



SPONSOR: Rep. Baumbach & Sen. Henry
Reps. Jaques, B. Short; Sens. Hansen, Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 160

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO END OF LIFE OPTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 16 of the Delaware Code by adding a new Chapter by making deletions as shown by strike
2 through and insertions as shown by underline as follows and redesignating accordingly:

3 CHAPTER 25B. END OF LIFE OPTIONS.

4 § 2501B. Definitions.

5 As used in this chapter:

6 (1) "Adult" means an individual who is 18 years of age or older.

7 (2) "Attending physician" means the physician who has primary responsibility for the care of the patient and
8 treatment of the patient's terminal disease, and who routinely provides medical care to patients with advanced and
9 terminal illnesses in the normal course of their medical practice. Such practice may not be primarily or solely
10 comprised of persons requesting medication to end their life in a humane and dignified manner.

11 (3) "Capable" means that in the opinion of an individual's attending physician and consulting physician, or
12 licensed medical professional if an opinion is requested by the attending or consulting physician, the individual has the
13 ability to make and communicate an informed medical decision to healthcare providers, including communication
14 through a person familiar with the individual's manner of communicating if that person is available.

15 (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a
16 professional diagnosis and prognosis regarding the patient's disease.

17 (5) "Counseling" means one or more consultations as necessary between a state-licensed psychiatrist or
18 psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a
19 psychiatric or psychological disorder or depression causing impaired judgment.

20 (6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to
21 administer health care or dispense medication in the ordinary course of business or practice of a profession, and
22 includes a health care facility.

(7) "Informed decision" means a decision by a terminally ill patient to request and obtain a prescription that the individual may self-administer to end their life in a humane and dignified manner that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of all of the following:

a. The patient's medical diagnosis.

b. The patient's prognosis.

c. The potential risks associated with taking the medication to be prescribed.

d. The probable result of taking the medication to be prescribed.

e. The feasible alternatives, including comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Licensure and Discipline for the State of Delaware.

(11) "Qualified patient" means a capable adult who is a resident of Delaware and has satisfied the requirements of this chapter in order to obtain a prescription for medication to end their life in a humane and dignified manner.

(12) "Self-administer" means any affirmative, voluntary and final physical act by a qualified patient to take the medication to bring about their own peaceful death.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within 6 months.

§ 2502B. Who may initiate a written request for medication.

(a) An adult who is capable, is a resident of Delaware, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed a wish to die, may make a written request for medication for the purpose of ending their life in a humane and dignified manner in accordance with this chapter.

(b) No person can qualify under the provisions of this chapter solely because of age or disability.

§ 2503B. Form of the written request.

(a) A valid request for medication under this chapter must be in substantially the form described herein, signed, and dated by the patient, and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(b) No more than one person who is any of the following may serve as a witness under subsection (a) of this section:

(1) A relative of the patient by blood, marriage, or adoption.

(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law.

(3) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident of that facility.

(c) The patient's attending physician at the time the request is signed may not be a witness.

§ 2504B. Attending physician responsibilities.

(a) The attending physician shall do all of the following:

(1) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily.

(2) Request that the patient demonstrate Delaware residency under § 2513B of this chapter.

(3) Ensure that the patient is making an informed decision, including informing the patient of the following:

a. The patient's medical diagnosis.

b. The patient's prognosis.

c. The potential risks associated with taking the medication to be prescribed.

d. The probable result of taking the medication to be prescribed.

e. The feasible alternatives, including comfort care, hospice care and pain control.

(4) Refer the patient to a consulting physician for medical confirmation of the terminal disease diagnosis and for a confirmation that the patient is capable and acting voluntarily.

(5) Refer the patient for counseling, if appropriate, pursuant to § 2506B of this chapter.

(6) Recommend that the patient notify next of kin.

(7) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to this chapter and of not taking the medication in a public place.

(8) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day waiting period pursuant to § 2511B of this chapter.

(9) Verify, immediately prior to writing the prescription for medication under this chapter, that the patient is making an informed decision.

(10) Fulfill the medical record documentation requirements of § 2512B of this chapter.

