

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2341

2001 SENATE HUMAN SERVICES

SB 2341

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2341

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 30, 2001

Tape Number	Side A	Side B	Meter #
1		X	17.4
Committee Clerk Signature <i>Baral Kolodziejchuk</i>			

Minutes:

The hearing on SB 2341 was opened.

SENATOR LEE, sponsor of the bill, introduced the bill. This bill comes from a wide range of agencies and boards dealing with end of life care. It addresses living will and power of attorney issues.

BRUCE LEVI, ND Medical Assoc., explained the bill. (Written Testimony) A living will is a document prepared when you have a terminal illness and death is immanent. It directs wishes at end of life. The durable power of attorney is a document that designates a proxy to make decisions at end of life. SENATOR MATHERN: How did this group overcome concerns of who? MR. LEVI: Difficulties of health care providers to be witnesses. What roll does the witness fulfill - simply verifying signature or verifying if the person is competent. It was an issue of competency or signing of freewill. SENATOR POLOVITZ: Would there be conflict between the two? MR. LEVI: It would make it less complicated. Living will kicks in at

different time than durable power of attorney. People should have both documents. SENATOR

KILZER: Is living will an accurate term? MR. LEVI: It is improving life. Living will is consistent in the code and allows to make changes.

RODGER WETZEL, MPA, LSW, HCA/c, supports the bill. (Written testimony)

MEL WEBSTER, attorney, supports bill. This bill makes witnessing requirements easier. It encourages people to complete forms, select agent and what degrees of care he wants.

ARNOLD THOMAS, President of ND Healthcare Assoc., supports bill. (Written testimony)

CHRISTOPHER DOBSON, ND Catholic Council, supports bill. This clarifies things that we thought were in the law.

STACEY PFLIGER, Right to Life, supports bill. (Written testimony) SENATOR MATHERN:

Mr. Levi, would you comment on the amendment? MR. LEVI: The language might be part of our law, but process is transfer. Nothing would hinder.

The hearing was closed on SB 2341.

Discussion was held. SENATOR MATHERN moved a DO PASS. SENATOR FISCHER seconded the motion. Roll call vote carried 6-0. SENATOR LEE will carry the bill.

Date: 1/30/01

Senate	HUMAN SERVICES	Committee
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Legislative Council Amendment Number _____

Motion Made By _____ Seconded By _____

[illegible]

Absent

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

REPORT OF STANDING COMMITTEE (410)
February 5, 2001 1:28 p.m.

Module No: SR-20-2365
Carrier: Leo
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2341: Human Services Committee (Sen. Lee, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2341 was placed on the
Eleventh order on the calendar.

2001 HOUSE HUMAN SERVICES

SB 2341

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2341

House Human Services Committee

☐ Conference Committee

Hearing Date February 20, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		Tape didn't work
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig

Chairman Price: Open hearing on SB 2341.

Bruce Levi: N.D. Medical Association. (See written testimony.) The Association supports SB 2341. Advance directive statutes provide a pathway for expressing wishes and preferences for end-of-life care. In North Dakota, the "living will" in chapter 23-06.4 and the durable power of attorney for health care in chapter 23-06.5 are tools that assist an individual to plan for future medical care in the event the individual is unable to make his or her own decisions. SB 2341 would make revisions to these two chapters of the North Dakota Century Code to encourage North Dakotans to plan in advance for their medical care if they are unable, in the future, to do so. There are other individuals who wish to testify in support of SB 2341, and who are better

Page 2

House Human Services Committee

Bill/Resolution Number SB 2341

Hearing Date February 20, 2001

able to describe the benefits of the bill. The N.D. Medical Association encourages you to vote
DO PASS on SB 2341.

Chairman Price: Page 1, line 21 and 22 - you took out by marriage - would a daughter-in-law be
considered a relative?

Bruce Levi: ??????????????????

Rep. Pollert: Is it common to have these forms in statute?

Bruce Levi: Yes, many other states have statutory forms.

Christopher Dodson: North Dakota Catholic Conference. We encourage passage of this bill. It
is a process for people to become comfortable with their circumstances and the dying process.

Chairman Price: Page 1, line 21 and 22 - can a daughter-in-law be a witness. I need to know
what you intended here.

Christopher Dodson: We need to look at it.

Rep. Pollert: Has someone from the Right-to-Life been in discussion regarding this bill?

Christopher Dodson: Stacy Phliger testified in favor of the bill in the Senate.

Melvin Webster: Attorney in Private Practice. (See written testimony.) The changes simplify
the witnessing process for both "living wills" and "health care powers of attorney" by providing
that one of the witnesses could be an employee of the health care provider or that the document
could be notarized rather than witnessed. This change makes it much easier to enable people to
sign advance directives. The primary problem that I encounter is that frequently there are no
qualified witnesses - that is, witnesses who are not blood relatives or witnesses or who are
non-employees. The only alternative under the present statute is to scurry around and see if you
can find a complete stranger who, ironically, is then qualified to witness the document. This
change would facilitate the signing of advanced directives for individuals who are in a long-term

care facility or hospital. The other change is that the bill permits the use of forms other than the statutory forms if the forms comply with North Dakota's statutes. There are a number of alternative forms that are available to individuals; many of them are available on the Internet. However, our present statute regarding living wills indicates it must be "substantially similar to the statutory form." In regard to the durable power of attorney, the statute for health care durable powers of attorney indicates that it is the "preferred form." The changes emphasize that while statutory forms are provided, they are not the "required forms." Most estimates indicate that no more than 15% of people have advance directives. The emphasis should be on encouraging individuals to plan for their incapacity rather than setting up roadblocks that inhibit the individuals to sign advance directives of one kind or the other. I believe that this bill would make it easier for individuals to sign advance directives and that it would, therefore, ensure that their wishes were carried out. I urge your support of SB 2341.

