



SPONSOR: Rep. Baumbach & Rep. Seigfried & Sen. Sokola  
Reps. Kowalko, Osienski; Sen. Hansen

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 140

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

1 WHEREAS, Delaware has long recognized that adult, terminally ill individuals have a fundamental right to  
2 determine their own medical treatment options as they near the end of life, free from coercion, and in accordance with their  
3 own values, beliefs, or personal preferences; and

4 WHEREAS, Delaware wants to promote both the highest standard of medical care for patients and a wide range of  
5 options appropriate for each individual at the end of life; and

6 WHEREAS, the integration of medical aid in dying into the standard for end-of-life care has improved quality of  
7 services by providing an additional palliative care option to terminally ill individuals.

8 WHEREAS, terminally ill patients may undergo unremitting pain, discomfort, and a sudden, continuing, and  
9 irreversible reduction in their quality of life in their final days and only the patient can determine if his or her suffering is  
10 unbearable; and

11 WHEREAS, participation in the practice of medical aid in dying by willing medical providers for terminally ill  
12 patients who request this end-of-life option, respects and honors patients' values and priorities for their own death, and puts  
13 the patient at the center of care.

14 NOW, THEREFORE:

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

16 Section 1. Amend Chapter 25, Title 16 of the Delaware Code by making deletions as shown by strike through and  
17 insertions as shown by underline as follows:

18 Chapter 25B. End of Life Options.

19 § 2501B. Purpose.

20 (a) A terminally ill adult individual who has decision-making capacity has the right to request and self-administer  
21 medication to end their life in a humane and dignified manner.

22 (b) An individual should not be coerced, pressured, or otherwise compelled to take medication to end their life and  
23 the decision to self-administer medication to end life must be made voluntarily by a terminally ill adult individual with

24 decision-making capacity, not by a guardian or other surrogate health-care decision maker or by the individual in an  
25 advance health-care directive.

26 (c) Health-care providers should not be subject to civil or criminal liability or professional discipline for honoring  
27 a request from a terminally ill adult individual for medication to end their life in a humane and dignified manner that is  
28 made in compliance with the requirements of this chapter.

29 (d) The self-administration of medication to end life in a humane and dignified manner by a terminally ill adult  
30 should not impact life insurance or annuity policies.

31 § 2502B. Definitions.

32 For purposes of this chapter:

33 (1) “Attending physician” means a physician designated by an individual to have primary responsibility  
34 for the individual's terminal illness. “Attending physician” does not mean a physician who provides treatment that  
35 is limited to or primarily comprised of prescribing or dispensing medication to end life in a humane and dignified  
36 manner.

37 (2) “Consulting physician” means a physician who is qualified by specialty or experience to make a  
38 professional diagnosis and prognosis regarding an individual’s terminal illness and is not designated by an  
39 individual to have primary responsibility for the individual's health care.

40 (3) “Counseling” means 1 or more consultations, as necessary, between a psychiatrist or psychologist and  
41 an individual for the purpose of determining that the individual has decision-making capacity.

42 (4) “Decision-making capacity” means an individual's ability to understand and appreciate the nature and  
43 consequences of a particular health-care decision, including the benefits and risks of that decision and alternatives  
44 to any proposed health care, and to reach an informed health-care decision.

45 (5) “Health-care institution” means an institution, facility, or agency licensed, certified, or otherwise  
46 authorized or permitted by law to provide health care in the ordinary course of business.

47 (6) “Health-care provider” means an individual licensed, certified, or otherwise authorized or permitted  
48 by law to provide health care or dispense medication in the ordinary course of business or practice of a profession.

49 (7) “Informed decision” means a decision by an individual with a terminal illness to request and obtain a  
50 prescription for medication that the individual may self-administer to end their life in a humane and dignified  
51 manner. An “informed decision” is based on the individual’s appreciation of the relevant facts and is made after  
52 being fully informed by the attending physician of all of the following:

53 a. The individual’s medical diagnosis.