(11) Ensure that all appropriate steps are carried out in accordance with the provisions of this chapter prior to writing a prescription for medication to enable a qualified patient to end their life in a humane and dignified manner.

(12)a. Subject to the 72-hour limitation in § 4739A of this title, dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, but only if the attending physician is registered as a dispensing physician with the Board of Medical Licensure and Discipline, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rule or regulation; or

b. Contact a pharmacist, inform the pharmacist of the prescription, and deliver the written prescription to the pharmacist personally, by mail, or other method acceptable to the pharmacist, who will dispense the medications only to the patient, the attending physician, or an agent expressly identified in writing by both the patient and the attending physician.

(b) The attending physician may sign the qualified patient's death certificate. The death certificate must list the underlying terminal illness as the cause of death.

§ 2505B. Consulting physician confirmation.

Before a patient becomes qualified under this chapter, a consulting physician shall examine the patient and the patient's relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

§ 2506B. Counseling referral.

If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, that physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner may be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment and reports the determination to the referring physician.

§ 2507B. Informed decision.

No person may receive a prescription for medication to end their life in a humane and dignified manner unless they have made an informed decision as defined in this chapter. Immediately prior to writing a prescription for medication under this chapter, the attending physician shall verify that the patient is making an informed decision.

§ 2508B. Family notification.

The attending physician shall recommend that the patient notify the next of kin of the patient's request for medication pursuant to this chapter. A patient who declines or is unable to notify next of kin will not be denied their request for medication for that reason.

§ 2509B. Written and oral requests.

In order for a patient to receive a prescription for medication to end the patient's life in a humane and dignified manner, a patient must have made two oral requests and one written request. The second oral request must be made no less than 15 days after making the initial oral request to the patient's attending physician. At the time the patient makes a second oral request, the attending physician shall offer the patient an additional opportunity to rescind the request.

§ 2510B. Right to rescind request.

A patient may rescind the request for medication at any time and in any manner without regard to the patient's mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

§ 2511B. Waiting and expiration periods.

(a) No less than 15 days may elapse between the patient's initial oral request and the writing of a prescription under this chapter. No less than 48 hours may elapse between the patient's written request and the writing of a prescription under this chapter.

(b) The patient's initial oral request automatically expires after 1 year if a prescription is not written pursuant to the provisions of this chapter during that time. If the initial oral request has expired, a prescription may not be written based on that initial oral request. However, the patient may make a subsequent initial oral request.

§ 2512B. Medical record documentation requirements.

The following must be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end the patient's life in a humane and dignified manner.

(2) All written requests by a patient for medication to end the patient's life in a humane and dignified manner.

(3) The attending physician's diagnosis and prognosis, determinations that the patient is capable, is acting voluntarily, and has made an informed decision.

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is capable, is acting voluntarily, and has made an informed decision.

(5) A report of the outcome and determinations made during counseling, if performed.

(6) The attending physician's offer to the patient to rescind the patient's request at the time of the patient's second oral request pursuant to § 2509B of this chapter.

(7) A note by the attending physician indicating that all requirements of this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

§ 2513B. Residency requirement.

(a) Only requests made by Delaware residents under this chapter may be granted.

(b) Factors demonstrating Delaware residency include:

(1) Possession of a Delaware driver license.

(2) Registration to vote in Delaware.

(3) Evidence that the person owns or leases property in Delaware.

(4) The filing of a Delaware tax return for the most recent tax year.

§ 2514B. Reporting requirements and comprehensive guidelines.

(a) The Department may annually review a sample of records maintained pursuant to § 2501B through § 2518B of this chapter.

(b) The Department shall require any health care provider upon dispensing medication pursuant to § 2501B through § 2518B of this chapter to file a copy of the dispensing record with the Department.

(c) The Department shall make rules and regulations to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected is not a public record and may not be made available for inspection by the public.

(d) The Department shall generate and make available to the public an annual statistical report of information collected under of this section.

(e) The Department shall develop comprehensive guidelines designed to be a resource for health care professionals and institutions implementing the provisions of this chapter.

§ 2515B. Effect on construction of wills, contracts, and statutes.