Rep. Klein: You won't have to make changes if you have this will now?

Mel Webster: No.

(See Judy Lee's attached written testimony.)

Chairman Price: Close hearing on SB 2341.

COMMITTEE WORK:

Rep. Cleary: Do Pass the amendment.

Rep. Metcalf: Second.

(12 Yes, 1 No, 1 Absent)

Rep. Galvin: DO PASS as amended.

Rep. Sandvig: Second.

13 YES 0 NO 1 ABSENT CARRIED BY REP. SANDVIG

18332.0101
Title.0200

Adopted by the Human Services Committee
February 20, 2001

✓
2/20/01

HOUSE AMENDMENTS TO SB 2341

HOUSE HS

2-21-01

Page 1, line 21, after "blood" insert ", marriage,"

HOUSE AMENDMENTS TO SB 2341

HOUSE HS

2-21-01

Page 6, line 11, after "blood" insert ", marriage,"

HOUSE AMENDMENTS TO SB 2341

HOUSE HS

2-21-01

Page 7, line 28, after "blood" insert ", marriage,"

Renumber accordingly

Date: 2-20-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2341

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS the Amendment

Motion Made By Rep. Cleary Seconded By Metcalf

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Audrey Cleary	<input checked="" type="checkbox"/>	
William Devlin - V. Chairman	<input checked="" type="checkbox"/>		Ralph Metcalf	<input checked="" type="checkbox"/>	
Mark Dosch		<input checked="" type="checkbox"/>	Carol Niemeier	<input checked="" type="checkbox"/>	
Pat Galvin	<input checked="" type="checkbox"/>		Sally Sandvig	<input checked="" type="checkbox"/>	
Frank Klein	<input checked="" type="checkbox"/>				
Chet Pollert	<input checked="" type="checkbox"/>				
Todd Porter	<input checked="" type="checkbox"/>				
Wayne Tieman	<input checked="" type="checkbox"/>				
Dave Weiler	<input checked="" type="checkbox"/>				
Robin Weisz	<input checked="" type="checkbox"/>				

Total (Yes) 12 No 1

Absent 1

Floor Assignment _____

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

Date: 2-20-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2341

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS as Amended

Motion Made By Rep. Galvin Seconded By Sen. Jung

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairman			Audrey Cleary	✓	
William Devlin - V. Chairman	✓		Ralph Metcalf	✓	
Mark Dosch	✓		Carol Niemcier	✓	
Pat Galvin	✓		Sally Sandvig	✓	
Frank Klein	✓				
Chet Pollert	✓				
Todd Porter	✓				
Wayne Tieman	✓				
Dave Weiler	✓				
Robin Weisz	✓				

Total (Yes) 13 No _____

Absent 1

Floor Assignment Rep. Sandvig

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

REPORT OF STANDING COMMITTEE (410)
February 21, 2001 12:29 p.m.

Module No: HR-32-4201
Carrier: Sandvig
Insert LC: 18332.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2341: Human Services Committee (Rep. Price, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2341 was placed on the Sixth
order on the calendar.

Page 1, line 21, after "blood" insert ", marriage,"

Page 6, line 11, after "blood" insert ", marriage,"

Page 7, line 28, after "blood" insert ", marriage,"

Renumber accordingly

2001 TESTIMONY

SB 2341



MeritCare Health System
720 4th St. N.
Fargo, ND 58122
Roger L. Gilhertum, M.D., President

MeritCare Medical Group
737 Broadway
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MeritCare Hospital
720 4th St. N.
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(701) 234-6000

January 29, 2001

The Honorable Senator Judy Lee, Chair
Members of the Human Services Committee
Fifty-Seventh Legislative Assembly

This Communication is from a North
Dakota Registered Lobbyist, Badge
#207

Dear Senator Lee and Committee Members:

RE: Senate Bill 2341

The purpose of this letter is to indicate the support of MeritCare Health System for the Committee's approval of SB 2341 which would enact various amendments to NDCC Chapters 23-06.4 and 23-06.5. The amendments would permit a declaration under Chapter 23-06.4 and durable power of attorney for health care under 23-06.5 to be signed before a notary. For ease of reference, both instruments will be referred to as an "advance directive" in the remainder of this letter.

MeritCare Health System operates MeritCare Hospital located in Fargo, North Dakota, which has approximately 18,000 admissions per year and MeritCare Medical Group which has over 1.2 Million patient visits per year at its 34 clinic sites located in North Dakota and Minnesota. MeritCare Hospital sees over 33,250 patients in the emergency center each year. The United States Patient Self Determination Act mandates that health care providers inform patients of their right to prepare advance directives and provide the patients with information as to the procedures and forms necessary to prepare an advance directive. As a result, it is common for MeritCare to receive requests by its patients for assistance in the preparation and signing of advance directives while they are at a MeritCare facility.

