

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0240

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **SB 18** - 01/22/2007

Introduced by: The Committee on Health and Human Services at the request of the Board of
Chiropractic Examiners

1 FOR AN ACT ENTITLED, An Act to revise the chiropractic scope of practice.

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

3 Section 1. That § 36-5-1 be amended to read as follows:

4 36-5-1. Chiropractic is ~~hereby defined to be~~ the science of locating and removing the cause
5 of any abnormal transmission of nerve energy including diagnostic and ~~externally~~ applied
6 mechanical measures incident thereto. ~~Chiropractors shall not be entitled to~~ Integral to
7 chiropractic is the treating of specific joints and articulations of the body and adjacent tissues,
8 to influence joints or neurophysiological functions of the body, or both, including the use of
9 examination and treatment by manipulation, adjustment, and mobilization of a joint. No
10 chiropractor may practice obstetrics or treat communicable diseases. ~~The requirements of this~~
11 section do not apply to those licensed pursuant to chapter 36-4.



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0363

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 64** - 01/22/2007

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Health and Human Services at the request of the
Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the consideration of
2 assets for the purpose of long term care eligibility.

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

4 Section 1. That § 28-6-3.1 be amended to read as follows:

5 28-6-3.1. Any real or personal assets disposed of by an individual, the individual's spouse,
6 or other person acting on behalf of or at the request of the individual, applying for or receiving
7 Title XIX medical assistance for long-term care and home and community based services
8 through the Department of Social Services at less than fair market value, at any time on or after
9 a look back date as defined in this section, are presumed to be assets to the fullest extent
10 allowable for federal financial participation when determining eligibility.

11 ~~The look back date is a date thirty-six months prior to the first date on which the individual~~
12 ~~is both institutionalized and has applied to the Department of Social Services for long-term care~~
13 ~~medical assistance, or in~~ If the asset was disposed of prior to February 8, 2006, and was not a
14 trust or similar legal device, the look back date is a date thirty-six months prior to the first date



1 on which the individual is both institutionalized and has applied to the Department of Social
2 Services for long-term care medical assistance. If the asset was disposed of after February 7,
3 2006, the look back date is a date sixty months prior to the first date on which the individual is
4 both institutionalized and has applied to the Department of Social Services for long-term care
5 medical assistance. In the case of a trust or similar legal device that is treated as an asset
6 disposed of at less than fair market value, the look back date is a date sixty months prior to the
7 first date on which the individual is both institutionalized and has applied to the Department of
8 Social Services for long-term care medical assistance.

9 The Department of Social Services shall promulgate rules, pursuant to chapter 1-26, to
10 determine eligibility for medical assistance for long-term care which shall relate to the following
11 areas:

- 12 (1) The period of ineligibility when real or personal assets are given away or sold at less
13 than fair market value;
- 14 (2) Exemptions; and
- 15 (3) Such other standards and requirements as may be necessary for federal financial
16 participation.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0365

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **SB 65** - 01/22/2007

Introduced by: The Committee on State Affairs at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the reimbursement
2 for medical assistance made by certain insurers to the state.

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

4 Section 1. That § 58-12-23 be amended to read as follows:

5 58-12-23. Notwithstanding any ~~other~~ provision of a ~~health benefit plan, health insurance~~
6 policy, plan, contract, or certificate, an insurer shall recognize that an application for medical
7 assistance or acceptance of medical assistance, paid by the Department of Social Services
8 operates as a release of any information kept by the insurer ~~and readily available~~, that would
9 facilitate efficient coordination of benefits between the department and the insurer, which may
10 include:

- 11 (1) The name, address, date of birth, social security number if available, and unique
12 health care identification number of the covered individual;
- 13 (2) The name, address, date of birth, social security number if available, policy number,
14 group identification number of the policyholder, sponsor, or subscriber;
- 15 (3) The name and address of the employer if it is an employer-employee benefit plan;



1 types of services covered under the plan or policy; and the name and address of the
2 claims administrator for the policy or plan;

3 (4) Previously paid benefits including the name and address of the payee; and

4 (5) The name and address of claims processing or administration centers, or both.

5 Upon written request by the department, the insurer shall provide the requested information
6 in writing within thirty calendar days of receipt of the request.

7 Section 2. That § 58-12-24 be amended to read as follows:

8 58-12-24. Notwithstanding any ~~other~~ provision of a ~~health benefit plan, health insurance~~
9 ~~policy, plan, contract, or certificate, that is issued, entered into, or renewed after July 1, 2005,~~
10 ~~no insurer may refuse to reimburse the Department of Social Services because of the manner,~~
11 ~~form, or date of a claim for reimbursement, if within one year after the date the claim has been~~
12 ~~paid by medicaid, for which reimbursement is sought, the department provides the insurer~~
13 ~~evidence of the insurer's liability~~ for medical assistance paid by the department on the basis of
14 the date of submission of the claim, the type or format of the claim form, or a failure to present
15 proper documentation at the point-of-sale for which reimbursement is sought, if the claim is
16 submitted within three years from the date the item or service was furnished and any action by
17 the department to enforce its rights with respect to such claim is commenced within six years
18 of the department's submission of such claim.