(a) Any provision in a will, contract, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end their life in a humane and dignified manner, is void and unenforceable.

(b) No obligation owing under any currently existing contract may be conditioned or affected by the making or rescinding of a request, by a person, for medication to end their life in a humane and dignified manner.

§ 2516B. Insurance or annuity policies.

(a) Any provision in an insurance policy, an annuity, a contract, or any other agreement, issued or made on or after the effective date of this chapter is not valid to the extent that the provision would attach consequences to or otherwise

172 restrict or influence an individual's decision to make or rescind a request for medication to end their life in a humane and
173 dignified manner pursuant to this chapter.

174 (b) Any obligation under a contract existing on the effective date of this chapter may not be conditioned on or
175 affected by the making or rescinding of a request for medication, by a person, to end their life in a humane and dignified
176 manner pursuant to this chapter.

177 (c) The sale, procurement, or issuance of a life, a health, or an accident insurance or annuity policy or the rate
178 charged for a life, a health, or an accident insurance or annuity policy may not be conditioned on or affected by the making
179 or rescinding of a request for medication, by a person, to end their life in a humane and dignified manner pursuant to
180 chapter.

181 (d) A qualified patient's act of ingesting medication to end their life in a humane and dignified manner pursuant to
182 this chapter may not have an effect under a life, a health, or an accident insurance or annuity policy that differs from the
183 effect under the policy of the patient's death from natural causes.

184 § 2517B. Construction of Act.

185 (a) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection,
186 mercy killing or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide,
187 assisted suicide, mercy killing or homicide.

188 (b) Nothing in this chapter should be construed to allow a lower standard of care for patients in the community
189 where the patient is treated or a similar community.

190 § 2518B. Immunities; basis for prohibiting health care provider from participation; notification; permissible
191 sanctions.

192 Except as provided in this chapter:

193 (1) No person is subject to civil or criminal liability or professional disciplinary action for participating in
194 good faith compliance with the provisions of this chapter. This includes being present when a qualified patient takes
195 the prescribed medication to end the their life in a humane and dignified manner.

196 (2) No professional organization or association, or health care provider, may subject a person to censure,
197 discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or
198 refusing to participate in good faith compliance with the provisions of this chapter.

199 (3) No request by a patient for or provision by an attending physician of medication in good faith compliance
200 with the provisions of this chapter constitutes abuse or neglect for any purpose of law or provide the sole basis for the
201 appointment of a guardian or involuntary commitment.

(4) No health care provider will be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to end their life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers their care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(5)a. A health care provider may prohibit another health care provider from participating in any activities pursuant to this chapter on the premises of the prohibiting health care provider if the prohibiting health care provider has notified in advance all health care providers with privileges to practice on the premises and the general public of the prohibiting health care provider's policy regarding participating in activities covered by this chapter. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in activities covered by this chapter.

b. Except as provided in paragraphs (1) through (4) of this section, a health care provider may subject another health care provider to any of the sanctions stated in this paragraph if the sanctioning health care provider has notified the health care provider prior to participation in activities covered by this chapter, by a separate statement in writing specifically informing the health care provider of the sanctioning health care provider's policy, that it prohibits such participation:

1. Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned health care provider is a member of the sanctioning health care provider's medical staff and participates in activities covered by this chapter while on the premises of the sanctioning health care provider, but not including the private medical office of the sanctioned health care provider.

2. Termination of lease or other property contract or other non-monetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned health care provider participates in activities covered by this chapter while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider.

3. Termination of contract or other non-monetary remedies provided by contract if the sanctioned health care provider participates in activities covered by this chapter while acting in the course and scope of the sanctioned health care provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this paragraph may be construed to prevent:

232 A. A health care provider from participating in activities covered by this chapter while acting
233 outside the course and scope of the health care provider's capacity as an employee or independent
234 contractor.

235 B. A patient from contracting with the patient's attending physician and consulting physician to
236 act outside the course and scope of the health care provider's capacity as an employee or independent
237 contractor of the sanctioning health care provider.

238 c. A health care provider that imposes sanctions pursuant to paragraph (5)b. of this section must follow all
239 due process and other procedures the sanctioning health care provider has that are related to the imposition of
240 sanctions on a health care provider.

