

**CHRISTIAN COALITION OF IOWA
LEGISLATIVE REPORT**

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June 22, 2005

The Legislature is in recess for the summer. That does not, however, mean that nothing is going on at the Capitol. The Legislature forms interim committees to gather information and hold hearings on issues that may result in legislation. Committees of the Legislature can also meet during the summer and fall to explore the feasibility of study bills for introduction at the next session.

House Study Bill 302 has been proposed by the Committee on Government Oversight by Chairperson Rep. Dwayne Alons (R). Rep. Joe Hutter (R), Rep. George Eichhorn (R), and Rep. Vicki Lensing (R) held a public hearing on the “Terry Schiavo” bill. The title of the bill, “An Act Creating a Starvation and Dehydration of Persons With Disabilities Prevention and Providing Remedies”, is self explanatory. This bill is designed to prevent the withholding of nutrition and/or hydration without a clear and verifiable declaration that the withholding is the express desire of the patient. That’s the simple explanation. You will need to read the bill to have an understanding of all its provisions and ramifications.

At this public hearing, representatives from the Iowa Medical Society, the Iowa Academy of Family Physicians and the nursing home industry spoke against the need for this legislation, claiming current Iowa Law addresses the concerns and issues raised by the Florida case. It would appear that, at least at this time, these organizations would lobby against HSB 302 in its present form. The oversight committee plans to have more meetings during this summer and fall in order to fine tune the bill before introduction next January.

We urge you to study HSB 302, to attend a committee meeting, and discuss the provisions of the bill with friends, colleagues and clergy. At this juncture, I anticipate a fight for getting this bill through the legislative process. If that is the case, you need to be informed and ready to help us get this legislation enacted into Iowa law.

In today’s Register, 6/22/05, the American Medical Association was quoted as adopting “a policy opposing any legislation that presumes patients would want life-sustaining treatment unless they have clearly stated otherwise”. It appears physicians see this as a medical issue. We see it as a moral one. Whose morality will prevail?

HSB 302 can be found at:

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=HSB302>

If you have trouble with this link, please go to <http://www.legis.state.ia.us/Legislation.html>

Click on Bill Book, and type in HSB302.

For your convenience, below is the bill as it is published on the Iowa Legislative Website on 6/24/2005:

House Study Bill 302

HOUSE FILE
BY (PROPOSED COMMITTEE ON

GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON ALONS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes ___ Nays ___ Vote: Ayes ___ Nays ___
Approved

A BILL FOR

1 An Act creating a starvation and dehydration of persons with
2 disabilities prevention Act and providing remedies.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 3549YC 81
5 rh/cf/24

PAG LIN

1 1 Section 1. NEW SECTION. 216F.1 TITLE.
1 2 This chapter shall be known and may be cited as the "Iowa
1 3 Starvation and Dehydration of Persons with Disabilities
1 4 Prevention Act".
1 5 Sec. 2. NEW SECTION. 216F.2 DEFINITIONS.
1 6 For the purposes of this chapter:
1 7 1. "Attending physician" means the physician who has
1 8 primary responsibility for the overall medical treatment and
1 9 care of a person.
1 10 2. "Express and informed consent" means consent
1 11 voluntarily given with sufficient knowledge of the subject
1 12 matter involved, including a general understanding of the
1 13 medical procedures and treatments, the medically acceptable
1 14 alternative procedures and treatments, and the substantial
1 15 risks and hazards inherent in the proposed treatments and
1 16 procedures, to enable the person giving consent to make an
1 17 informed decision in the absence of force, fraud, deceit,
1 18 duress, or any other form of constraint or coercion.
1 19 3. "Health care provider" means a person who is licensed,
1 20 certified, or otherwise authorized under the laws of this
1 21 state to administer medical treatment or care in the ordinary
1 22 course of business or practice of a profession.
1 23 4. "Nutrition" means sustenance administered by way of the
1 24 gastrointestinal tract.
1 25 5. "Person legally incapable of making health care
1 26 decisions" means a person who is any of the following:
1 27 a. Has been declared legally incompetent to make decisions
1 28 affecting medical treatment or care.
1 29 b. In the reasonable judgment of the attending physician,
1 30 is unable to make decisions affecting medical treatment or
1 31 care services.
1 32 c. Is a minor.
1 33 6. "Physician" means a person who is licensed to practice
1 34 medicine and surgery, osteopathy, or osteopathic medicine and
1 35 surgery in this state.
2 1 7. "Reasonable medical judgment" means a medical judgment

2 2 that would be made by a reasonably prudent physician
2 3 knowledgeable about the person's medical condition and the
2 4 treatment options available.

2 5 Sec. 3. NEW SECTION. 216F.3 PRESUMPTION OF NUTRITION AND
2 6 HYDRATION SUFFICIENT TO SUSTAIN LIFE.

2 7 1. It shall be presumed that a person legally incapable of
2 8 making health care decisions has directed the person's health
2 9 care provider to provide the person with nutrition and
2 10 hydration to a degree sufficient to sustain the life of the
2 11 person.

