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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3804

02/15/2024 Authored by Norris
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health; requiring the commissioner of health to develop a health care
1.3 instruction form related to opioids; modifying existing permissible health care
1.4 instructions to exclude prohibiting the intraoperative use of opioids; amending
1.5 Minnesota Statutes 2022, sections 145C.05, subdivision 2; 145C.17.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2022, section 145C.05, subdivision 2, is amended to read:

1.8 Subd. 2. Provisions that may be included. (a) A health care directive may include
1.9 provisions consistent with this chapter, including, but not limited to:

1.10 (1) the designation of one or more alternate health care agents to act if the named health
1.11 care agent is not reasonably available to serve;

1.12 (2) directions to joint health care agents regarding the process or standards by which the
1.13 health care agents are to reach a health care decision for the principal, and a statement
1.14 whether joint health care agents may act independently of one another;

1.15 (3) limitations, if any, on the right of the health care agent or any alternate health care
1.16 agents to receive, review, obtain copies of, and consent to the disclosure of the principal's
1.17 medical records or to visit the principal when the principal is a patient in a health care
1.18 facility;

1.19 (4) limitations, if any, on the nomination of the health care agent as guardian for purposes
1.20 of sections 524.5-202, 524.5-211, 524.5-302, and 524.5-303;

1.21 (5) a document of gift for the purpose of making an anatomical gift, as set forth in chapter
1.22 525A, or an amendment to, revocation of, or refusal to make an anatomical gift;

2.1 (6) a declaration regarding intrusive mental health treatment under section 253B.03,
2.2 subdivision 6d, or a statement that the health care agent is authorized to give consent for
2.3 the principal under section 253B.04, subdivision 1a;

2.4 (7) a funeral directive as provided in section 149A.80, subdivision 2;

2.5 (8) limitations, if any, to the effect of dissolution or annulment of marriage or termination
2.6 of domestic partnership on the appointment of a health care agent under section 145C.09,
2.7 subdivision 2;

2.8 (9) specific reasons why a principal wants a health care provider or an employee of a
2.9 health care provider attending the principal to be eligible to act as the principal's health care
2.10 agent;

2.11 (10) health care instructions by a woman of child bearing age regarding how she would
2.12 like her pregnancy, if any, to affect health care decisions made on her behalf;

2.13 (11) health care instructions regarding artificially administered nutrition or hydration;
2.14 and

2.15 (12) health care instructions to prohibit administering, dispensing, or prescribing an
2.16 opioid, except that these instructions must not be construed to limit the administering,
2.17 dispensing, or prescribing an opioid: (1) to treat substance abuse, opioid dependence, or an
2.18 overdose, unless otherwise prohibited in the health care directive; or (2) for intraoperative
2.19 use.

2.20 (b) A health care directive may include a statement of the circumstances under which
2.21 the directive becomes effective other than upon the judgment of the principal's attending
2.22 physician, advanced practice registered nurse, or physician assistant in the following
2.23 situations:

2.24 (1) a principal who in good faith generally selects and depends upon spiritual means or
2.25 prayer for the treatment or care of disease or remedial care and does not have an attending
2.26 physician, advanced practice registered nurse, or physician assistant, may include a statement
2.27 appointing an individual who may determine the principal's decision-making capacity; and

2.28 (2) a principal who in good faith does not generally select a physician, advanced practice
2.29 registered nurse, or physician assistant or a health care facility for the principal's health care
2.30 needs may include a statement appointing an individual who may determine the principal's
2.31 decision-making capacity, provided that if the need to determine the principal's capacity
2.32 arises when the principal is receiving care under the direction of an attending physician,
2.33 advanced practice registered nurse, or physician assistant in a health care facility, the

3.1 determination must be made by an attending physician, advanced practice registered nurse,
3.2 or physician assistant after consultation with the appointed individual.

3.3 If a person appointed under clause (1) or (2) is not reasonably available and the principal
3.4 is receiving care under the direction of an attending physician, advanced practice registered
3.5 nurse, or physician assistant in a health care facility, an attending physician, advanced
3.6 practice registered nurse, or physician assistant shall determine the principal's
3.7 decision-making capacity.

3.8 (c) A health care directive may authorize a health care agent to make health care decisions
3.9 for a principal even though the principal retains decision-making capacity.

3.10 Sec. 2. Minnesota Statutes 2022, section 145C.17, is amended to read:

3.11 **145C.17 OPIOID INSTRUCTIONS ~~ENTERED INTO HEALTH RECORD.~~**

3.12 Subdivision 1. Opioid instruction form. (a) The commissioner of health shall develop
3.13 a legally sufficient health care directive form containing only health care instructions related
3.14 to administering, dispensing, or prescribing an opioid. The opioid health care instruction
3.15 form must include a disclosure that the health care directive does not prohibit administering,
3.16 dispensing, or prescribing an opioid for intraoperative use; an option to prohibit
3.17 administering, dispensing, or prescribing an opioid to treat substance abuse, opioid
3.18 dependence, or an overdose; and instructions on how the form may be revoked. The opioid
3.19 health care instruction form must not include a health care power of attorney to appoint a
3.20 health care agent.

3.21 (b) The commissioner shall make the opioid health care instruction form available to
3.22 the public on the Department of Health's website.

3.23 Subd. 2. Opioid instruction entered into health record. At the request of the ~~patient~~
3.24 principle or health care agent, a health care provider shall enter into the ~~patient's principle's~~
3.25 health care record any instructions relating to administering, dispensing, or prescribing an
3.26 opioid.