As MeritCare's staff assist patients through the process of preparing advance directives, the current witnessing requirements have proven to be problematic. The inclusion of an option to sign the advance directive before a notary would greatly enhance the ability of patients to complete the advance directive. Since many individuals are unable to serve as witnesses, it is commonplace to request individuals who are unrelated and unknown to serve as witnesses. At times it has been difficult to get someone in the facility to act as a witness or to become involved in a matter in which they have no interest and consider to be personal to the patient. When we

The Honorable Senatore Judy Lee, Chair
Human Services Committee
Page 2

are unable to find a person who meets the requirements, the patients desire to complete the advance directive is thwarted.

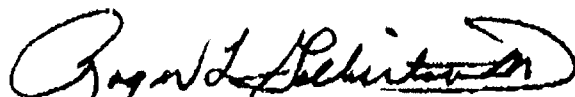
The proposed legislation would permit a notary, including one employed by the health care provider, to witness and notarize the advance directive. MeritCare has a notary on duty at all times who would be available to notarize advance directives when requested by patients. The conduct of a notary is governed by NDCC Chapter 44-06 as well as the requirements of NDCC Chapters 23-06.4 and 23-06.5. The inclusion of a notary option is consistent with the approach taken by other states such as Minnesota. This has proven to be invaluable in our effort to facilitate our patients' desire to prepare an advance directive in our Minnesota sites. The proposed legislation would extend the same benefit to our North Dakota patients.

MeritCare also supports the proposed amendment to Section 23-06.4-03(2) which would make it clear that North Dakota residents have the option of using the statutory form or an alternative form so long as it complies with the requirements of Chapter 23-06.4. Over the years since Chapter 23-06.4 was first enacted, there has been the development of various declaration formats which meet the requirements of Chapter 23-06.4, but improve the readability of the documents. The latitude to develop forms which are more easily understood would enhance our patients' ability to complete a declaration.

SB 2341 would facilitate the completion of advance directives by North Dakota residents. The preparation of an advance directive is an important and personal process by which North Dakota residents can express their wishes for health care when they are unable to speak for themselves. MeritCare Health System supports SB 2341 which would ease the process for our patients to make clear their personal decisions with respect to their health care. We would urge the Committee's approval of SB 2341.

Thank you for your consideration.

Sincerely,



Roger L. Gilbertson, MD
President

(Lobbyist Registration Badge #207)

AGING

with *Dignity*

FIVE WISHES™

FOR

Print Your Name

Print Your Birth Date

My Wish For:

1. The Person I Want To Make Care Decisions For Me When I Can't
2. The Kind of Medical Treatment I Want or Don't Want
3. How Comfortable I Want To Be
4. How I Want People To Treat Me
5. What I Want My Loved Ones To Know

Five Wishes makes it easier for you to let your doctor, family, and friends know how you want to be treated if you become seriously ill and cannot tell them.

Five Wishes is a gift to your family members and friends so that they won't have to guess what you want. *Five Wishes* is easy to understand and simple to use.

FIVE WISHES

has captured the hearts and minds of people in Florida from the day it was introduced. Hundreds of thousands of Floridians are using *Five Wishes*, including Florida's Governor, Supreme Court Chief Justice, and thousands of others.

Because *Five Wishes* was so successful in Florida, it was featured on the NBC Today Show. Aging with Dignity wanted to see if it could be used in other states. We consulted experts who

reviewed the laws of all fifty states. We found out that *Five Wishes* could be written in a way that made it valid under the health care statutes in many states.

With the help of the American Bar Association Commission on Legal Problems of the Elderly, we came up with this new version of *Five Wishes*. We are confident that *Five Wishes* meets the legal requirements under the health decisions statutes of 33 states and the District of Columbia.

FIVE WISHES STATES

If you live in the District of Columbia or one of the 33 states listed below, you can use *Five Wishes* and have the peace of mind to know that it meets your state's requirements under the law:

Arizona
Arkansas
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii

Idaho
Illinois
Iowa
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota

Mississippi
Missouri
Montana
Nebraska
New Jersey
New Mexico
New York
North Carolina
North Dakota

Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
Wyoming

If your state is not one of the 33 states listed above, *Five Wishes* does not meet the technical requirements in the statutes of your state, and some doctors in your state may be reluctant to honor *Five Wishes*. However, you can still use *Five Wishes* to put your wishes in writing. This will be a helpful guide to your care providers. Most doctors and health care professionals understand that they have a duty to listen to your wishes no matter how you express them.

Talk to your doctor during your next office visit. Give your doctor a copy of *Five Wishes* and ask to have a talk about it. Make sure your doctor under-

stands your wishes and will honor them. Ask him or her to urge other doctors treating you to honor them.

You have a legal and moral right to decide what kind of medical treatment you want or don't want when you are seriously ill and your death is expected. You also have a right to choose a person to make health care decisions for you when you are no longer able to speak or think clearly. *Five Wishes* helps you exercise these rights. But remember, your doctor needs to know, and be willing to follow, your wishes.

PART A

1 The Person I Want To Make Health Care Decisions For Me When I Can't Make Them For Myself

If I am no longer able to make my own health care decisions, this form names the person I choose to make these choices for me. This person will be my Health Care Agent (or other term that may be used in my state, such as proxy, representative, or surrogate).

This person will make my health care choices if both of these things happen:

- 1) My attending or treating doctor finds that I am no longer able to make health care choices.
- AND
- 2) Another health care professional agrees that this is true.