2 12 2. A guardian, surrogate, employee of a public or private
2 13 agency, any other person, or court shall not decide on behalf
2 14 of a person legally incapable of making health care decisions
2 15 to withhold or withdraw nutrition or hydration from such a
2 16 person except as provided in subsection 3.

2 17 3. Subsection 1 shall not apply to the following:

2 18 a. Based upon a physician's reasonable medical judgment,
2 19 any of the following:

2 20 (1) The provision of nutrition and hydration is not
2 21 medically possible.

2 22 (2) The provision of nutrition and hydration would hasten
2 23 death.

2 24 (3) The person would be incapable of digesting or
2 25 absorbing the nutrition and hydration.

2 26 b. The person executed a declaration pursuant to section
2 27 144A.3 specifically authorizing the withholding or withdrawal
2 28 of nutrition and hydration to the extent the authorization
2 29 applies.

2 30 c. Clear and convincing evidence exists that the person
2 31 who is legally incapable of making health care decisions, when
2 32 legally capable of making health care decisions, gave express
2 33 and informed consent to withdrawing or withholding nutrition
2 34 or hydration in the applicable circumstances.

2 35 Sec. 4. NEW SECTION. 216F.4 CIVIL REMEDIES.

3 1 1. A cause of action may be maintained to secure a court
3 2 determination, notwithstanding the position of a guardian,
3 3 surrogate, or attorney in fact, as to whether clear and
3 4 convincing evidence exists that the person legally incapable
3 5 of making health care decisions, when legally capable of
3 6 making such decisions, gave express and informed consent to
3 7 the withdrawing or withholding of nutrition or hydration in
3 8 the applicable circumstances.

3 9 2. An action pursuant to subsection 1 may be brought by
3 10 any of the following persons:

3 11 a. A spouse, parent, child, or sibling of the person
3 12 legally incapable of making a health care decision.

3 13 b. A current or former health care provider of the person
3 14 legally incapable of making a health care decision.

3 15 c. A guardian of the person legally incapable of making a
3 16 health care decision.

3 17 d. An employee of a state protection or advocacy agency.

3 18 e. A public official with authority to prosecute and
3 19 enforce the laws of this state.

3 20 3. Pending the final determination of a court as to
3 21 whether a person who is legally incapable of making health
3 22 care decisions has been unlawfully denied nutrition or

3 23 hydration, the court shall issue an order directing that
3 24 nutrition and hydration be provided unless the court
3 25 determines that section 216F.3, subsection 3, applies.
3 26 Sec. 5. NEW SECTION. 216F.5 APPLICABILITY.
3 27 This chapter shall not invalidate any living will, durable
3 28 power of attorney for health care, or any similarly executed
3 29 legal document created prior to July 1, 2005.

3 30 EXPLANATION

3 31 This bill creates a starvation and dehydration of persons
3 32 with disabilities prevention Act.

3 33 The bill creates a presumption in the law that a person who
3 34 is legally incapable of making health care decisions has
3 35 directed the person's health care provider to provide the
4 1 person with nutrition and hydration to a degree sufficient to
4 2 sustain the life of the person. The bill provides that the
4 3 presumption cannot be overcome by the actions of any guardian,
4 4 surrogate, employee of a public or private agency, or any
4 5 other person, or court. However, the presumption does not
4 6 apply in cases where, based upon a physician's reasonable
4 7 medical judgment, the provision of nutrition and hydration is
4 8 not medically possible or would hasten death, or where the
4 9 person would be incapable of digesting or absorbing the
4 10 nutrition and hydration. In addition, the presumption does
4 11 not apply in cases where the person executed a declaration
4 12 specifically authorizing the withholding or withdrawal of
4 13 nutrition and hydration or where clear and convincing evidence
4 14 exists that the person who is legally incapable of making
4 15 health care decisions, when legally capable of making health
4 16 care decisions, gave express and informed consent to
4 17 withdrawing or withholding nutrition or hydration in the
4 18 applicable circumstances.

4 19 The bill provides that a cause of action may be maintained
4 20 to secure a court determination, notwithstanding the position
4 21 of a guardian, surrogate, or attorney in fact, whether clear
4 22 and convincing evidence exists that the person legally
4 23 incapable of making health care decisions, when legally
4 24 capable of making such decisions, gave express and informed
4 25 consent to the withdrawing or withholding of nutrition or
4 26 hydration in the applicable circumstances. The bill further
4 27 provides that a court, upon a final determination that a
4 28 person who is legally incapable of making health care
4 29 decisions has been unlawfully denied nutrition or hydration,
4 30 shall issue an order directing that nutrition or hydration be
4 31 provided unless the court determines that circumstances exist
4 32 that overcome the presumption in favor of the provision of
4 33 nutrition and hydration.

4 34 The bill defines "person legally incapable of making health
4 35 care decisions" to mean any person who has been declared
5 1 legally incompetent to make decisions affecting medical
5 2 treatment or care, who, in the reasonable judgment of the
5 3 attending physician, is unable to make decisions affecting
5 4 medical treatment or other health care services, or who is a
5 5 minor.

5 6 LSB 3549YC 81

5 7 rh:rj/cf/24.1