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HOUSE OF REPRESENTATIVES
151st 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 the patient's 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 each patient's values and priorities for their own death, and
13 puts 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 Part II, Title 16 of the Delaware Code by creating a new Chapter 25B and by making deletions
17 as shown by strike through and insertions as shown by underline as follows:

18 Chapter 25B. End of Life Options.

19 § 2501B. Purpose and intent.

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

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

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

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

§ 2502B. Definitions.

For purposes of this chapter:

(1) “Advanced practice registered nurse” or “APRN” means an individual with a valid Delaware APRN license.

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

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

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

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

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

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

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

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

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

a. The individual’s medical diagnosis.

b. The individual’s prognosis.

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

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

e. The feasible alternative, concurrent, or additional treatment opportunities, including comfort care, hospice care, and pain control.

(11) “Medically confirmed” means a consulting physician or consulting APRN confirms the medical opinion of the attending physician or attending APRN after the consulting physician or consulting APRN examines the individual and the individual’s relevant medical records.

(12) “Psychiatrist” means an individual who possesses a valid State of Delaware license to practice medicine and has completed an accredited residency training program in psychiatry.

(13) “Psychologist” means an individual who possesses a valid State of Delaware license to practice psychology.

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

(15) “Self-administer” means an individual performs an affirmative, conscious, voluntary, and final act to ingest medication into the individual’s body. “Self-administer” does not include administration through injection or intravenous infusion.

(16) “Terminal illness” means an incurable and irreversible disease, illness, or condition that as a medical probability, will result in death within 6 months.

§ 2503B. Information to patients.

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

(b) An attending physician or attending APRN must provide sufficient information to an individual with a terminal illness regarding all available treatment options, and the alternatives and the foreseeable risks and benefits of each, so that the individual can make an independent decision regarding the individual's end of life health care.

(c) An attending physician's or attending APRN's failure to inform an individual with a terminal illness who requests additional information about available end of life treatments, including medication to end their life in a humane and dignified manner, or failure to refer the individual to another physician or APRN who can provide the information, is considered a failure to obtain informed consent for subsequent medical treatment.

§ 2504B. Qualified patients: requirements.

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

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

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

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

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

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

(c) A request for medication to end their life in a humane and dignified manner must be made by the individual with a terminal illness and may not be made by any other individual, including the terminally ill individual's guardian or other surrogate health-care decision maker or by the individual in an advance health-care directive.

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

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

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

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

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

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

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

a. The individual signed the document in the presence of the witness.

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

(d) No more than 1 of the witnesses under paragraph (c)(3) of this section may be any of the following:

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

(2) Entitled to any portion of the estate of the individual upon the individual's death under a will or by operation of law at the time the request for medication is signed.

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

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

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

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

I, _____, am an adult resident of Delaware with decision-making capacity.

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

I request that my attending physician or attending APRN prescribe medication to end life in a humane and dignified manner that will end my life in a peaceful manner if I choose to take it, and I authorize my attending physician or attending APRN to dispense my prescription or to contact a pharmacist to fill my prescription. I understand that I have the right to rescind this request at any time. I understand the seriousness of this request, and I expect to die if I take the medication prescribed to end life in a humane and dignified manner. I further understand that although most deaths occur

142 within 3 hours, my death may take longer, and my attending physician or attending APRN has counseled me about this
143 possibility.

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

146 Signed: _____

147 Dated: _____

148
149 _____ Witness, Date

150 _____ Witness, Date

151 § 2506B. Right to rescind request.

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

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

157 § 2507B. Waiting periods and expiration of request.

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

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

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

166 § 2508B. Responsibilities of the attending physician or attending APRN.

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

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

171 (2) Determine if the individual requesting medication that will end the individual's life in a humane and
172 dignified manner meets all of the following:
173 a. Has a terminal illness.
174 b. Has decision-making capacity.
175 c. Has voluntarily made the request for medication that will end the individual's life in a humane and
176 dignified manner.

177 (3) Request that the individual demonstrate Delaware residency. Examples of documents that demonstrate
178 Delaware residency include all of the following:

- 179 a. A driver's license or identification card issued under Title 21.
- 180 b. A voter registration card or other documentation showing the individual is registered to vote in this
181 State.
- 182 c. Evidence that the individual owns or leases property in this State.
- 183 d. A Delaware income tax return for the most recent tax year.

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

- 186 a. The individual's medical diagnosis and prognosis of 6 months or less to live.
- 187 b. The potential risks associated with taking the medication to be prescribed to end the individual's life in
188 a humane and dignified manner.
- 189 c. The expected result of taking the medication to be prescribed to end the individual's life in a humane
190 and dignified manner.
- 191 d. The choices available to the individual, including the possibility that the individual may choose not to
192 fill the prescription for the medication, or may fill the prescription for the medication but may decide not to self-
193 administer it.
- 194 e. The feasible alternative, concurrent, or additional treatment opportunities, including comfort care,
195 palliative care, hospice care, and pain control.

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

199 (6) Refer the individual to a consulting physician or consulting APRN.

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

(8) Refer the individual to a psychiatrist or psychologist under § 2510B of this title, if the attending physician or attending APRN believes the individual may not have decision-making capacity and add the psychiatrist or psychologist's written determination to the individual's medical record.

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

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

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

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

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

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

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

(12) Immediately before writing a prescription for medication to end the individual's life in a humane and dignified manner, verify that the individual is making an informed decision under § 2508B(4) of this title.

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

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

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

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

a. The individual's prognosis.

b. The individual's decision-making capacity.

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

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

e. The individual's valid written request.

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

§ 2509B. Responsibilities of the consulting physician or consulting APRN.

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

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

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

a. Has a terminal illness.

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

c. Is making an informed decision.

d. Is acting voluntarily.

§ 2510B. Confirming decision-making capacity.

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

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

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

§ 2511B. Department Responsibilities.

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

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

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

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

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

§ 2512B. Assumptions and presumptions; effect on construction of wills, contracts, insurance, and annuity policies.

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

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

(c)(1) Nothing in this chapter authorizes a physician, APRN, or any other person to end an individual's life by infusion, intravenous injection, mercy killing, or euthanasia.

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

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

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

(f) A health-care institution, health-care provider, health-care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit hospital service plan, or any other type of direct or indirect provider of health-care benefits or services or insurer cannot deny or alter health-care benefits otherwise available to an individual with a terminal illness based on the availability of medication to end life in a humane and dignified manner or otherwise

attempt to coerce or require as a condition to receiving care that an individual with a terminal illness make a request for medication to end life in a humane and dignified manner.

§ 2513B. Immunity.

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

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

(2) Prescribing or dispensing or refusing to prescribe or dispense medication to end life in a humane and dignified manner.

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

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

(c) A request for medication to end life in a humane and dignified manner under this chapter, or the fact that medication to end life in a humane and dignified manner is prescribed or dispensed under this chapter, does not solely constitute neglect or elder abuse for any purpose or provide the sole basis for the appointment of a guardian or involuntary mental health treatment.

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

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 or attending advanced practice registered nurse (APRN) and a consulting physician or consulting APRN 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 or attending APRN and a consulting physician or consulting APRN 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 or attending APRN 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, palliative 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 or APRNs 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 or attending APRN 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 or attending APRN 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 or APRN from prescribing medication to end life on the health-care institution's premises.

11. A request or prescription for or the dispensing of medication under this Act does not constitute elder abuse, 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.