PICKING THE RIGHT PERSON TO BE YOUR HEALTH CARE AGENT

Choose someone who knows you very well and cares about you, and who can make difficult decisions. Sometimes a spouse or family member is not the best choice because they are too emotionally involved with you. Sometimes they are the best choice. You know best. Make sure you choose someone who is able to stand up for you so that your wishes are followed. Also, choose someone who is likely to be nearby so that they are ready to help you when you need them.

Whether you choose your spouse, family member or friend to be your Health Care Agent, make sure you talk about your wishes with this person and that he or she agrees to respect and follow them.

Your Health Care Agent should be at least 18 years or older (in Colorado, 21 years or older) and should not be:

- your health care provider, including owner or operator of a health or residential or community care facility serving you.
- an employee of your health care provider.
- serving as an agent or proxy for 10 or more people unless he or she is your spouse or close relative.

The person I choose as my Health Care Agent is:

NAME

PHONE NUMBER

ADDRESS

CITY/STATE/ZIP

If this person

- Is not able or willing to make these choices for me,
- Is divorced or legally separated from me,
- OR
- This person has died,

Then these people are my next choices:

SECOND CHOICE NAME

PHONE NUMBER

ADDRESS

CITY/STATE/ZIP

THIRD CHOICE NAME

PHONE NUMBER

ADDRESS

CITY/STATE/ZIP

Please cross out anything you don't want your Agent to do that is listed below):

- Listed below are any changes, additions, or other limitations on my Health Care Agent's powers:

[illegible]

- Destroy all copies of this Part of the Five Wishes form. OR
- Write the word "Revoked" in large letters across the name of each agent whose authority I want to cancel and signing my name on that page. OR
- Tell someone, such as my doctor or family, that I want to cancel or change my Health Care Agent.

My Wish For The Kind Of Medical Treatment I Want Or Don't Want

The instructions that I am including in this section are to let my family, my doctors and other health care providers, my friends and all others know the kind of medical treatment that I want or don't want.

- I do not want to be in pain. I want my doctor to give me enough medicine to relieve my pain, even if that means that I will be drowsy or sleep more than I would otherwise.
- I do not want anything done or omitted by my doctors or nurses *with the intention of taking my life.*
- I want to be offered food and fluids by mouth, and kept clean and warm.

Life-support treatment means any medical procedure, device or medication to keep me alive. Life-support treatment includes: medical devices put in me to help me breathe; food and water supplied artificially by medical device (tube feeding); cardiopulmonary resuscitation (CPR); major surgery; blood transfusions; dialysis; and antibiotics.

C. If I am close to death:

If my doctor and another health care professional both decide that I am likely to die within a short period of time, and life-support treatment would only postpone the moment of my death (choose one of the following):

- ☐ I want to have life-support treatment.
- ☐ I want to have life-support treatment if my doctor believes it could help, but I want my doctor to stop giving me life-support treatment if it is not helping my health condition or symptoms.
- ☐ I do not want life-support treatment. If it has been started, I want it stopped.

PART B

I want to be treated with dignity near the end of my life as Part A of Five Wishes is followed. To be treated with dignity means that I would like people to do the things written in Part B when it can be done.

I understand that my family, my doctors and other health care providers, my friends, and others may not be able to do the things, or are not required by law to do the things written in Part B.

I do not expect my wishes in Part B to place new or added legal duties on my doctors or other health care providers. I also do not expect these wishes in Part B to excuse my doctor or other health care providers from giving me the proper care asked for by law.

3 My Wish For How Comfortable I Want To Be

(Please cross out anything that you *don't* agree with)

- I do not want to be in pain. I want my doctor to give me enough medicine to relieve my pain, even if that means that I will be drowsy or sleep more than I would otherwise.
- If I show signs of depression, nausea, shortness of breath, or hallucinations, I want my caregivers to do whatever they can to help me.
- I wish to have a cool moist cloth put on my head if I have a fever.
- I want my lips and mouth kept moist to stop dryness.
- I wish to have warm baths often. I wish to be kept fresh and clean at all times.
- I wish to be massaged with warm oils as often as I can be.
- I wish to have my favorite music played when possible until my time of death.
- I wish to have personal care like shaving, nail clipping, hair brushing, and teeth brushing, as long as they do not cause me pain or discomfort.
- I wish to have religious readings and well loved poems read aloud when I am near death.

4 My Wish For How I Want People To Treat Me

(Please cross out anything that you *don't* agree with)

- I wish to have people with me when possible. I want someone to be with me when it seems that death may come at any time.
- I wish to have my hand held and to be talked to when possible, even if I don't seem to respond to the voice or touch of others.
- I wish to have others by my side praying for me when possible.
- I wish to have the members of my church or synagogue told that I am sick and asked to pray for me and visit me.
- I wish to be cared for with kindness and cheerfulness, and not sadness.
- I wish to have pictures of my loved ones in my room, near my bed.
- If I am not able to control my bowel or bladder functions, I wish for my clothes and bed linens to be kept clean, and for them to be changed as soon as they can be if they have been soiled.
- I want to die in my home, if that can be done.

5

My Wish For What I Want My Loved Ones To Know

(Please cross out anything that you don't agree with)

- I wish to have my family members and loved ones know that I love them.
- I wish to be forgiven for the times I have hurt my family, friends, and others.
- I wish to have my family members and friends know that I forgive them for what they may have done to me in my life.
- I wish for my family members and loved ones to know that because of the faith I have,

I do not fear death itself. I think it is not the end, but a new beginning for me.

