

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

580N0185

## SENATE BILL NO. 76

Introduced by: Senators Hunhoff, Heidepriem, Knudson, Koetzle, and Turbak and  
Representatives Feinstein, Cutler, Gillespie, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding health care decisions  
2 by agents.

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

4 Section 1. That § 59-7-2.5 be amended to read as follows:

5 59-7-2.5. The attorney-in-fact or agent may make any health care decisions for the principal  
6 which the principal could make individually if ~~he~~ the principal had decisional capacity.  
7 However, all such decisions shall be made in accordance with accepted medical ~~practice~~  
8 standards. Whenever making any health care decision for the principal, the attorney-in-fact or  
9 agent shall consider the recommendation of the attending physician, the decision that the  
10 principal would have made if the principal then had decisional capacity, if known, and the  
11 decision that would be in the best interest of the principal.

12 Section 2. That § 59-7-2.7 be amended to read as follows:

13 59-7-2.7. The attorney-in-fact or agent may not authorize the withholding or withdrawal of  
14 comfort care from the principal ~~of comfort care and nutrition or hydration. However, artificial~~  
15 ~~nutrition or hydration may be withheld or withdrawn if.~~ The attorney-in-fact or agent may



1 authorize that artificial nutrition or hydration be withheld or withdrawn if one or more of the  
2 following exist:

3 (1) Artificial nutrition or hydration is not needed for comfort care or the relief of pain  
4 and the attending physician reasonably believes that the principal's death ~~will occur~~  
5 ~~within approximately one week~~ is imminent; or

6 (2) Artificial nutrition or hydration cannot be physically assimilated by the principal; or

7 (3) The burden of providing artificial nutrition or hydration outweighs its benefit,  
8 provided that the determination of burden refers to the provision of artificial nutrition  
9 or hydration itself and not to the quality of the continued life of the principal; or

10 (4) ~~There is clear and convincing evidence that artificial nutrition or hydration was~~  
11 ~~refused by the person prior to loss of decisional capacity; or the power of attorney~~  
12 ~~directs that artificial nutrition or hydration not be given or specifically authorizes the~~  
13 ~~attorney-in-fact or agent to make that decision; or prior to the loss of decisional~~  
14 ~~capacity there is clear and convincing evidence that the principal expressed the desire~~  
15 ~~that artificial nutrition or hydration not be given.~~

16 ~~— Even in the exceptions listed in subdivisions (1), (2), (3) and (4) of this section, artificial~~  
17 ~~nutrition or hydration may not be withheld or withdrawn if it is needed for comfort or the relief~~  
18 ~~of pain~~ The principal expressed the desire that artificial nutrition or hydration be withheld, or  
19 refused artificial nutrition or hydration prior to the loss of decisional capacity; or

20 (5) The principal expressed in the document creating the power of attorney that artificial  
21 nutrition or hydration be withheld; or

22 (6) The principal expressly authorized, in the writing creating the power of attorney, the  
23 attorney-in-fact or agent to direct the withholding of artificial nutrition or hydration.

24 Section 3. That § 59-7-8 be amended to read as follows:

1       59-7-8. A physician or other ~~healthcare~~ health care provider as defined in subdivision 34-  
2 12C-1(5) acting in reliance on a health care decision by an attorney-in-fact or agent whom the  
3 physician or ~~healthcare~~ health care provider believes in good faith is authorized by this chapter  
4 to make a health care decision for the principal or a physician or other ~~healthcare~~ health care  
5 provider declining to act in reliance on a health care decision by an attorney-in-fact or agent  
6 whom the physician or ~~healthcare~~ health care provider believes in good faith is not authorized  
7 by this chapter to make a health care decision for the principal is not subject to criminal  
8 prosecution, civil liability, or professional disciplinary action on the ground that the  
9 attorney-in-fact or agent either had or did not have authority to make a health care decision or  
10 for disclosing to the attorney-in-fact or agent medical records or other information.

11       A physician or other ~~healthcare~~ health care provider who in good faith believes that the  
12 principal has or does not have decisional capacity under § 59-7-2.6 is not subject to criminal  
13 prosecution, civil liability, or professional disciplinary action for making that determination.