241 d. Participation in activities covered by this chapter means to perform the duties of an attending physician
242 in § 2504B of this chapter, the consulting physician function in § 2505B of this chapter, or the counseling function
243 in § 2506B of this chapter. Participation in activities covered by this chapter does not include the following:

244 1. Making an initial determination that a patient has a terminal disease and informing the patient of
245 the medical prognosis.

246 2. Providing information about the Delaware End of Life Options Act to a patient upon the request of
247 the patient.

248 3. Providing a patient, upon the request of the patient, with a referral to another physician.

249 4. A patient contracting with their attending physician and consulting physician to act outside of the
250 course and scope of the provider's capacity as an employee or independent contractor of the sanctioning
251 health care provider.

252 (6) Suspension or termination of staff membership or privileges under paragraph (5)b. of this section is not
253 reportable under this chapter. Action taken pursuant to § 2504B, § 2505B, or § 2506B of this chapter may not be the
254 sole basis for a report of unprofessional or dishonorable conduct.

255 § 2519B. Claims by governmental entity for costs incurred.

256 Any governmental entity that incurs costs resulting from a person terminating their life pursuant to the provisions
257 of this chapter in a public place shall have a claim against the estate of the person to recover such costs and reasonable
258 attorney fees related to enforcing the claim.

259 § 2520B. Form of the request.

260 A request for a medication as authorized by the provisions of this chapter must be in substantially the following
261 form:

262

263

REQUEST FOR MEDICATION

264

TO END MY LIFE IN A HUMANE

265

AND DIGNIFIED MANNER

266

I _____, am an adult of sound mind.

267

I am suffering from _____, which my attending physician has determined is a terminal disease and which has

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been medically confirmed by a consulting physician.

269

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential

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associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care and pain control.

271

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

272

INITIAL ONE:

273

_____ I have informed my family of my decision and taken their opinions into consideration.

274

_____ I have decided to not inform my family of my decision.

275

_____ I have no family to inform of my decision.

276

I understand that I have the right to rescind this request at any time.

277

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further

278

understand that although most deaths occur within three hours, my death may take longer and my physician has counseled

279

me about this possibility.

280

I make this request voluntarily and without reservation, and I accept full responsibility for my actions.

281

Signed: _____

282

Dated: _____

283

DECLARATION OF WITNESSES

284

We declare that the person signing this request:

285

(a) Is personally known to us or has provided proof of identity;

286

(b) Signed this request in our presence;

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(c) Appears to be of sound mind and not under duress, fraud or undue influence;

288

(d) Is not a patient for whom either of us is attending physician.

289

_____ Witness 1/Date

290

_____ Witness 2/Date

291 NOTE: No more than one of the witnesses may be 1) a relative (by blood, marriage or adoption) of the person
292 signing this request, 2) entitled to any portion of the person's estate upon death, or 3) an owner, operator, or employee at a
293 health care facility where the person is a patient or resident.

294 _____
295 Section 2. Any section of this Act being held invalid as to any person or circumstance does not affect the
296 application of any other section of this Act which can be given full effect without the invalid section or application.

297 Section 3. This Act shall take effect 6 months after its enactment into law.

298 Section 4. This Act shall be known and may be cited as the "Delaware End of Life Options Act."

SYNOPSIS

The Delaware End of Life Options Act provides an additional option which terminally ill adults nearing their death can decide to select, to lessen their pain and suffering. The bill clarifies the procedures necessary for making the request, including 1) the presentation of all end of life options which include comfort care, hospice care, and pain control, 2) a physician's evaluation, 3) medical confirmation by a second physician, 4) psychiatric/psychological counseling when indicated, 5) the passage of two waiting periods, and 6) the completion of a formally witnessed request for prescribed medication. The bill provides many safeguards to ensure the patient is making an informed decision, the right to rescind any request for medication, and immunity for persons participating in good faith compliance with the procedures. When the process is followed with its safeguards, the terminally ill patient is provided the right to receive medication to peacefully end the patient's life in a humane and dignified manner.