- I wish for all of my family members to make peace with each other before my death, if they can.
- I wish for my family and friends to think about what I was like before I had a terminal illness. I want them to remember me in this way after my death.
- I wish for my family and friends to look at my dying as a time of personal growth for everyone, including me. This will help me live a meaningful life in my final days.
- I wish for my family and friends to get counseling if they have trouble with my death. I want memories of my life to give them joy and not sorrow.

If anyone asks how I want to be remembered, please say the following about me:

The following person knows my funeral wishes:

If there is to be a memorial service for me, I wish for this service to include the following *(list music, songs, readings or other specific requests that you have)*:

Add other wishes here *(such as your wishes about donating any or all parts of your body when you die)*:

**RESIDENTS OF INSTITUTIONS IN CONNECTICUT, DELAWARE, GEORGIA, NEW YORK,
AND NORTH DAKOTA MUST FOLLOW SPECIAL WITNESSING RULES**

If you live in certain institutions (a nursing home or other licensed long term care facility, a home for the mentally retarded or developmentally disabled, or a mental health institution) in the states of Connecticut, Delaware, Georgia, New York or North Dakota, you may have to follow special "witnessing requirements" for your *Five Wishes* to be valid. For further information on what you need to do if you live in an institution in one of these five states and want to fill out *Five Wishes*, please contact a social worker or patient advocate at your institution.

If you live in Connecticut, Delaware, Georgia, New York or North Dakota, and you do not live in an institution, then you can fill out the *Five Wishes* form just the way it is.

SIGNING THE FIVE WISHES FORM

Please make sure you sign your Five Wishes form in the presence of the two witnesses.

Make sure they sign their names in your presence. You do not need to have this form notarized unless you live in Hawaii, Missouri, North Carolina or Tennessee (see below).

I, _____, ask that my family, my doctors and other health care providers, my friends, and all others, follow my wishes as communicated by my Health Care Agent (if I have one and he or she is available), or as otherwise expressed in this form. If any part of this form cannot be legally followed, I ask that all other parts of this form be followed.

Signature: _____

Address: _____

Phone #: _____ Date: _____

**SIGNATURES SHOULD
BE NOTARIZED IN
HAWAII,
MISSOURI,
NORTH CAROLINA AND TENNESSEE**

If you live in Hawaii, North Carolina, or Tennessee you should have your signature, and the signatures of your witnesses, notarized on page 8. If you live in Missouri, only your signature should be notarized.

Five Wishes is meant to be a helpful resource for you as you talk with your doctor, family and others about how you want to be treated when you are seriously ill. *Five Wishes* does not try to answer all questions about all situations you may come up against. And remember, while the information in this booklet is up-to-date as of the date it was published, laws can change quickly! So if you have a specific question or problem, you should talk to a professional for medical or legal advice.

WITNESS STATEMENT (2 witnesses needed):

I declare that the person who signed or acknowledged this form (hereafter "person") is personally known to me, that he/she signed or acknowledged this [Health Care Agent and/or Living Will form(s)] in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence.

I also declare that I am over 19 years of age and am NOT:

- the individual appointed as (agent/proxy/surrogate/patient advocate) by this document,
- the person's health care provider, including owner or operator of a health, long-term care, or other residential or community care facility serving the person,
- an employee of the person's health care provider,
- financially responsible for the person's health care,
- an employee of a life or health insurance provider for the person,
- related to the person by blood, marriage, or adoption, and,
- to the best of my knowledge, a creditor of the person or entitled to any part of his/her estate under a will or codicil, by operation of law.

Signature of Witness (1) _____

Print Name of Witness _____

Address _____

Phone Number(s) _____

Signature of Witness (2) _____

Print Name of Witness _____

Address _____

Phone Number(s) _____

If you are a resident of Hawaii, Missouri, North Carolina or Tennessee, you should have the following completed. If you live in any other state, you do not need to have the following completed.

NOTARIZATION

STATE OF _____)

)ss.

COUNTY OF _____)

On this _____ day of _____, 19/20____, the said _____, and _____, known to me (or satisfactorily proven) to be the person named in the foregoing instrument and witnesses, respectively, personally appeared before me, a Notary Public, within and for the State and County aforesaid, and acknowledged that they freely and voluntarily executed the same for the purposes stated therein.

My Commission Expires: _____

NOTARY PUBLIC

Testimony in Support of SB 2341
Senate Human Services Committee
January 30, 2001

The North Dakota Medical Association supports SB 2341.

Advance directive statutes provide a pathway for expressing wishes and preferences for end-of-life care. In North Dakota, the "living will" in chapter 23-06.4 and the durable power of attorney for healthcare in chapter 23-06.5 are tools that assist an individual to plan for future medical care in the event the individual is unable to make his or her own decisions.

Throughout 2000, the ND Medical Association has participated in a coalition of state organizations and individuals committed to improving end-of-life care in North Dakota. The coalition project, known as *Matters of Life & Death*, has initiated efforts to educate professionals and the public on opportunities for encouraging advance care planning. Advance care planning is a process, not an event or form. During this process, an individual explores, discusses, articulates, and documents their preferences. The process helps individuals identify and clarify their personal values and goals about health and medical treatment. An individual can also determine who they would like to make health care decisions on their behalf in the event they cannot make decisions for themselves.

