

State of South Dakota

EIGHTY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2007

952N0635

HOUSE BILL NO. 1270

Introduced by: Representatives Rausch, Hackl, Hunt, Jerke, Koistinen, Moore, Novstrup (Al), and Wick and Senators Duenwald, Apa, Greenfield, Napoli, and Schmidt (Dennis)

1 FOR AN ACT ENTITLED, An Act to facilitate the transfer of certain patients to health care
2 providers who are able and willing to provide treatment, artificial nutrition, and hydration
3 under certain circumstances.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 34-12D-1 be amended to read as follows:

6 34-12D-1. Terms used in this chapter mean:

- 7 (1) "Attending physician," the physician who has primary responsibility for the treatment
8 and care of the patient;
- 9 (2) "Declaration," a writing executed in accordance with the requirements of § 34-12D-2;
- 10 (3) "Health-care provider," any person who is licensed, certified, or otherwise authorized
11 by law to administer health care in the ordinary course of business or practice of a
12 profession, including any person employed by or acting for any such authorized
13 person;
- 14 (4) "Life-sustaining treatment," any medical procedure or intervention that, when
15 administered to a qualified patient, will serve only to postpone the moment of death



1 or to maintain the patient in a condition of permanent unconsciousness. The term
2 does not include the provision of appropriate care to maintain comfort, hygiene and
3 human dignity, the oral administration of food and water, or the administration of any
4 medication or other medical procedure deemed necessary to alleviate pain;

5 (5) "Person," an individual, corporation, business trust, estate, trust, limited liability
6 company, partnership, association, joint venture, government, governmental
7 subdivision, or agency, or any other legal or commercial entity;

8 (6) "Physician," an individual licensed to practice medicine in this state;

9 (7) "Qualified patient," an adult individual who has executed a declaration and who has
10 been determined by the attending physician and one other physician to be in a
11 terminal condition;

12 (8) "Reasonable medical judgment," a medical judgment that would be made by a
13 reasonably prudent physician who is knowledgeable about the case and the treatment
14 possibilities with respect to the medical conditions involved;

15 (9) "Terminal condition," an incurable and irreversible condition that, in accordance with
16 accepted medical standards, will cause death within a relatively short time if
17 life-sustaining treatment is not administered, or a coma or other condition of
18 permanent unconsciousness that, in accordance with accepted medical standards, will
19 last indefinitely without significant improvement and in which the individual is
20 unable to communicate verbally or nonverbally, demonstrates no purposeful
21 movement or motor ability, and is unable to interact purposefully with environmental
22 stimulation.

23 Section 2. That § 34-12D-12 be amended to read as follows:

24 34-12D-12. If a patient with decisional capacity, an individual's declaration ~~contains a~~

1 ~~directive to provide~~ or power of attorney, or the guardian, attorney-in-fact or agent, or other
2 person authorized to make a health care decision for an incapacitated person directs the
3 provision of treatment or artificial nutrition and hydration under any circumstances, any
4 physician or health-care provider who has responsibility for the treatment and care of the
5 individual must provide the directed treatment or artificial nutrition and hydration in those
6 circumstances so long as ~~it is technically feasible~~ its denial would, in reasonable medical
7 judgment, be likely to result in or hasten the death of the patient. A physician or health-care
8 provider who objects to providing such treatment may instead transfer the individual to a
9 physician or health-care provider willing to honor the declaration, but must continue to provide
10 the treatment or care until the transfer is effectuated.

11 Section 3. That chapter 34-12D be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Promptly after deciding to seek transfer, pursuant to § 34-12D-12, of the patient because of
14 an objection to providing such treatment, nutrition, or hydration, the physician or other health
15 care provider shall provide the patient, if the patient has decisional capacity, or otherwise the
16 patient's guardian, attorney-in-fact or agent, or other person authorized to make a health care
17 decision for the incapacitated patient with a copy of the patient's medical records with a copy
18 of this Act, and with a copy of the registry list of health care providers and referral groups that
19 have volunteered their readiness to consider accepting transfer, or to assist in locating a provider
20 willing to accept transfer.

21 Section 4. That chapter 34-12D be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The Department of Health shall maintain a registry listing the identity of and contact
24 information for health care providers and referral groups, situated inside and outside the State

1 of South Dakota, that have voluntarily notified the Department of Health that they may consider
2 accepting, or may assist in locating a provider willing to accept, transfer of a patient in
3 accordance with this Act. The listing of a provider or referral group in the registry does not
4 obligate the provider or group to accept transfer of, or provide services to, any particular patient.
5 The Department of Health shall post the current registry list, in a form appropriate for easy
6 comprehension by patients and persons responsible for the health care decisions of patients, on
7 its website, and provide a clearly identifiable link from its home page to the registry page. The
8 list shall separately indicate those providers and groups that have stated their interest in assisting
9 the transfer of those patients on whose behalf treatment or nutrition and hydration necessary to
10 prevent death is being sought, those providers and groups that have indicated their interest in
11 assisting the transfer of those patients on whose behalf the withholding or withdrawal of life-
12 sustaining treatment is being sought, and those providers and groups that have indicated their
13 interest in assisting transfer in both types of cases.