

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2308

2007 SENATE JUDICIARY

SB 2308

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2308**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 1805

Committee Clerk Signature *Maria Solberg*

Minutes: Relating to provision of health care directive.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Judy Lee, Dist. #13 Introduced the bill (meter 0.1) I was approached by a local attorney to present this bill.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

Christopher Dobson, ND Catholic Conference (meter 1:42) Referred to a letter sent to Mr. Levi. The subject has come up when an elderly person who is in the process of dieing and is tired of making decisions. In the healthcare current directive the trigger for assistance is at the stage of incapacitation. Is this law needed? The debate is if this could currently be by the "informed consent procedure" My concern is if one gives up the decision making rights at what point can they be give it back. For example if a person is sick and gives away there rights, finds out they are dying of cancer. Do they have the right to know they are dying.

Sen. Nething spoke of situations where the person does not have any family taking care of them and the dilemma of non-family members helping.

Sen. Fiebiger spoke of the concerns of a person "having a bad day" and giving the rights away-then wanting the rights back. How do you in force? Currently the physicians focus is on the patient and what they want, how would this affect that. What if you have siblings who are rivaling? Would that be a concern for your ethics committee? It did not come up but the current "undue influence" portion should cover this in the current statute

How wide spread is this problem? No one in my healthcare directive has asked for this.

Bruce Levi, Executive Director Medical Council, (meter 9:45) This bill was presented to me by William Guy of Fargo, NDMA board of Ethics. Gave the legislative history of the bill and how we emulated MN law. **Sen. Nething** asked what the pitfalls to this legislation would be (meter 13:20 Initially it could cause confusion and as an advance directive medially it give the physician one more layer to deal with. He continued with the questions. Does the Doctor make the decision to trigger this? No it is addressed in the health care directive. Discussion of when and who makes what decisions. (meter 16:18) The agent must first accept an appointment.

Sen. Fiebiger stated (meter 19:30) With all types of family dynamics, how easy is it for a family member to manipulate this bill? This would fall under "undue influence" and another family member could use this portion to address a conflict.

Sen. Neslon requested a copy of the Health Care Directive

The committee discussed a person still having the capacity to make a decision, why have another individual make the decision and not the medical doctor. (meter 22:00)

Sen. Nething requested Mr. Dobson to work on an amendment to clarify tree changes (meter 24:00)

Sen. Nething sited a case of a 98 year old woman back how whom his wife and some neighbors watch over due to her not having any living relatives left alive. He spoke of her diabetes and how at times the disease causes her to be confused and disorientated till her levels are corrected. She may be able to think clearly one day and be completely out of it the next. The also spoke of how this might make a confusing situation more complicated. This bill is not for the person surrounded by family members who are already involved in the decision making process, it is for the person with out any family who is being taken care of by the community and friends.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2308**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 2934

Committee Clerk Signature

Minutes: Relating to provision of health care directive.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee had requested a review of the Health Care Directives and **Christopher Dobson**, ND Catholic Diocese brought in copies Att. #1 and the "short form" Att. #2 and Att. #3 and spoke of an amendment for clarification Att. #5

Bruce Levi, ND Medical Assoc. (Meter 4:34) provided additional information Att. #4 Spoke of the "trigger" mechanism in the bill. He stated that they crafted law after MN Law and spoke of the "revoking" of director. Additional Testimony: **Bill Guy**, Attorney , Vogal Law Firm, Fargo requested the bill from Sen. Judy Lee but was unable to make the first hearing on the bill. – Att. #6.

Sen. Nething asked for an example (meter 8:15) How this bill would come into play for an elderly person under today's law and how this would change that.

Sen. Lyson stated his confusion (meter 11:04) Have we got a problem? What is it? This is a continuation of the work that was done last session. These are the directives that make the bill more complicated and he reviewed the process of the bill again.

Sen. Nething stated that no one has to do this, it is a choice to do for clarity.

Sen. Olafson stated (meter 13:00) that this bill allows people the option to turn the "decision process" over to there agent. They discussed the "trigger" and the amendments.

Sen. Fiebiger referred to the MN statute. Does the amendment part of the bill mirror MN law?
Yes, all except the "revocation" language.

Mr. Levi reviewed the amendment with the bill (meter 16:05)

Sen. Nothing stated that part of the bill would pertain to a case where there are no children to help the elderly. Discussed the oppositions to the bill should be helped with the clarification of the amendments.

Senator David Nothing, Chairman closed the hearing.

Sen. Olafson made the motion to Do Pass Amendment – Att. #5 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Olafson made the motion to Do Pass as Amended and **Sen. Nelson** seconded the motion. All members were in favor except for **Sen. Lyson** and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nothing, Chairman closed the hearing.