As part of the *Matters of Life & Death* project, a work group identified barriers to advance care planning. A telephone survey conducted in late 1999 found that there is a lack of public understanding and knowledge in North Dakota about advance care planning. The work group identified other barriers, including the complex and often confusing nature of advance directive legal forms; that advance directives do not always adequately inform physicians of the patient's wishes or communicate important values; that there needs to be clarification of whether the statutory forms of the living will and durable power of attorney for healthcare may be substantially modified or not; and that advance care planning often occurs as crisis decisionmaking or is focused on the act of completing a legal form rather than engaging in a process of conversation, listening, and reflective decisionmaking.

Our work group discussed the efforts in many other states that, during the 1990s, began moving toward simplification and greater flexibility in the use of advance directives. Many states have combined their laws on advance directives into comprehensive advance directive acts, which cover living wills and the durable power of attorney for healthcare in the same law. Minnesota is one such state that now has a comprehensive advance directive law. Minnesota has also simplified the process for execution of advance directives by requiring that the act of witnessing an individual's signature on an advance directive be performed by a notary or two witnesses. Minnesota law also clarifies that the statutory form of the advance directive is not a required form. SB 2341 would revise North Dakota's advance directive statutes to take this same flexible approach.

SB 2341 would:

- (1) Add the option for verifying the signature of the individual who executes an advance directive by a notary, clarifying that the act of notarizing or witnessing is an act of verification of the signature and not an attestation as to the individual's competency.
- (2) Clarify that the statutory forms for both the living will and the durable power of attorney for healthcare are preferred forms, but not required forms. If a form complies with North Dakota law, it will be recognized under chs. 23-06.4 and 23-06.5 as meeting the requirements for application of those chapters.
- (3) Conform the witnessing requirements between the living will and the durable power of attorney for healthcare, and allow one of the witnesses to be an employee of a health care provider providing direct care to the individual or an employee of the health care provider providing direct care to the individual.

Most importantly, these proposed changes to our advance directives statutes would allow for the use of other advance directive forms – forms that are more conducive to the *process* of advance care planning. One such form that many individuals in this state have expressed a preference for using is the Five Wishes form or other models that could be developed to accommodate the needs of individuals who find themselves in different situations. From a physician standpoint, change is welcome if advance directive forms encourage their patients to take a more active role in advance care planning and document their preferences in a way that better informs the physician of their personal values and goals about health and medical treatment.

There are other individuals who wish to testify in support of SB 2341, and who are better able to describe the benefits of the bill. I'd be happy to answer any questions you have. The ND Medical Association encourages you to vote DO PASS on SB 2341.

Section 1 would amend the "living will" statutes (23-06.4-03) to allow the document to be executed by a verification of the declarant's signature by a notary or by two witnesses. Of the two witnesses, one would could be an employee of a health care provider providing direct care to the declarant or an employee of the health care provider. The list of individuals who may not notarize or witness the declarant's signature is modified to conform to the same requirements for the durable power of attorney in 23-06.5-05. Section 1 (p. 2, line 8) would remove additional requirements imposed on residents of long-term care facilities which require that at least one of the witnesses be a member of the clergy, an attorney, or a person designated by the Department of Human Services or district court.

Section 1 (p. 2, line 13) would also clarify that the form provided in the statute is a preferred form (as stated in the provisions relating to the durable power of attorney for healthcare) – that it is not a required form. Other forms can be used that satisfy chapter 23-06.4 (and for which immunity provisions and other provisions apply) if the form complies with chapter 23-06.4.

Section 2 (p. 6, lines 1-8) makes comparable changes to the durable power of attorney for healthcare statutes (ch. 23-06.5) to allow the document to be executed by a verification of the declarant's signature by a notary or by two witnesses. The list of individuals who may not notarize or witness the individual's signature would be modified to conform to the same requirements for the living will in 23-06.5-05 (p. 6, lines 8-15). Language would be removed to confirm that the notary/witness function is to verify the signature of the individual signing the document, rather than attest to the individual's competency.

Section 3 (p.6, lines 24-27) would also clarify that the form provided in the statute is not a required form. Other forms can be used that satisfy chapter 23-06.5 (and for which immunity provisions and other provisions apply) if the form complies with chapter 23-06.5.

Section 4 (p. 7, lines 16-26 and pp. 8 and 9) would conform the statutory form to the new notary and witness requirements.



North Dakota Right to Life Association

Testimony before the SENATE HUMAN SERVICES COMMITTEE

Regarding SENATE BILL 2341

January 30, 2001 10:15 a.m.

Chairman Lee, members of the committee, I am Stacey Pflieger, Executive Director of the North Dakota Right to Life Association. I am here today in support of SB 2341 relating to the form and execution of advance health care directives.

This bill simply allows advanced health care directives to be verified by a notary or two witnesses. It also recognizes the use of other advanced directives that comply with existing state law. These are minor changes to the existing law and our organization has no objections to them.

However, I would like to offer language for an amendment to SB 2341 concerning the Uniform Rights of Terminally Ill Act. The concern I am expressing today is found in North Dakota Century Code 23-06.4-08 the Transfer of patients. Currently, state law requires that "an attending physician or other health care provider who is unwilling to comply with this chapter shall take, as promptly as practicable, all reasonable steps to transfer care of the declarant to another physician or health care provider who is willing to comply with this chapter." However, there is nothing in this language that states that the unwilling physician or other health care provider provide treatment to preserve the patient's life until the transfer is complete.