54                    b. The individual’s prognosis.

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

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

57                    e. The feasible alternative, concurrent, or additional treatment opportunities, including comfort care,

58                    hospice care, and pain control.

59                    (8) “Medically confirmed” means a consulting physician confirms the medical opinion of the attending

60                    physician after the consulting physician examines the individual and the individual’s relevant medical records.

61                    (9) “Psychiatrist” means an individual who possesses a valid State of Delaware license to practice

62                    medicine and has completed an accredited residency training program in psychiatry.

63                    (10) “Psychologist” means an individual who possesses a valid State of Delaware license to practice

64                    psychology.

65                    (11) “Qualified patient” means an individual who meets all of the requirements of § 2504B of this title.

66                    (12) “Self-administer” means an individual performs an affirmative, conscious, voluntary, and final act to

67                    take medication into the individual’s body.

68                    (13) “Terminal illness” means an incurable and irreversible disease, illness, or condition that as a medical

69                    probability, will result in death within 6 months.

70                    § 2503B. Information to patients.

71                    (a) Nothing in this chapter may be construed to lessen informed consent requirements.

72                    (b) An attending physician must provide sufficient information to an individual with a terminal illness regarding

73                    all available treatment options, and the alternatives and the foreseeable risks and benefits of each, so that the individual can

74                    make an independent decision regarding the individual’s end-of-life health care.

75                    (c) An attending physician’s failure to inform an individual with a terminal illness who requests additional

76                    information about available end-of-life treatments, including medication to end their life in a humane and dignified manner,

77                    or failure to refer the individual to another physician who can provide the information, is considered a failure to obtain

78                    informed consent for subsequent medical treatment.

79                    § 2504B. Qualified patients: requirements.

80                    (a) An individual who meets all of the following requirements is a qualified patient under this chapter:

81                    (1) The individual is an adult resident of Delaware.

82                    (2) The individual’s attending physician has completed all of the requirements under § 2508B of this title.

83                    (3) A consulting physician has completed all of the requirements under § 2509B of this title.

84                   (4) The individual has made an informed decision to voluntarily request medication to end their life in a  
85                   humane and dignified manner, under § 2505B of this title.

86                   (b) An individual cannot be a qualified patient under this section solely because of the individual's age or  
87                   disability.

88                   (c) A request for medication to end their life in a humane and dignified manner must be made by the individual  
89                   with a terminal illness and may not be made by any other individual including the terminally ill individual's guardian or  
90                   authorized representative.

91                   § 2505B. Request process for medication to end life.

92                   (a) An individual may request medication to end their life in a humane and dignified manner by making 2 oral  
93                   requests and 1 written request to the individual's attending physician.

94                   (b) An individual must make the second oral request for medication to end their life in a humane and dignified  
95                   manner no more than 15 days after making the first oral request for this medication. At the time of the second oral request,  
96                   the individual's attending physician must offer the individual an additional opportunity to rescind this request.

97                   (c) An individual's written request for medication to end their life in a humane and dignified manner must contain  
98                   all of the following and use the form or be substantially similar to the form under subsection (f) of this section:

99                               (1) A request for medication that will end the individual's life in a humane and dignified manner.

100                              (2) The individual's signature, with the date signed.

101                              (3) The signatures of at least 2 individuals who each attest to all of the following:

102                                       a. The individual was present and witnessed the individual sign the document.

103                                       b. To the best of the individual's knowledge, the individual has decision-making capacity, is acting  
104                                       voluntarily, and is not being coerced to sign the document.

105                              (d) Only 1 of the following individuals may provide a signature required under paragraph (c)(3) of this section:

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

107                                       (2) An individual who, at the time the request is signed, would be entitled to any portion of the estate of  
108                                       the individual upon the individual's death under a will or by operation of law.