Date: 2-6-07

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2308

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Olafson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger	✓	
Sen. Lyson		✓	Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 5 No 1

Absent 0

Floor Assignment Sen. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2308: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2308 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "or when the principal retains the capacity to make" with ", unless otherwise specified in the"

Page 1, line 13, replace "decisions" with "directive"

Page 2, line 3, remove "for a principal in the case of lack of capacity to make health"

Page 2, line 4, remove "care decisions"

Page 2, line 9, after "4." insert "Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in the same manner as a health care directive may be revoked under section 23-06.5-07."

5."

Page 2, line 12, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly

2007 HOUSE HUMAN SERVICES

SB 2308

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2308

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 14, 2007

Recorder Job Number: 5060

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Price: We will open the hearing on SB 2308.

Senator Judy Lee, District 13 West Fargo: The bill is related to health care directives. This addresses a redundant form that has been required for folks going into long term care or hospitals. One does not necessarily have to be incompetent to be in a setting like that. There is extra paper work involved for parties involved in the health care facilities and long term care facilities. Don't see any danger to people in deleting the additional requirements that is covered in 2212 so that the kinds of directives that are established might carry through without that sort of house keeping stamp of approval on it that is required at this time with the additional paper work. In 2308 also talks about health care directives, we used to call them living wills and powers of attorney for health care. They are combined into one form now. Our goal would be to encourage people to sign health directives, it is also important for young people to do this. There are times someone may be seriously ill and is competent and capable but struggling with making with making decisions on behalf of themselves. That is what 2308 talks about. They could designate someone to make those decisions for them in that situation.

John Petrick, reading the testimony of William Guy III: See attached testimony.

Bruce Levi, ND Medical Association: See attached testimony. We talked about SB 2212 in 2005 there was the combining of the living will and the power of attorney for health care, and putting the option form into one health care directive. The bill you have is a topic as was mentioned is part of the law in Minnesota. It is really a part of the law from a uniform act that was developed in 1993. The bill would allow a person who is executed in health care directive if you fill out one of those forms, and appoint an agent. If in your situation you would want your agent to immediately be able to make health care decisions for you, even though you still have the capacity to make decisions. I will hand out acceptance of appointment section. See attached.

Christopher Dodson, with ND Catholic Conference: We are neutral on this bill if you are going to pass something like this with the changes made in the Senate,

Rep. Potter: Being neutral must be some positives and some negatives. What are the negatives?

Mr. Dodson: Some of the negatives are unknown. How it works, and the idea of a advanced directive was initially that you could speak for yourself. Why would you relinquish? I can understand someone may be tired of making decisions. We wanted the bill as clear as possible.

Rep. Porter: In the way the bill is written it is fairly easy to dismiss someone under this new provision. If they are making decisions that you don't want, that you have given them the authority to make. It would be very easy to dismiss them in this process.

Mr. Dodson: I think the bill you have in front of you provides at least a clear way of dismissal. The questions some people is why is this necessary, and this be done under out existing consent parameters.

Chairman Price: Anyone else to testify on SB 2308? If not we will close the hearing on SB 2308.

Chairman Price: Committee we will take out SB 2308 and act on it.

Representative Hatlestad moves a motion for a do pass, seconded by **Representative Schneider**.

Representative Weisz: I have some concerns giving someone who is capable, but doesn't want to deal with it.

Representative Uglem: I had a mother in law in the hospital a year ago, and she would be capable of making the decision and in an hour later she could not.

Representative Hofstad: What happens when there is a conflict with the rest of the siblings?

Representative Porter: This is part of the reason we do this in the first place, while of sound mind, to avoid those conflicts.

Representative Weisz: Could not hear him.

Chairman Price: If they have authorized this person and authorized them to take over prior to incapacity. Wouldn't they basically have to revoke the original directive totally and create a new one?

Mr. Levi: Under the bill the remedy there is not to revoke the entire care directive it is to revoke the authorization for the principal to take authorization in the same manner. You would revoke your previous appointment.

The vote was taken with 11 yeas, 0 nays, and 1 absent. **Representative Schneider** will carry the bill to the floor.

Date: 3/14
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES S.B. 2308 Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Rep. Hattestad Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairman	✓		Kari L Conrad	✓	
Vonnie Pietsch - Vice Chairman	✓		Lee Kaldor	✓	
Chuck Damschen			Louise Potter	✓	
Patrick R. Hattestad	✓		Jasper Schneider	✓	
Curt Hofstad	✓				
Todd Porter	✓				
Gerry Uglen	✓				
Robin Weisz	✓				

Total (Yes) 11 "Click here to type Yes Vote" No 0 "Click here to type No Vote"

Absent 1

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 12:09 p.m.