I have attached the Oklahoma statute. This language reflects the protection and preservation of the patient's life, remembering that patient autonomy includes the right to choose life.

I urge this committee to give SB 2341a **DO PASS** as amended.

At this time I would be available for any questions you may have.

OKLAHOMA STATUTES ANNOTATED
TITLE 63. PUBLIC HEALTH AND SAFETY
CHAPTER 60. OKLAHOMA RIGHTS OF THE TERMINALLY ILL OR
PERSISTENTLY
UNCONSCIOUS ACT

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Current through End of 1998 1st Ex. Sess.

' 3101.9. Physician or health care provider unwilling to comply with act

An attending physician or other health care provider who is unwilling to comply with the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act [FN1] shall as promptly as practicable take all reasonable steps to arrange care of the declarant by another physician or health care provider when the declarant becomes a qualified patient. Once a patient has established a physician-patient relationship with a physician or a provider-patient relationship with another health care provider, if the physician or other health care provider refuses to comply with a medical treatment decision made by or on behalf of the patient pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, or with a medical treatment decision made by such a patient who has decision-making capacity, and if the refusal would in reasonable medical judgment be likely to result in the death of the patient, then the physician or other health care provider must comply with the medical treatment decision pending the completion of the transfer of the patient to a physician or health care provider willing to comply with the decision. Nothing in this section shall require the provision of treatment if the physician or other health care provider is physically or legally unable to provide or is physically or legally unable to provide without thereby denying the same treatment to another patient. Nothing in this section may be construed to alter any legal obligation or lack of legal obligation of a physician or other health care provider to provide medical treatment, nutrition, or hydration to a patient who refuses or is unable to pay for them.

CREDIT(S)

1996 Main Volume

Laws 1992, c. 114, ' 9, eff. Sept. 1, 1992; Laws 1995, c. 99, ' 2, eff. Nov. 1, 1995.

1998 Electronic Pocket Part Update

Amended by Laws 1998, c. 164, ' 1, emerg. eff. April 28, 1998.

[FN1] Title 63, ' 3101.1 et seq.

**Testimony in Support of SB 2341
Senate - Human Services Committee
January 30, 2001**

-Rodger Wetzel, MPA, LSW, HCA/c

Ph 530-7379 (O)
rwetzel@primecare.org

I am in support of SB 2341.

I currently am the Chair of the State Steering Committee for the N.D. Matters of Life and Death Project. I also Chair the State Sub-committee addressing the continuum of services for those at the end of life.

I have worked with older adults for 30 years, including 15 years with state government, including the Aging Services Division, and now 15 years at St. Alexius.

I have assisted hundreds of people with advance directive forms, issues and questions.

Very briefly, and not to duplicate other speakers, proposed changes which I support include:

- 1) Changing the witnessing requirements. Now there is inconsistency between the two forms, and it often is difficult for hospital patients from out of town to obtain witnesses for the durable power of attorney for healthcare.
- 2) Accepting advance directives in other forms which meet the requirements of N.D. law. There are other good forms, such as the "Five Wishes" document, which are very good advance directives, and address other issues as well. In addition, they encourage communication between the adult, family, and other key parties.
- 3) Changing the law so that requirements in both forms are similar. Currently the differences cause some confusion and errors by those completing them.

I encourage a DO PASS on SB 2341.

I would be happy to answer any questions.



North Dakota Healthcare Association

Vision

The North Dakota Healthcare Association will take an active leadership role in major healthcare issues

Mission

The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

2001 Session

Testimony: SB 2341

Madame Chairman, members of Human Services Committee, I am Arnold Thomas, President of the North Dakota Healthcare Association. I am here in support of SB 2341.

The NDHA was involved in the process to clarify and reconcile the code provisions governing durable power of attorney and living wills. The results of this process are contained in SB 2341. We believe SB 2341 will provide a clearer understanding of the policies governing the use of these instruments of declaration to those having an interest in and to those responding to these Instrumentallties.

We request a Do Pass on SB 2341.

Testimony In Support of SB 2341
House Human Services Committee
February 20, 2001

The North Dakota Medical Association supports SB 2341.

Advance directive statutes provide a pathway for expressing wishes and preferences for end-of-life care. In North Dakota, the "living will" in chapter 23-06.4 and the durable power of attorney for healthcare in chapter 23-06.5 are tools that assist an individual to plan for future medical care in the event the individual is unable to make his or her own decisions. SB 2341 would make revisions to these two chapters of the North Dakota Century Code to encourage North Dakotans to plan in advance for their medical care if they are unable, in the future, to do so.

Throughout 2000, the ND Medical Association has participated in a coalition of state organizations and individuals committed to improving end-of-life care in North Dakota. The coalition project, known as *Matters of Life & Death*, has initiated efforts to educate professionals and the public on opportunities for encouraging advance care planning. Advance care planning is a process, not an event or form. During this process, an individual explores, discusses, articulates, and documents their preferences. The process helps individuals identify and clarify their personal values and goals about health and medical treatment. An individual can also determine who they would like to make health care decisions on their behalf in the event they cannot make decisions for themselves.