109                                       (3) An owner, operator, or employee of a health-care institution where the individual is receiving medical  
110                                       treatment or is a resident.

111                              (e) The individual's attending physician at the time the individual signs the document under subsection (a) of this  
112                              section may not provide a signature required under paragraph (c)(3) of this section.

113 (f) A written request for medication to end life in a humane and dignified manner under subsection (c) of this  
114 section must use the following form or be substantially similar to the following form:

115 Request for Medication to End My Life in a Humane and Dignified Manner

116 I, \_\_\_\_\_, am an adult resident of Delaware with decision-making capacity.

117 I have been diagnosed with \_\_\_\_\_, which my attending  
118 physician has determined is a terminal illness and has been medically confirmed by a consulting physician. I have been  
119 fully informed of my diagnosis and prognosis of 6 months or less to live, the nature of the medication to be prescribed to  
120 end life in a humane and dignified manner, the potential associated risks of this medication, the expected result, and the  
121 feasible alternative, concurrent, or additional treatment opportunities available to me, including comfort care, palliative  
122 care, hospice care, and pain control.

123 I request that my attending physician prescribe medication to end life in a humane and dignified manner that will  
124 end my life in a peaceful manner if I choose to take it, and I authorize my attending physician to contact a pharmacist to fill  
125 my prescription. I understand that I have the right to rescind this request at any time. I understand the seriousness of this  
126 request, and I expect to die if I take the medication prescribed to end life in a humane and dignified manner. I further  
127 understand that although most deaths occur within 3 hours, my death may take longer and my attending physician has  
128 counseled me about this possibility.

129 I make this request voluntarily, without reservation, free from coercion or pressure, and I accept full responsibility  
130 for my actions.

131 Signed: \_\_\_\_\_

132 Dated: \_\_\_\_\_

133

134 \_\_\_\_\_ Witness, Date

135 \_\_\_\_\_ Witness, Date

136 § 2506B. Right to rescind request.

137 (a) At any time, an individual may rescind a request for medication to end life in a humane and dignified manner  
138 without regard to the individual's mental state.

139 (b) An attending physician may not write a prescription for medication to end life in a humane and dignified  
140 manner under this chapter unless the attending physician has offered the individual an opportunity to rescind the request.

141 § 2507B. Waiting periods and expiration of request.

142           (a) An attending physician may not write a prescription under this chapter less than 15 days after the individual's  
143 first oral request for medication to end life in a humane and dignified manner.

144           (b) An attending physician may not write a prescription under this chapter less than 48 hours after the individual's  
145 written request for medication to end life in a humane and dignified manner.

146           (c) An individual's first oral request for medication to end life in a humane and dignified manner expires after 1  
147 year if no medication to end life in a humane and dignified manner is prescribed under this chapter. An individual may  
148 make a new oral request for medication to end life in a humane and dignified manner and begin the process under this  
149 chapter again.

150           § 2508B. Attending physician responsibilities.

151           An attending physician must do all of the following before prescribing or dispensing medication to an individual  
152 who provides a document under § 2505B of this title requesting medication that will end the individual's life in a humane  
153 and dignified manner:

154                     (1) Provide care that conforms with accepted medical standards and guidelines.

155                     (2) Determine if the individual requesting medication that will end the individual's life in a humane and  
156 dignified manner meets all of the following:

157                             a. Has a terminal illness.

158                             b. Has decision-making capacity.

159                             c. Has voluntarily made the request for medication that will end the individual's life in a humane and  
160 dignified manner.

161                     (3) Request that the individual demonstrate State residency. Examples of documents that demonstrate  
162 State residency include all of the following:

163                             a. A driver's license or identification card issued under Title 21.

164                             b. A voter registration card or other documentation showing the individual is registered to vote in this  
165 State.

166                             c. Evidence that the individual owns or leases property in this State.

167                             d. A State income tax return for the most recent tax year.

