end his or her life in a humane and
3 dignified manner, that is based on an appreciation of the relevant facts and is made
4 after having been fully informed by the attending physician of all of the following:

5 (a) The individual’s medical diagnosis.

6 (b) The individual’s prognosis.

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

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

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

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

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

13 **(11)** “Physician” has the meaning given in s. 448.01 (5).

14 **(12)** “Request for medication” means a request made under s. 156.03 that meets
15 the requirements of s. 156.05.

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

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

20 **(15)** “Responsible person” means the attending physician, a health care
21 provider serving the requester, an inpatient health care facility in which the
22 requester is located, or the requester’s spouse, child, parent, brother, sister,
23 grandparent, or grandchild.

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1 **(16)** “Social worker” means a person certified as a social worker, advanced
2 practice social worker, independent social worker, or independent clinical social
3 worker under s. 457.08.

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

7 **156.03 Authorization to make request.** An individual who is of sound mind,
8 has attained age 18, has residence in this state, does not have incapacity, and has a
9 terminal disease may voluntarily make a request for medication for the purpose of
10 ending his or her life in a humane and dignified manner. An individual for whom an
11 adjudication of incompetence and appointment of a guardian of the person is in effect
12 under ch. 54 is presumed not to be of sound mind for purposes of this section.

13 **156.05 Valid request for medication; requirements. (1)** A request for
14 medication under s. 156.03 is valid only if it is all of the following:

15 (a) In writing.

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

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

19 (d) Made voluntarily.

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

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

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

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

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

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

8 4. An individual who is a health care provider who is serving the requester at
9 the time of the witnessing; an employee, other than a chaplain or a social worker, of
10 the health care provider; or an employee, other than a chaplain or a social worker,
11 of a health care facility in which the requester is a patient.

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

15 **156.07 Attending physician; responsibilities and limitations.** The
16 attending physician shall do all of the following:

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

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

20 (a) The requester's medical diagnosis.

21 (b) The requester's prognosis.

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

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

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

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1 **(3)** Refer the requester to a consulting physician under the requirements of s.
2 156.09.

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

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

7 **(6)** Inform the requester that he or she may revoke the request for medication
8 at any time; explain the methods of revocation that are specified under s. 156.17 (1);
9 and offer the requester an opportunity to revoke the request at the time, if any, that
10 the requester orally asks for medication under s. 156.13 (3) (c).

11 **(7)** Before writing a prescription that fulfills a request for medication, verify
12 that all of the following have occurred:

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

14 (b) No fewer than 48 hours have elapsed since the requester made a request
15 for medication.

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

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

19 (a) All occasions which the requester orally asks for medication under s. 156.13
20 (3) and all requests for medication that are made by the requester.

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

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1 (c) The consulting 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 (d) A certification of the outcome and determinations made during any review
5 and counseling for which the requester was referred under s. 156.11.

6 (e) A certification as to whether the attending physician offered the requester
7 an opportunity to revoke the request for medication, as required under sub. (6).

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

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

20 **(9)** If the attending physician refuses to fulfill the requester's request for
21 medication under this chapter, the attending physician shall make a good faith
22 attempt to transfer the requester's care and treatment to another physician who will
23 act as the attending physician under this chapter and will fulfill the requester's
24 request for medication. If a transfer is made, the attending physician to whom the

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1 requester's care and treatment is transferred shall comply with the requirements of
2 this section.

3 **156.09 Consulting physician.** Before an attending physician may fulfill a
4 request for medication under this chapter, a consulting physician shall examine the
5 requester and his or her relevant patient health care records and shall medically
6 confirm the attending physician's determinations that the requester suffers from a
7 terminal disease, does not have incapacity, is making a request for medication
8 voluntarily, and has made an informed decision.

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

20 **156.13 Requester rights, responsibilities, and limitations. (1)** No
21 requester may receive a prescription that fulfills a request for medication unless he
22 or she has made an informed decision.

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

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

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

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

8 INITIAL ONE OF THE FOLLOWING 3 STATEMENTS:

9 I have informed my family members of my decision and taken their opinions
10 into consideration.

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

12 I have no family to inform of my decision.

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

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

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

18 Signed:

19 Dated:

20 STATEMENT AND SIGNATURES

21 OF WITNESSES

22 I know the requester personally or I have received proof of his or her identity
23 and I believe him or her to be of sound mind and at least 18 years of age. I believe
24 that the requester makes this request voluntarily. I am at least 18 years of age, am
25 not related to the requester by blood, marriage, or adoption, and am not directly

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1 financially responsible for the requester’s health care. I am not a health care
2 provider who is serving the requester at this time; an employee of the health care
3 provider, other than a chaplain or a social worker; or an employee, other than a
4 chaplain or a social worker, of a health care facility in which the requester is a
5 patient. To the best of my knowledge, I am not entitled to and do not have a claim
6 on the requester’s estate.

