SPONSOR: Rep. Baumbach & Rep. Morrison & Rep. Minor-Brown & Sen. Townsend
Reps. Longhurst, Griffith, Neal, Osienski, Phillips, Romer, Schwartzkopf, K. Williams; Sens. Hoffner, Huxtable, Lockman, S. McBride, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 140
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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

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

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

WHEREAS, in other jurisdictions, the integration of medical aid in dying into the standard for end of life care has improved quality of services by providing an additional palliative care option to terminally ill individuals; and

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

WHEREAS, under this Act, a mental illness or mental health condition is not a qualifying condition because it does not meet the definition of a terminal illness; and

WHEREAS, a mental illness or mental health condition may be the reason that an individual does not have decision-making capacity; and

WHEREAS, under this Act, the attending physician or attending Advanced Practice Registered Nurse must determine that an individual requesting medication to end their life in a humane and dignified manner has the decision-making capacity to make an informed decision before prescribing this medication; and

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

NOW, THEREFORE:

LC : DIG : CM : 5971520021 Released: 06/25/2024 04:18 PM
LC : HVW : CBM : 5081520181

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

Section 1. Amend Part II, Title 16 of the Delaware Code by creating a new Chapter 25B and by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 25B. End of Life Options.

§ 2501B. Purpose and intent.

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

(b) An individual should not be coerced, pressured, or otherwise compelled to take medication to end their life and 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 if 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.

§ 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 (c)(2) 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 consulting 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 dispense 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 within 3 hours, my death may take longer, and my attending physician or attending APRN has counseled me about this possibility.

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

Signed:_____

Dated:_____

_____ Witness, Date

_____ Witness, Date

§ 2506B. Right to rescind request.

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

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

§ 2507B. Waiting periods and expiration of request.

(a) Under § 2505B(b) of this title, an attending physician or attending APRN may not write a prescription under this chapter less than 15 days after the individual's first oral request for medication to end life in a humane and dignified manner.

(b) Under § 2508B(11)b. of this title, an attending physician or attending APRN may not write a prescription under this chapter less than 48 hours after the individual's written request for medication to end life in a humane and dignified manner.

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

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

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

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

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

a. Has a terminal illness.

b. Has decision-making capacity.

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

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

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

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

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

d. A Delaware resident income tax return for the most recent tax year.

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

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

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

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

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

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

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

(6) Refer the individual to a consulting physician or consulting APRN under § 2509B of this title and add the consulting physician's or consulting APRN's written determination to the individual's medical record.

(7) 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.

(8) 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.

(9) 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 applicable state or United States Food and Drug Administration guidelines, such as using a medication collection site or a medication disposal pouch.

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

(10) 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.

(11) Immediately before writing a prescription for medication to end the individual's life in a humane and dignified manner, verify all of the following:

a. The individual is making an informed decision under § 2508B(4) of this title.

b. It is at least 48 hours after the individual submitted the written request under § 2505B of this title.

(12) 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. Provide to the qualified patient, orally and in writing or electronically, the safe-keeping and proper disposal information required under paragraph (9)a. of this section.

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

(13) 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, including the date and time received.

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)(1) The Department shall make rules and regulations to facilitate the collection of information regarding compliance with this chapter, including the information necessary to assess compliance with all of the following:

a. The responsibilities of the attending physician or attending APRN under § 2508B of this title.

b. The responsibilities of the consulting physician or consulting APRN under § 2509B of this title.

(2) The Department may share information collected under this section with the Division of Professional Regulation if the Department suspects that a health-care provider has failed to comply with the requirements under this chapter.

(3) The Department of State may also promulgate regulations or develop forms and protocols necessary under this chapter.

(4) 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.

(b) The Department shall require a health-care provider that prescribes or dispenses medication under this chapter to file a report with the Department in the form required under subsection (a) of this section.

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

(d) Unless otherwise specifically provided under law, information collected under this chapter is not a public record under Chapter 100 of Title 29.

(e) The Department shall generate and make available to the public an annual statistical report of information collected under of this chapter. The purpose of this annual statistical report is to ensure proper Department oversight over compliance with this chapter and to provide information to the public about the implementation 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 physician or APRN may refuse to honor 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 under this chapter.

(d) 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.

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

Section 2. Amend § 4798, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4798. The Delaware Prescription Monitoring Program.

(*l*) The Office of Controlled Substances shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in this section.

(2) The Office of Controlled Substances may provide data in the prescription monitoring program in the form of a report to the following persons:

e. The Delaware Department of Health and Social Services regarding Medicaid program ~~recipients;~~ recipients and to assess compliance with Chapter 25B of this title.

Section 3. This Act is effective immediately and is to be implemented the earlier of the following:

(1) Notice by the Secretary of the Department of Health and Social Services, published in the Register of Regulations, that final regulations required under § 2511B of Title 16 have been promulgated.

(2) July 1, 2025.

Section 4. This Act is known as "The Ron Silverio/Heather Block End of Life Options Law".