168                     (4) Provide full disclosures to affirm that the individual is making an informed decision by discussing all  
169 of the following with the individual:

170                             a. The individual's medical diagnosis and prognosis of 6 months or less to live.

171 b. The potential risks associated with taking the medication to be prescribed to end the individual's  
172 life in a humane and dignified manner.

173 c. The probable result of taking the medication to be prescribed to end the individual's life in a  
174 humane and dignified manner.

175 d. The choices available to the individual, including the possibility that the individual may choose  
176 not to fill the prescription for the medication, or may fill the prescription for the medication but may  
177 decide not to self-administer it.

178 e. The feasible alternatives, concurrent, or additional treatment opportunities, including comfort care,  
179 palliative care, hospice care, and pain control.

180 (5) Confirm that the individual's request does not arise from coercion or undue influence by another  
181 person by discussing with the individual, outside the presence of another individual, except for an interpreter as  
182 necessary, whether the individual is feeling coerced or unduly influenced by another individual.

183 (6) Refer the individual to a consulting physician.

184 (7) Add the consulting physician's written determination, under § 2509B of this title, to the individual's  
185 medical record.

186 (8) Refer the individual to a psychiatrist or psychologist if the attending physician believes the individual  
187 may not have decision-making capacity and add the psychiatrist or psychologist's written determination to the  
188 individual's medical record.

189 (9) Counsel the individual on the potential benefits of all of the following:

190 a. Notifying family of the individual's decision to request and obtain medication to end the  
191 individual's life in a humane and dignified manner as one of the individual's end-of-life care options.

192 b. Having another person present when the individual self-administers the medication that is to be  
193 prescribed to end the individual's life in a humane and dignified manner.

194 (10) Counsel the individual on the importance of all of the following:

195 a. Safe-keeping and proper disposal of unused medication to end the individual's life in a humane  
196 and dignified manner in accordance with Federal Drug Administration guidelines and § 122(3)m. of this  
197 title.

198 b. Not taking the medication to end the individual's life in a humane and dignified manner in a public  
199 place.

200                   (11) Inform the individual that the individual may rescind the request for medication to end the  
201 individual's life in a humane and dignified manner at any time and in any manner.

202                   (12) Immediately before writing a prescription for medication to end the individual's life in a humane and  
203 dignified manner, verify that the individual is making an informed decision.

204                   (13) Ensure that all appropriate steps are carried out in accordance with this Act before writing a  
205 prescription for medication to end the individual's life in a humane and dignified manner and do 1 of the  
206 following:

207                   a. Dispense the medication to the qualified patient, including ancillary medications intended to  
208 minimize the individual's discomfort, if the attending physician has a current drug enforcement  
209 administration certificate and complies with any applicable administrative rule.

210                   b. Deliver the written prescription personally, by mail or through an authorized electronic  
211 transmission to a licensed pharmacist, who will dispense the medication to end the qualified patient's life  
212 in a humane and dignified manner to the qualified patient, the attending physician, or to an individual  
213 expressly designated by the qualified patient in person, or, with a signature required on delivery, by mail  
214 service or by messenger service.

215                   (14) Document all of the following in the individual's medical record:

216                   a. The individual's prognosis.

217                   b. The individual's decision-making capacity.

218                   c. The date of the individual's first oral request.

219                   d. The date of the individual's second oral request.

220                   e. The individual's valid written request.

221                   f. A notation that all the requirements under this section have been completed, and the medications  
222 dispensed or prescribed to end the qualified patient's life in a humane and dignified manner and ancillary  
223 medications dispensed or prescribed.

224                   § 2509B. Consulting physician responsibilities.

225                   Before an individual may receive a prescription for medication to end life in a humane and dignified manner a  
226 consulting physician must do all of the following:

227                   (1) Evaluate the individual and the individual's relevant medical records.

228                   (2) Confirm, in writing, to the attending physician that the individual meets all of the following:

229                   a. Has a terminal illness.