7 Witness No. 1:

8 (print) Name:

9 Address:

10 Signature:

11 Witness No. 2:

12 (print) Name:

13 Address:

14 Signature:

15 Witness No. 3:

16 (print) Name:

17 Address:

18 Signature:

19 If the requester is a patient in a health care facility, at least one of the above
20 witnesses must be a patients’ advocate designated by the board on aging and
21 long–term care. A patients’ advocate who is a witness should print “patients’
22 advocate” after the printing of his or her name above.

23 **156.17 Revocation of request for medication. (1)** A requester may revoke
24 his or her request for medication at any time by doing any of the following:

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

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

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

8 (d) Making a subsequent request for medication.

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

13 **156.19 Designation of patients' advocates.** The board on aging and
14 long-term care shall designate staff of the long-term care ombudsman program as
15 patients' advocates. A person so designated shall serve as a witness to a request for
16 medication of a requester who is a patient or resident of a nursing home or
17 community-based residential facility, as required under s. 156.05 (2) (b), and shall
18 speak on behalf of the requester to ensure that his or her needs or wants are
19 communicated to and addressed by his or her attending physician.

20 **156.21 Duties and immunities. (1)** No health care facility or health care
21 provider may be charged with a crime, held civilly liable, or charged with
22 unprofessional conduct for any of the following:

23 (a) Failing to fulfill a request for medication, except that failure of an attending
24 physician to fulfill a request for medication constitutes unprofessional conduct if the
25 attending physician refuses or fails to make a good faith attempt to transfer the

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1 requester's care and treatment to another physician who will act as attending
2 physician under this chapter and fulfill the request for medication.

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

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

8 **(2)** In the absence of actual notice to the contrary, a health care facility or a
9 health care provider, other than a physician acting as the requester's attending
10 physician under this chapter, may presume that a requester was authorized to make
11 his or her request for medication under the requirements of this chapter and that the
12 request for medication is valid.

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

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

18 **156.23 General provisions. (1)** (a) The making of a request for medication
19 under this chapter does not, for any purpose, constitute attempted suicide. Taking
20 medication under a fulfilled request for medication under this chapter does not, for
21 any purpose, constitute suicide.

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

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

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

8 **(4)** A request for medication that has not been revoked and that is in its original
9 form or is a legible photocopy or electronic facsimile copy is presumed to be valid.

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

14 **156.25 Record review.** The department shall annually examine a sampling
15 of patient health care records of requesters for whom medication was prescribed in
16 fulfillment of a request for medication and about whom the department has received
17 information under s. 156.07 (8) (g).

18 **156.27 Penalties. (1)** Any person who willfully conceals, cancels, defaces,
19 obliterates, or damages the request for medication of another without the requester's
20 consent may be fined not more than \$500 or imprisoned for not more than 30 days
21 or both.

22 **(2)** Any person who, with the intent to cause a requester to take medication that
23 is prescribed under a request for medication contrary to the wishes of the requester,
24 illegally falsifies or forges the request for medication of another or conceals a

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1 revocation under s. 156.17 (1) (a), (b), or (c) shall be fined not more than \$10,000 or
2 imprisoned for not more than 10 years or both.

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

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

9 979.01 **(1)** (intro.) All Except as provided in sub. (1j), all physicians, authorities
10 of hospitals, sanatoriums, public and private institutions, convalescent homes,
11 authorities of any institution of a like nature, and other persons having knowledge
12 of the death of any person who has died under any of the following circumstances,
13 shall immediately report the death to the sheriff, ~~police chief, or~~ and medical
14 examiner or coroner of the county and to the police chief of any community where the
15 death took place:

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

17 979.01 **(1g)** A sheriff or police chief shall, immediately upon notification of a
18 death under sub. (1), ~~notify the coroner or the medical examiner, and the coroner or~~
19 ~~medical examiner of the county where death took place,~~ if the crime, injury, or event
20 occurred in another county, ~~shall immediately~~ report the death to the coroner or
21 medical examiner of that county.

22 **SECTION 6.** 979.01 (1j) of the statutes is created to read:

23 979.01 **(1j)** Subsection (1) does not apply to a death that results from taking
24 medication under a fulfilled request for medication that meets the requirements of
25 ch. 156.