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Our work group discussed the efforts in many other states that, during the 1990s, began moving toward simplification and greater flexibility in the use of advance directives. Many states have combined their laws on advance directives into comprehensive advance directive acts, which cover living wills and the durable power of attorney for healthcare in the same law. Minnesota is one such state that now has a comprehensive advance directive law. Minnesota has also simplified the process for execution of advance directives by requiring that the act of witnessing an individual's signature on an advance directive be performed by a notary or two witnesses. Minnesota law also clarifies that the statutory form of the advance directive is not a required form. SB 2341 would revise North Dakota's advance directive statutes to take this same flexible approach.

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Most importantly, these proposed changes to our advance directives statutes would allow for the use of other advance directive forms – forms that are more conducive to the *process* of advance care planning. One such form that many individuals in this state have expressed a preference for using is the Five Wishes form or other models that could be developed to accommodate the needs of individuals who find themselves in different situations. From a physician standpoint, change is welcome if advance directive forms encourage their patients to take a more active role

in advance care planning and document their preferences in a way that better informs the physician of their personal values and goals about health and medical treatment.

There are other individuals who wish to testify in support of SB 2341, and who are better able to describe the benefits of the bill. I'd be happy to answer any questions you have. The ND Medical Association encourages you to vote DO PASS on SB 2341.

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Section 1 (p. 2, line 13) would also clarify that the form provided in the statute is a preferred form (as stated in the provisions relating to the durable power of attorney for healthcare) that it is not a required form. Other forms can be used that satisfy chapter 23-06.4 (and for which immunity provisions and other provisions apply) if the form complies with chapter 23-06.4.

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Section 4 (p. 7, lines 16-26 and pp. 8 and 9) would conform the statutory form to the new notary and witness requirements.

**TESTIMONY OF MELVIN L. WEBSTER
IN SUPPORT OF SENATE BILL 2341
BEFORE THE NORTH DAKOTA HOUSE OF REPRESENTATIVES
HUMAN SERVICES COMMITTEE
FEBRUARY 20, 2001**

My name is Melvin Webster. I am an attorney in private practice in Bismarck, North Dakota. My practice includes assisting clients in signing advance directives such as living wills (declaration relating to the use of life-prolonging treatment) and durable powers of attorney for health care. I was a member of a subcommittee established by the Robert Wood Johnson sponsored Matters of Life and Death. The subcommittee recommended these changes in North Dakota's advanced directive statutes.

The changes simplify the witnessing process for both "living wills" and "health care powers of attorney" by providing that one of the witnesses could be an employee of the health care provider or that the document could be notarized rather than witnessed. This change makes it much easier to enable people to sign advance directives. The primary problem that I encounter is that frequently there are no qualified witnesses -- that is, witnesses who are not blood relatives or witnesses or who are non-employees. The only alternative under the present statute is to scurry around and see if you can find a complete stranger who, ironically, is then qualified to witness the document. This change would facilitate the signing of advanced directives for individuals who are in a long-term care facility or hospital.

The other change is that the bill permits the use of forms other than the statutory forms if the forms comply with North Dakota's statutes. There are a number of alternative forms that are available to individuals; many of them are available on the Internet. However, our present statute regarding living wills indicates it must be "**substantially**

similar to the statutory form." In regard to the durable power of attorney, the statute for health care durable powers of attorney indicates that it is the "preferred form." The changes emphasize that while statutory forms are provided, they are not the "required forms."

Most estimates indicate that no more than 15% of people have advance directives. The emphasis should be on encouraging individuals to plan for their incapacity rather than setting up roadblocks that inhibit the individuals to sign advance directives of one kind or the other. I believe that this bill would make it easier for individuals to sign advance directives and that it would, therefore, ensure that their wishes were carried out.

I urge your support of Senate Bill 2341.

SB 2341

SB 2341 deals with advanced directives, what we commonly call a living will and durable power of attorney for health care. These documents are tools which assist a person in planning for future medical care in the event the individual is unable to make his or her own decisions. The living will allows appointment of an agent to make decisions concerning health care, when one is unable to make the decisions oneself. The durable power of attorney kicks in, when one is incompetent.

As a result of receiving a Robert Wood Johnson grant, over 40 organizations and individuals have been working together on a coalition committed to improving end-of-life care in ND. The coalition project, known as Matters of Life & Death, has, among other tasks, initiated efforts to educate professionals and the public on opportunities for encouraging advance care planning. During the discussions, it became clear that there is a need to change the statute to simplify and make consistent the procedures for using these documents.

This bill will change the witnessing requirements, so that the documents can now be witnessed by a notary who can be employee of the health care or long term care provider providing care for the person. Currently, there must be 2 witnesses who cannot be related to or providing care the patient. That means that, if a person from Williston travels with a family or member or two to Bismarck for medical care and wished to execute a living will and durable power of attorney, someone had to travel the halls of the hospital to find strangers who could witness the documents, because family members or hospital staff could not. Current law says that one of the witnesses must be a member of the clergy, attorney, or person designated by the Dept. Of Human Services of District Court. Now there would be the option of having a notary public, who could be a hospital employee, witness the document. Deleted is the portion which said that, by witnessing, the witness stated that the person was competent.

SB 2341 also clarifies that the statutory forms for both the living will and durable power of attorney for healthcare are preferred forms, but not required forms. There are other good forms which people request and this bill would make clear that they meet the requirements in ND.

This bill also makes changes in the forms, so that both are similar. Currently the differences cause some confusion and errors by those completing them.

SB 2341 will facilitate the completion of advance directives by ND citizens. The preparation of an advance directive is an important and personal process by which ND residents can express their wishes for health care, when they are unable to speak for themselves.

Judy Lee