Module No: HR-48-5284
Carrier: Schneider
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2308, as engrossed: Human Services Committee (Rep. Price, Chairman)
recommends **DO PASS** (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2308 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2308

**CHAPTER 23-06.5
HEALTH CARE DIRECTIVES**

AAH #1
2/6

23-06.5-01. Statement of purpose. Every competent adult has the right and responsibility to make the decisions relating to the adult's own health care, including the decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to enable adults to retain control over their own health care during periods of incapacity through health directives and the designation of an individual to make health care decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

23-06.5-02. Definitions. In this chapter, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a health care directive for the individual granting the power.
2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care, and the ability to communicate a health care decision.
4. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including:
 - a. Selection and discharge of health care providers and institutions;
 - b. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate;
 - c. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
 - d. Establishment of an individual's abode within or without the state and personal security safeguards for an individual, to the extent decisions on these matters relate to the health care needs of the individual.
5. "Health care directive" means a written instrument that complies with this chapter and includes one or more health care instructions, a power of attorney for health care, or both.
6. "Health care instruction" means an individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.
7. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
8. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.
9. "Principal" means an adult who has executed a health care directive.

23-06.5-03. Health care directive.

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions. Subject to the provisions of this chapter and any express limitations set forth by the principal in the health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
 - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive; or
 - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.
3. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.
4. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
5. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

23-06.5-04. Restrictions on who can act as agent. A person may not exercise the authority of agent while serving in one of the following capacities:

1. The principal's health care provider;
2. A nonrelative of the principal who is an employee of the principal's health care provider;
3. The principal's long-term care services provider; or
4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

23-06.5-05. Health care directive requirements - Execution and witnesses.

1. To be legally sufficient in this state, a health care directive must:
 - a. Be in writing;
 - b. Be dated;
 - c. State the principal's name;

- d. Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;
 - e. Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and
 - f. Include a health care instruction or a power of attorney for health care, or both.
2. A health care directive must be signed by the principal and that signature must be verified by a notary public or at least two or more subscribing witnesses who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, the agent, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. If the principal is physically unable to sign, the directive may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

23-06.5-05.1. Suggested health care directive form. A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;
4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;
5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.2 or an amendment to, revocation of, or refusal to make an anatomical gift;
6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent; and
7. Health care instructions regarding artificially administered nutrition or hydration.

23-06.5-06. Acceptance of appointment - Withdrawal. To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates authority for the agent to make health care decisions on behalf of the principal at such time as the principal becomes incapacitated. Until the principal becomes incapacitated, the agent may withdraw by giving notice to the principal. After the principal becomes incapacitated,

the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

23-06.5-07. Revocation.

1. A health care directive is revoked:
 - a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the directive; or
 - b. By execution by the principal of a subsequent health care directive.
2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a health care directive shall immediately record the revocation in the principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the principal's care of the revocation.
3. Unless otherwise provided in the health care directive, if the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

23-06.5-08. Inspection and disclosure of medical information. Subject to any limitations set forth in the health care directive by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
2. Execute any releases or other documents which may be required in order to obtain such medical information; and
3. Consent to the disclosure of such medical information.

23-06.5-09. Duties of provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's health care directive, are bound to follow the health care decisions of the principal's designated agent or a health care instruction to the extent they are consistent with this chapter and the health care directive.
2. A principal's health care or long-term care services provider may decline to comply with a health care decision of a principal's designated agent or a health care instruction for reasons of conscience or other conflict. A provider that declines to comply with a health care decision or instruction shall take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's health care decision, or instruction or directive, and shall provide continuing care to the principal until a transfer can be effected.
3. This chapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
4. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care, or alleviation of pain.
5. Notwithstanding a contrary direction contained in a health care directive executed under this chapter, health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record

by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.

6. In the absence of a direction to the contrary contained in a health care directive prepared under this chapter, nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to the principal. Nutrition or hydration, or both, must be withdrawn, withheld, or administered, if the principal for whom the administration of nutrition or hydration is considered, has directed in a health care directive the principal's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health care directive prepared under this chapter does not indicate the principal's direction with respect to nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the principal or would be physically harmful or would cause unreasonable physical pain to the principal.

23-06.5-10. Freedom from Influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a health care directive.
2. The appointment of an agent is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the district court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.
3. The appointment of an agent is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.

23-06.5-11. Reciprocity. This chapter does not limit the enforceability of a health care directive or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

23-06.5-12. Immunity.

1. A person acting as agent pursuant to a health care directive or person authorized to provide informed consent pursuant to section 23-12-13 may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the provisions of this chapter or section 23-12-13.
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal

