

Living Will Law

Country: Austria

Partner Institute: Institute for Advanced Studies (IHS), Vienna

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Health Policy Issues: Quality Improvement, Responsiveness

Current Process Stages



Featured in half-yearly report: Health Policy Developments 7/8

1. Abstract

This legislation enables patients to compose a living will which is binding for providers (e.g. physicians) if certain criteria are met. The living will is a declaration of rejection of certain medical interventions. This declaration becomes effective when patients are no longer able to make their own decisions or to communicate with other persons.

2. Purpose of health policy or idea

The main objective of this legislation is to stipulate terms under which a binding living will can be instituted.

In particular the objectives are

1. to enhance patient autonomy and
2. to create legal certainty for patients and providers, e.g. physicians. As a declaration of an anticipatory will this legislation entitles patients to deny medical treatment if an array of criteria in form and context are met. Providers will gain certainty as their role as the patient#s agent is promoted.

The law consists of five paragraphs and 19 clauses which cover definitions of terms, periods of validity, and nullity. It updates existing legislation by improving legal certainty for persons who want to make a living will.

The legislation regulates

- the terms of an anticipatory living will to ensure that patients are not given treatments in a situation where they are unable to express their will
- the terms for the installation of a binding living will

The following requirements have to be met for the will to be binding:

- Content: All medical treatments which are rejected have to be described in a precise way. Further, consequences of this declaration must be obvious for patients.
- Counseling: Before the living will is composed, an extensive counseling by a physician has to take place. In this conversation, the physician has to inform the patient about the character and consequences of the living will for the medical treatment; the physician has to document the patient's power of judgement with name, address and signature.
- Installation: The living will is only binding if the declaration is composed in the presence of a lawyer, a notary or an employee of the patient representations (e.g. patient lawyers). Further, they have to inform the patient about the consequences of the living will and the possibility to revoke the living will at any time. They have to document this with name and signature.
- Validity: The living will loses its binding character after five years if the patient has not defined a shorter time limit. The living will may be renewed after consulting with a physician and after the consultation of a lawyer, notary or patients representation.

Impact of a living will: A living will is binding if all criteria as specified by the law are met. If it does not meet all formal requirements, the living will is nevertheless to adhere to and has to be taken into account by providers when looking for a patient's will.

No financial impact on public budgets is envisaged and no compliance with EU legislation is required as this legislation is no Community area. This legislation affects the whole population as well as providers since the enhancement of patient autonomy influences providers obligations to treat. However, it is not allowed to initiate a physician to practice active euthanasia, which is forbidden in Austria.

Main objectives

The main objectives of this legislation are

- 1) to enhance the patient's autonomy and
- 2) to create legal certainty for patients and providers

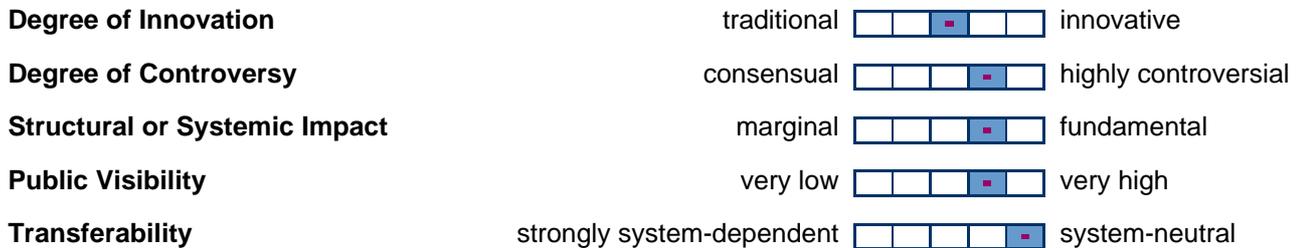
Type of incentives

No financial impact on public budgets is envisaged. Incentive to declare a living will may be limited as it involves fees to be paid for lawyers. Currently no provisions are foreseen to exempt socially vulnerable groups from paying these fees even though fee levels are likely to be prohibitive (approx. 300 Euros per declaration). Incentives for providers to find out if a living will exists may be diminished as currently no central registry is foreseen to systematically document living wills.

Groups affected

Austrian population, physicians, non-medical providers, lawyers, notaries, patient representations

3. Characteristics of this policy



4. Political and economic background

Up to now no jurisdiction existed in Austria which unambiguously stipulates binding rules of patient decisions authorizing or rejecting medical treatment. While previous legislation contains provisions to consider the patient will, it has not allowed for explicitly anticipated wills to be binding. These insecure provisions were carried on in a general agreement between the federation and a majority of federal states regarding a patients' charta signed in 1999.

At the beginning of the 1990s patient wills were increasingly debated based on international discussions about medically assisted suicide in the Netherlands and in Switzerland and on debates about living wills in the US. The debate about living wills is also embedded in the discussion about agency in health matters. The current government programme of the center-right coalition contains a mandate for the Ministry of Justice to clarify current legal positions regarding the reform of solicitorship (Gmeiner, Kopetzki 2005).