19 Section 3. That § 58-12-26 be amended to read as follows:

20 58-12-26. For the purposes of §§ 58-12-22 to 58-12-29, inclusive, the term, insurer, means:

21 (1) Any commercial insurance company, employer-employee benefit plan, health
22 maintenance organization, professional association, service benefit plan, public self-
23 funded employer or pool, union, or fraternal group selling or otherwise offering
24 individual or group health insurance coverage including self-insured and self-funded

1 plans;

2 (2) Any profit or nonprofit prepaid plan offering either medical services of full or partial
3 payment for services included in the department's medicaid plan;

4 (3) Any other entity offering health benefits for which a medicaid recipient may be
5 eligible in addition to public medical assistance; ~~or~~

6 (4) Any managed care organization, third-party administrator, pharmacy benefits
7 manager, or other entity which processes claims, administers services, or otherwise
8 manages health benefits on behalf of any of the aforementioned insurers; or

9 (5) Any other party that is by statute, contract, or agreement, legally responsible for
10 payment of a claim for a health care item or service including workers' compensation,
11 automobile insurance, and liability insurance plans.

12 Section 4. That § 58-12-29 be repealed.

13 ~~—58-12-29. Sections 58-12-22 to 58-12-29, inclusive, do not apply to any coverages under a~~
14 ~~personal lines property and casualty policy.~~

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

409N0183

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 75 - 01/22/2007

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 living wills.

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

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

4 34-12D-1. Terms used in this chapter mean:

5 (1) "Attending physician," the physician who has primary responsibility for the treatment
6 and care of the patient;

7 (2) "Declaration," a writing executed in accordance with the requirements of § 34-12D-2;

8 (3) "~~Health-care~~ Health care provider," any ~~person who is licensed, certified, or~~
9 ~~otherwise authorized by law to administer health care in the ordinary course of~~
10 ~~business or practice of a profession, including any person employed by or acting for~~
11 ~~any such authorized person~~ licensed health care facility or any person, corporation,
12 or organization licensed, certified, or otherwise authorized or permitted by law to
13 administer health care;

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

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

21 34-12D-3. A declaration may, but need not, be in the following form:

22 LIVING WILL DECLARATION

23 This is an important legal document. ~~This document~~ A living will directs the medical
 24 treatment you are to receive in the event you are in a terminal condition and are unable to

1 participate in your own medical decisions ~~and you are in a terminal condition~~. This document
2 living will may state what kind of treatment you want or do not want to receive.

3 ~~This document can control whether you live or die~~. Prepare this document living will
4 carefully. If you use this form, read it completely. You may want to seek professional help to
5 make sure the form does what you intend and is completed without mistakes.

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

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

15 I, _____ ~~willfully and voluntarily make this declaration as a directive to be followed if I am~~
16 ~~in a terminal condition and become unable to participate in decisions regarding my medical care~~
17 direct you to follow my wishes for care if I am in a terminal condition, my death is imminent,
18 and I am unable to communicate my decisions about my medical care.

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

20 (Initial only one of the following ~~optional directives if you agree~~ options. If you do not agree
21 with ~~any either~~ of the following ~~directives~~ options, space is provided below for you to write your
22 own ~~directives~~ instructions.):

23 ~~_____ NO LIFE-SUSTAINING TREATMENT. I direct that no life-sustaining treatment be~~
24 ~~provided. If life-sustaining treatment is begun, terminate it.~~

1 ~~___ TREATMENT FOR RESTORATION. Provide life-sustaining treatment only if and for~~
2 ~~so long as you believe treatment offers a reasonable possibility of restoring to me the ability to~~
3 ~~think and act for myself.~~

4 ~~___ TREAT UNLESS PERMANENTLY UNCONSCIOUS. If you believe that I am~~
5 ~~permanently unconscious and are satisfied that this condition is irreversible, then do not provide~~
6 ~~me with life-sustaining treatment, and if life-sustaining treatment is being provided to me,~~
7 ~~terminate it. If and so long as you believe that treatment has a reasonable possibility of restoring~~
8 ~~consciousness to me, then provide life-sustaining treatment.~~

9 ~~___ MAXIMUM TREATMENT. Preserve my life as long as possible, but do not provide~~
10 ~~treatment that is not in accordance with accepted medical standards as then in effect.~~

11 ~~___ (Artificial nutrition and hydration is food and water provided by means of a nasogastric tube~~
12 ~~or tubes inserted into the stomach, intestines, or veins. If you do not wish to receive this form~~
13 ~~of treatment, you must initial the statement below which reads: "I intend to include this~~
14 ~~treatment, among the 'life-sustaining treatment' that may be withheld or withdrawn.")~~

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

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

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

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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 ~~wish to make clear that~~ direct the following:

(Initial only one)
~~___ I intend to include this treatment among the "life-sustaining treatment" that may be withheld or withdrawn.~~

~~___ I do not intend to include this treatment among the "life-sustaining treatment" that may be withheld or withdrawn.~~