230 b. Has decision-making capacity or provide documentation that the consulting physician has referred  
231 the individual for further evaluation under § 2510B of this title.

232 c. Is making an informed decision.

233 d. Is acting voluntarily.

234 § 2510B. Confirming decision-making capacity.

235 (a) If an attending physician or a consulting physician believes that an individual may not have decision-making  
236 capacity, the attending physician or consulting physician shall refer the individual to a psychiatrist or psychologist for  
237 evaluation of the individual's decision-making capacity.

238 (b) A psychiatrist or psychologist who evaluates an individual under this section shall communicate in writing, to  
239 the attending or consulting physician who requested the evaluation, the psychiatrist's or psychologist's conclusions about  
240 whether the individual has decision-making capacity to make an informed decision under this chapter.

241 (c) If the psychiatrist or psychologist finds that the individual does not have decision-making capacity, the  
242 individual is not a qualified patient under this chapter and the attending physician must not prescribe medication to end life  
243 in a humane and dignified manner to the individual.

244 § 2511B. Certificate of death.

245 A certificate of death, under § 3123 of this title, for a qualified patient who dies after voluntarily self-administering  
246 medication to end the qualified patient's life under this chapter must list the underlying terminal illness as the cause of  
247 death.

248 § 2512B. Reporting requirements.

249 (a) The Department may annually review a sample of records maintained under this chapter.

250 (b) The Department shall require a health-care provider that dispenses medication under this chapter to dispose of  
251 unused medication under § 122(3)m. of this title and to file a copy of the dispensing record with the Division.

252 (c) The Department shall make rules and regulations to facilitate the collection of information regarding  
253 compliance with this chapter. Unless otherwise specifically provided under law, information collected under this chapter is  
254 not a public record under Chapter 100 of Title 29.

255 (d) The Department may work with the Division of Professional Regulation to develop forms and protocols for the  
256 education of all health-care providers under its licensing or certification jurisdiction.

257 (e) The Department shall generate and make available to the public an annual statistical report of information  
258 collected under of this chapter.

259           § 2513B. Assumptions and presumptions; effect on construction of wills, contracts, insurance, and annuity  
260 policies.

261           (a) A provision in a contract, will, or other agreement, whether written or oral, that would affect whether an  
262 individual may make or rescind a request for medication to end life in a humane and dignified manner, is not valid.

263           (b) An obligation owing under any currently existing contract may not be conditioned or affected by an  
264 individual's act of making or rescinding a request for medication to end life in a humane and dignified manner.

265           (c) A request for medication to end life in a humane and dignified manner under this chapter, or the fact that  
266 medication to end life in a humane and dignified manner is prescribed or dispensed under this chapter, does not, for any  
267 purpose, constitute a suicide, assisted-suicide, homicide, or euthanasia.

268           (d) The sale, procurement, or issuance of a life, health, or accident insurance or annuity policy, or the rate charged  
269 for such a policy, may not be conditioned upon or affected by an individual's act of making or rescinding a request for  
270 medication to end life in a humane and dignified manner.

271           (e) A qualified patient's act of self-administering medication to end life in a humane and dignified manner does  
272 not invalidate any part of a life, health, or accident insurance or annuity policy.

273           (f) A health-care institution, health-care provider, health-care service plan, insurer issuing disability insurance,  
274 self-insured employee welfare benefit plan, nonprofit hospital service plan, or any other type of direct or indirect provider  
275 of health-care benefits or services or insurer cannot deny or alter health-care benefits otherwise available to an individual  
276 with a terminal illness based on the availability of medication to end life in a humane and dignified manner or otherwise  
277 attempt to coerce or require as a condition to receiving care that an individual with a terminal illness make a request for  
278 medication to end life in a humane and dignified manner.

279           § 2514B. Immunity.

