

AN ACT

ENTITLED, An Act to revise certain provisions regarding living wills.

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

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

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

- (1) "Attending physician," the physician who has primary responsibility for the treatment and care of the patient;
- (2) "Declaration," a writing executed in accordance with the requirements of § 34-12D-2;
- (3) "Health care provider," any licensed health care facility or any person, corporation, or organization licensed, certified, or otherwise authorized or permitted by law to administer health care;
- (4) "Life-sustaining treatment," any medical procedure or intervention that, when administered to a patient, will serve only to postpone the moment of death or to maintain the patient in a condition of permanent unconsciousness. The term does not include the provision of appropriate care to maintain comfort, hygiene and human dignity, the oral administration of food and water, or the administration of any medication or other medical procedure deemed necessary to alleviate pain;
- (5) "Person," an individual, corporation, business trust, estate, trust, limited liability company, partnership, association, joint venture, government, governmental subdivision, or agency, or any other legal or commercial entity;
- (6) "Physician," an individual licensed to practice medicine in this state;
- (7) "Terminal condition," an incurable and irreversible condition such that, in accordance with accepted medical standards, death is imminent if life-sustaining treatment is not administered, or a coma or other condition of permanent unconsciousness that, in

accordance with accepted medical standards, will last indefinitely without significant improvement and in which the individual is unable to communicate verbally or nonverbally, demonstrates no purposeful movement or motor ability, and is unable to interact purposefully with environmental stimulation.

Section 2. That § 34-12D-3 be amended to read as follows:

34-12D-3. A declaration may, but need not, be in the following form:

LIVING WILL DECLARATION

This is an important legal document. A living will directs the medical treatment you are to receive in the event you are in a terminal condition and are unable to participate in your own medical decisions. This living will may state what kind of treatment you want or do not want to receive.

Prepare this living will carefully. If you use this form, read it completely. You may want to seek professional help to make sure the form does what you intend and is completed without mistakes.

This living will remains valid and in effect until and unless you revoke it. Review this living will periodically to make sure it continues to reflect your wishes. You may amend or revoke this living will at any time by notifying your physician and other health care providers. You should give copies of this living will to your family, your physician, and your health care facility. This form is entirely optional. If you choose to use this form, please note that the form provides signature lines for you, the two witnesses whom you have selected, and a notary public.

TO MY FAMILY, HEALTH CARE PROVIDER, AND ALL THOSE CONCERNED WITH MY CARE:

I, _____ direct you to follow my wishes for care if I am in a terminal condition, my death is imminent, and I am unable to communicate my decisions about my medical care.

With respect to any life-sustaining treatment, I direct the following:

(Initial only one of the following options. If you do not agree with either of the following options,

space is provided below for you to write your own instructions.)

☐ If my death is imminent or I am permanently unconscious, I choose not to prolong my life. If life sustaining treatment has been started, stop it, but keep me comfortable and control my pain.

☐ Even if my death is imminent or I am permanently unconscious, I choose to prolong my life.

☐ I choose neither of the above options, and here are my instructions should I become terminally ill and my death is imminent or I am permanently unconscious:

Artificial Nutrition and Hydration: food and water provided by means of a tube inserted into the stomach or intestine or needle into a vein.

With respect to artificial nutrition and hydration, I direct the following:

(Initial only one)

☐ If my death is imminent or I am permanently unconscious, I do not want artificial nutrition and hydration. If it has been started, stop it.

☐ Even if my death is imminent or I am permanently unconscious, I want artificial nutrition and hydration.

Date: _____

(your signature)

(your address)

(type or print your signature)

The declarant voluntarily signed this document in my presence.

Witness _____

Address _____

Witness _____

Address _____

On this the _____ day of _____, _____, the declarant, _____, and witnesses _____, and _____ personally appeared before the undersigned officer and signed the foregoing instrument in my presence. Dated this _____ day of _____, _____.

_____ Notary Public

My commission expires: _____.

Section 3. That § 34-12D-5 be amended to read as follows:

34-12D-5. A living will declaration becomes operative when the declarant is determined by the attending physician to be in a terminal condition, death is imminent, and the declarant is no longer able to communicate decisions about medical care.

Section 4. That § 34-12D-8 be amended to read as follows:

34-12D-8. A declarant may revoke a declaration at any time and in any manner without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the health care provider. The health care provider shall make the revocation a part of the declarant's medical record.

Section 5. That § 34-12D-9 be amended to read as follows:

34-12D-9. This chapter does not affect the responsibility of any health care provider to provide treatment when necessary to alleviate pain or to provide for the patient's comfort, hygiene, or human dignity.

Section 6. That § 34-12D-11 be amended to read as follows:

34-12D-11. A health care provider need not participate in the withdrawal or withholding of

life-sustaining treatment. However, a health care provider electing for any reason not to participate in the withholding or withdrawal of life-sustaining treatment shall make a reasonable effort to locate and to transfer the declarant to a physician or health care provider willing to honor the declaration.

Section 7. That § 34-12D-12 be amended to read as follows:

34-12D-12. If an individual's declaration contains a directive to provide treatment or artificial nutrition and hydration under any circumstances, any health care provider who has responsibility for the treatment and care of the individual must provide the directed treatment or artificial nutrition and hydration in those circumstances so long as it is technically feasible. A health care provider who objects to providing such treatment may instead transfer the individual to a health care provider willing to honor the declaration, but must continue to provide the treatment or care until the transfer is effectuated.

Section 8. That § 34-12D-13 be amended to read as follows:

34-12D-13. A health care provider is not subject to civil or criminal liability or to professional disciplinary action for giving effect to a declaration, absent actual knowledge of its revocation, for determining that a terminal condition does or does not exist or for declining to give effect to a declaration under § 34-12D-11.

Section 9. That § 34-12D-14 be amended to read as follows:

34-12D-14. Death resulting from the withdrawal or withholding of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide on the part of the declarant or a homicide on the part of the attending physician or other health care providers.

Section 10. That § 34-12D-19 be amended to read as follows:

34-12D-19. This chapter does not require a physician or other health care provider to take action contrary to accepted medical standards.

Section 11. That § 34-12D-21 be amended to read as follows:

34-12D-21. In the absence of actual knowledge to the contrary, a health care provider may assume that a declaration complies with this chapter and is valid.

Section 12. That § 34-12D-29 be amended to read as follows:

34-12D-29. For the purposes of §§ 34-12D-23 to 34-12D-28, inclusive, the term, licensed health care professional, means any physician, surgeon, podiatrist, osteopath, physician assistant, nurse, certified nurse practitioner, certified nurse midwife, clinical nurse specialist, certified registered nurse anesthetist, dentist, or pharmacist licensed pursuant to Title 36.

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I certify that the attached Act
originated in the

SENATE as Bill No. 75

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 75

File No. _____

Chapter No. _____

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock ____ M.

Secretary of State

By _____
Asst. Secretary of State