5. Purpose and process analysis



Origins of health policy idea

After the parliamentary enquete "Solidarity with the dying - aspects of human terminal care in Austria" in May 2001 the parliamentary health committee adopted a four-party motion for a resolution to identify a practical solution for living wills in December 2001. For this purpose a group of experts was organized by the Ministry of Social Security and Generations (BMSG) and the Ministry of Justice. Between spring 2002 and summer 2003 the expert group developed guidelines to support both patients and providers facing difficulties with respect to dilemmas which may arise at the end of life. The Doctors' Chamber was not compliant with these guidelines making it obvious that legal provisions were needed.

In autumn 2004 a draft legislation was submitted to clarify the legal position. It was closely tied to current provisions and was mainly concerned with issues of validity and of effective impacts of living wills. The draft was criticized as not being entirely in line with provisions in the Austrian constitution. Further, the Doctors' Chamber again opposed the draft because the assessment of the validity of a living will was exclusively imposed on physicians (Gmeiner, Kopetzki 2005). Moreover, the Chamber of Doctors suggested that the legislation should only apply to the terminal phase of an incurable disease.

Based on assessments from experts the legislation was re-drafted at the beginning of 2005 and in March 2005 a revision of the draft legislation was submitted to the Committee of Bioethics for further appraisal. In March 2006 the National Assembly resolved upon this legislation. The legislative process was completed at the end of April 2006.

Initiators of idea/main actors

- Government

Approach of idea

The approach of the idea is described as: renewed: Beginning of the 1990s

Stakeholder positions

- The **Austrian Socialdemocratic Party** (the major opposition party) criticises the lack of political discourse and that important expert opinions were not heard. Main points of criticism concern financial barriers to draw up a living will because of the compulsory hand-over in a notary's or lawyer's office. Composing a living will should be affordable for all people and thus they suggest that living wills should also be issued by patients lawyers. Further, it is criticised that the government rejects the central registration of living wills. Due to this it will be impossible to find out if a living will exists. Further, the absence of interim solutions for concomitant living wills is being criticised. The Austrian Socialdemocratic Party could not agree with the Law in the current form.
- **The Greens** (the minor opposition party) see the Living Will Law as an important step for self-determination of patients. But for the Greens the draft is not comprehensive enough. Like the Austrian Socialdemocratic Party they criticise that self-determination and basic rights may not go along with any cost and that there is the lack of a central registration. Furthermore a collateral evaluation of the law is claimed. In spite of these disapprovals, the Greens implemented the law together with the governing parties.
- **The Austrian Red Cross** appreciated the Living Will Law, but pledged for additional adjustments. It suggested for instance the fixation of an explicit age limit for a living will composition. Below this age, living wills do not have a binding character. Further they suggested to establish a centrally operated Austrian-wide register for living wills, like the register for rejecting organ donations.
- The **hospice movement Tyrol** criticises that the new law is too formal and that there is a high barrier to compose a living will and to notarise it.
- **Caritas Austria** appreciated the Living Will Law but requires that information, consultation and access should be guaranteed for all persons. It was suggested that access should be made possible by a strong patient advocacy.

- **Experts** claim that the current legislation creates high barriers for drawing up a binding living will; essentially the legislation is seen as being biased towards stipulations where providers only have to adhere to patient wills since formal requirements for making binding living wills are prohibitive for making binding living wills.

Actors and positions

Description of actors and their positions

Government

Chamber of Doctors	very supportive	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	strongly opposed
Legal experts	very supportive	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	strongly opposed
Commission of Bioethics	very supportive	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	strongly opposed

Influences in policy making and legislation

While this legislation has been hotly debated among legal and ethics experts and between those expert groups and the medical profession, public discussions about this subject were not as obvious. Publicly transmitted reactions to the law were mostly concerned with issues of access to composing a living will for all and regarding a central register. But discussions about the content were much driven by the Chamber of Doctors. For example, the adoption of "Practice guidelines" based on previous legislation was opposed by medical stakeholders; furthermore the scope of the living will was opposed.

According to medical stakeholders the binding character of living wills has to be restricted to terminal care for incurable diseases. However, the current legislation goes beyond this and strengthens self-determination even though it creates high barriers for drawing up a binding living will. Apart from medical stakeholders the Commission of Bioethics, non-governmental organizations, e.g. Caritas Austria, the Hospice Movement and patient lawyers were strongly involved in the legislative process.