280           (a) A person acting in good faith and in accordance with generally accepted health-care standards is not subject to  
281 civil or criminal liability or to discipline for unprofessional conduct, including censure, suspension, loss of license, loss of  
282 privileges, loss of membership, or any other penalty for providing medical care in good faith compliance with the  
283 requirements under this chapter, including any of the following:

284                   (1) Being present when a qualified patient self-administers the prescribed medication to end life in a  
285 humane and dignified manner.

286                   (2) Prescribing or refusing to prescribe medication to end life in a humane and dignified manner under  
287 this chapter.

288                   (3) Providing scientific and accurate information about medication to end life in a humane and dignified  
289                   manner.

290                   (b) A health-care institution may prohibit a physician from prescribing medication under this chapter on the  
291 health-care institution's premises if the health-care institution has provided notice of the health-care institution's policy  
292 regarding this chapter to all health-care providers and the public.

293                   (c) A request by a qualified patient for or provision by an attending physician of medication to end life in a  
294 humane and dignified manner under this chapter does not solely constitute neglect or elder abuse for any purpose or provide  
295 the sole basis for the appointment of a guardian or involuntary mental health treatment.

296                   (d) This section does not limit civil or criminal liability for negligence, recklessness, or intentional misconduct.

297                   Section 2. This Act is known as "The Ron Silverio/Heather Block End of Life Options Law".

#### SYNOPSIS

This Act permits a terminally ill individual who is an adult resident of Delaware to request and self-administer medication to end the individual's life in a humane and dignified manner if both the individual's attending physician and a consulting physician agree on the individual's diagnosis and prognosis and believe the individual has decision-making capacity, is making an informed decision, and is acting voluntarily.

This Act uses terms and definitions that are consistent with other Delaware laws in Title 16, specifically Chapter 25 (regarding advance health-care directives) and Chapter 25A (regarding Delaware Medical Orders for Scope of Treatment).

This Act also provides the following procedural safeguards:

1. No one may request medication to end life on behalf of another individual.
2. An individual cannot qualify for medication to end life under this chapter solely because of the individual's age or disability.
3. Both the individual's attending physician and a consulting physician must confirm that the individual has a terminal illness and a prognosis of 6 months or less to live, has decision-making capacity, is making an informed decision, and is acting voluntarily.
4. The individual's attending physician must also provide specific disclosures to the individual to ensure that the individual is making an informed decision, including the presentation of all end of life options which include comfort care, hospice care, and pain control.
5. The individual must be evaluated by a psychiatrist or a psychologist if either the attending or consulting physicians are concerned that the individual lacks decision-making capacity.
6. The individual must complete a witnessed form requesting medication to end life and there are limitations on who can witness the signing of the form.
7. The attending physician must offer the individual the opportunity to rescind the request for medication to end life before writing a prescription for the medication.
8. Two waiting periods must pass before the attending physician may prescribe the medication to end life.
9. An insurer or health-care provider may not deny or alter healthcare benefits otherwise available to an individual based upon the availability of medication to end life or otherwise coerce or require a request for medication to end life as a condition of receiving care.
10. A health-care institution may prohibit a physician from prescribing medication to end life on the health-care institution's premises.
11. The cause of death for an individual who self-administers medication under this Act must be listed as the underlying terminal condition and a request or prescription for or the dispensing of medication under this Act does not constitute a suicide, assisted-suicide, homicide, or euthanasia.
12. People acting in good faith and in accordance with generally accepted health-care standards under this Act have immunity, but those acting with negligence, recklessness, or intentional misconduct do not have criminal or civil immunity.
13. The Department of Health and Social Services must develop rules and regulations to collect information regarding compliance with this Act, complete an annual statistical report of information collected under this Act, and may review samples of records maintained under this Act.

This Act is known as "The Ron Silverio/Heather Block End of Life Options Law" in memory of Ron Silverio and Heather Block, who were passionate advocates that passed away without this option becoming available to them.