~~(If you do not agree with any of the printed directives and want to write your own, or if you want to write directives in addition to the printed provisions, or if you want to express some of your other thoughts, you can do so here).~~

___ 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: _____

1 (your signature)

2 _____

3 (your address)

(type or print your signature)

4

5 The declarant voluntarily signed this document in my presence.

6 Witness _____

7 Address _____

8 Witness _____

9 Address _____

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

14 _____ Notary Public

15 My commission expires: _____.

16 Section 3. That § 34-12D-5 be repealed.

17 ~~—34-12D-5. A declaration becomes operative when the declarant is determined by the~~
18 ~~attending physician and one other physician to be in a terminal condition and no longer able to~~
19 ~~make decisions regarding administration of life-sustaining treatment. If the declaration becomes~~
20 ~~operative, the attending physician and other health-care providers shall act in accordance with~~
21 ~~the declaration or comply with the transfer requirements of § 34-12D-11.~~

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

23 34-12D-8. A declarant may revoke a declaration at any time and in any manner without
24 regard to the declarant's mental or physical condition. A revocation is effective upon

1 communication to the ~~attending physician or other health-care~~ health care provider. The
2 ~~attending physician or health-care~~ health care provider shall make the revocation a part of the
3 declarant's medical record.

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

5 34-12D-9. This chapter does not affect the responsibility of ~~the attending physician or other~~
6 ~~health-care~~ any health care provider to provide treatment, ~~including orally or artificially~~
7 ~~administered nutrition and hydration~~, when necessary to alleviate pain or to provide for the
8 patient's comfort, hygiene, or human dignity.

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

10 34-12D-11. A ~~physician or other health-care~~ health care provider need not participate in the
11 withdrawal or withholding of life-sustaining treatment. However, a ~~physician or other~~
12 ~~health-care~~ health care provider electing for any reason not to participate in the withholding or
13 withdrawal of life-sustaining treatment shall make a reasonable effort to locate and to transfer
14 the declarant to a physician or ~~health-care~~ health care provider willing to honor the declaration.

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

16 34-12D-12. If an individual's declaration contains a directive to provide treatment or
17 artificial nutrition and hydration under any circumstances, any ~~physician or health-care~~ health
18 care provider who has responsibility for the treatment and care of the individual must provide
19 the directed treatment or artificial nutrition and hydration in those circumstances so long as it
20 is technically feasible. A ~~physician or health-care~~ health care provider who objects to providing
21 such treatment may instead transfer the individual to a ~~physician or health-care~~ health care
22 provider willing to honor the declaration, but must continue to provide the treatment or care
23 until the transfer is effectuated.

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

1 34-12D-13. A ~~physician or other health-care~~ health care provider is not subject to civil or
2 criminal liability or to ~~discipline for unprofessional conduct~~ professional disciplinary action for
3 giving effect to a declaration, absent actual knowledge of its revocation, for determining that
4 a terminal condition does or does not exist or for declining to give effect to a declaration under
5 § 34-12D-11.

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

7 34-12D-14. Death resulting from the withdrawal or withholding of life-sustaining treatment
8 in accordance with this chapter does not constitute, for any purpose, a suicide on the part of the
9 declarant or a homicide on the part of the attending physician or other ~~health-care~~ health care
10 providers.

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

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

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

15 34-12D-21. In the absence of actual knowledge to the contrary, a ~~physician or other~~
16 ~~health-care~~ health care provider may assume that a declaration complies with this chapter and
17 is valid.

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

19 34-12D-29. For the purposes of §§ 34-12D-23 to 34-12D-28, inclusive, the term, licensed
20 health care professional, means any physician, surgeon, podiatrist, osteopath, physician
21 assistant, nurse, certified nurse practitioner, certified nurse midwife, certified nurse specialist,
22 certified registered nurse anesthetist, dentist, or pharmacist licensed pursuant to Title 36.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

490N0400

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 77 - 01/22/2007

Introduced by: Senators Knudson, Heidepriem, and Koetzle and Representatives Feinstein,
Cutler, Gillespie, and Lust

1 FOR AN ACT ENTITLED, An Act to provide for an exclusive remedy for judgment creditors
2 of limited partnerships.

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

4 Section 1. That § 48-7-703 be amended to read as follows:

5 48-7-703. On application to a court of competent jurisdiction by any judgment creditor of
6 a partner, the court may charge the partnership interest of the partner with payment of the
7 unsatisfied amount of the judgment with interest. To the extent so charged, the judgment
8 creditor has only the rights of an assignee of the partnership interest. This chapter does not
9 deprive any partner of the benefit of any exemption laws applicable to ~~his~~ the partner's
10 partnership interest.

11 This section provides the exclusive remedy that a judgment creditor of a general or limited
12 partner or of the general or limited partner's assignee may use to satisfy a judgment out of the
13 judgment debtor's interest in the partnership. No other remedy, including foreclosure on the
14 general or limited partner's partnership interest or a court order for directions, accounts, and
15 inquiries that the debtor, general or limited partner might have made, is available to the



- 1 judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the
- 2 limited partnership, and no other remedy may be ordered by a court.