Legislative outcome

success

Actors and influence

Description of actors and their influence

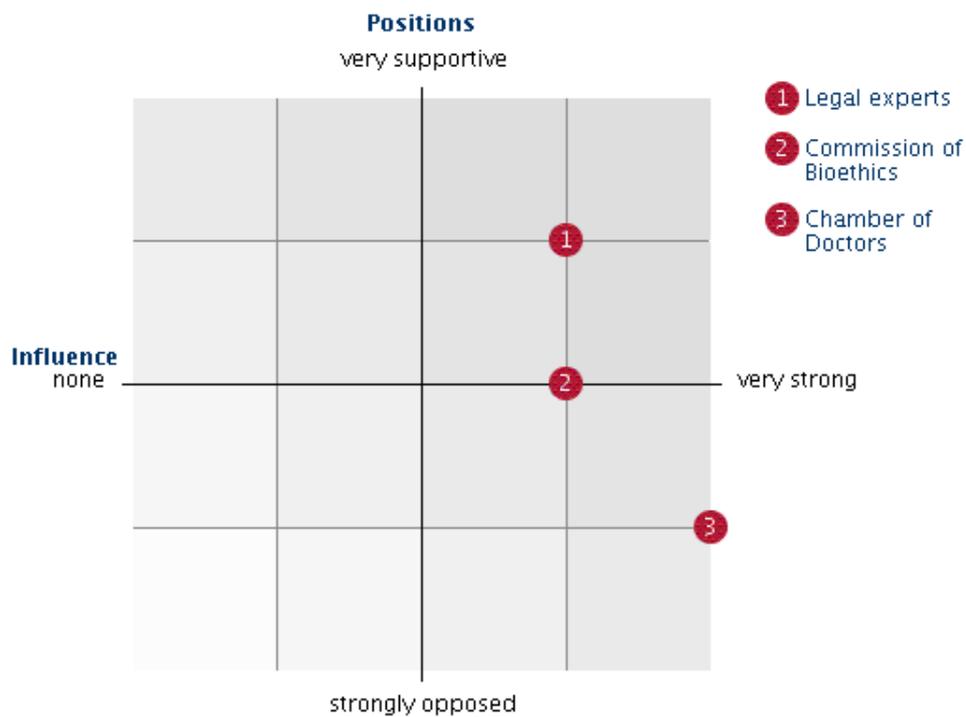
Government

Chamber of Doctors	very strong	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	none
Legal experts	very strong	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	none
Commission of Bioethics	very strong	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	none

Positions and Influences at a glance

Monitoring and evaluation

While the legislation does not foresee an evaluation some stakeholders claimed that this would be necessary, e.g. Caritas Austria. When approving the law the National Assembly passed a resolution demanding the Ministry of



Health and Women and the Ministry of Justice to submit a report on experiences with the law and the level of costs for patients three years after implementation. It further demands to take measures enabling physicians to retrieve information on existing living wills in due time. Finally the ministries are asked to examine if information about existing living wills may be stored on the electronic patient card (e-card, see Survey (4)2004) which is effective for the whole population since the beginning of 2005.

6. Expected outcome

This legislation strengthens patient autonomy and compared to previous laws it creates a higher degree of legal certainty for providers and patients. Debates around this legislation reflect very well tensions between the role of physicians adhering to their "ethical mandate" to treat and the limitations imposed on them when respecting self-determination of people. It intrinsically addresses issues of the patient-physician relationship which is generally and continually challenged by the promotion of patient rights and by claims to strengthen consumerism in health care.

High formal requirements in drawing up a binding living will, e.g. the involvement of lawyers and notaries may be seen as a relief for physicians. Doctors no longer carry the marginal responsibility of assessing the validity of a living will. Rather, this responsibility is devolved to lawyers and notaries who step in as yet another agent for the patient.

As currently no provisions are foreseen to subsidise people who cannot afford lawyers or notary costs the likelihood that people declare a binding living will may be diminished. This barrier to access together with a lack of a central register which would alleviate searching for patient decisions may impede to fully meet the main objectives of the law. Thus "end of life" decisions may largely remain incumbent upon the doctor-patient relationship.

Quality of Health Care Servicesmarginal  fundamental**Level of Equity**system less equitable  system more equitable**Cost Efficiency**very low  very high

When taking into account patient responsiveness as one important dimension of quality this legislation will have a rather fundamental impact on quality of care provided. The enforcement of patient rights raises patient autonomy and promotes the right to deny treatment.

Unless the majority of patients is willing to declare a binding living will the level of equity will remain unchanged. If however costs for lawyers and notaries turn out to be too prohibitive the level of equity may change. But this does not seem to be likely.

As physicians will have clear guidelines when to treat and when not this legislation may reduce an incentive to overprovide services and may thus lead to lower cost. However, the overall level of cost efficiency is likely to remain unchanged as it is not expected that the majority of people will declare a binding living will nor is it expected that the amount of services concerned is large enough to have a visible impact on cost of care.

7. References

Sources of Information

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Gmeiner, R., Ch. Kopetzki, Oesterreich auf dem Weg zu einem Patientenverfügungs-Gesetz? Zeitschrift fuer Biopolitik, Nr. 2, 4. Jahrgang 2005: 67-75

Various press releases

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