SPONSOR: Rep. Baumbach

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 150

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO DEATH WITH DIGNITY.

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

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

CHAPTER 25A. DEATH WITH DIGNITY

§ 2501A Definitions.

As used in this Chapter:

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

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to:

(i) understand and acknowledge the nature and consequences of health care decisions, including the benefits and disadvantages of treatment;

(ii) make an informed decision;

(iii) communicate the informed decision to a health care provider, including communicating through an individual familiar with the patient's manner of communicating; and

(iv) self–administer medication.

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

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

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

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control.

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

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

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

(11) "Qualified patient" means a capable adult who is a resident of Delaware and has satisfied the requirements of § 2501A through § 2518A of this Chapter in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

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

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

(a) An adult who is capable, is a resident of Delaware, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with § 2501A through § 2518A of this Chapter.

(b) No person shall qualify under the provisions § 2501A through § 2518A of this Chapter solely because of age or disability.

§ 2503A. Form of the written request.

(a) A valid request for medication under § 2501A through § 2518A of this Chapter shall be in substantially the form described herein, signed, and dated by the patient, and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(b) Neither of the witnesses shall be a person who is:

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

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

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

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

(d) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated as a patient advocate or ombudsperson by the Department. The patient advocate or ombudsperson must have the qualifications required of other witnesses under this chapter and additional qualifications and training specified by the Department by rule and regulation.

§ 2504A. Attending physician responsibilities.

(a) The attending physician shall:

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

(2) Request that the patient demonstrate Delaware residency under § 2513A of this Chapter;

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

(A) His or her medical diagnosis;

(B) His or her prognosis;

(C) The potential risks associated with taking the medication to be prescribed;

(D) The probable result of taking the medication to be prescribed; and

(E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;

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

(5) Refer the patient for counseling, if appropriate, pursuant to § 2506A of this Chapter;

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

(7) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to § 2501A through § 2518A of this Chapter and of not taking the medication in a public place;

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

(9) Verify, immediately prior to writing the prescription for medication under § 2501A through § 2518A of this Chapter, that the patient is making an informed decision;

(10) Fulfill the medical record documentation requirements of § 2512A of this Chapter;

(11) Ensure that all appropriate steps are carried out in accordance with § 2501A through § 2518A of this Chapter prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

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

b. With the patient's written consent:

(i) Contact a pharmacist and inform the pharmacist of the prescription; and

(ii) Deliver the written prescription to the pharmacist personally, by mail, or other method acceptable to the pharmacist, who will dispense the medications only to the patient, the attending physician, or an agent expressly identified in writing by the patient.

(b) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate. The qualified patient's death certificate shall list the underlying terminal illness as the cause of death.

§ 2505A. Consulting physician confirmation.

Before a patient is qualified under § 2501A through § 2518A of this Chapter, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

§ 2506A. Counseling referral.

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

§ 2507A. Informed decision.

No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision as defined in this Chapter. Immediately prior to writing a prescription for

medication under § 2501A through § 2518A of this Chapter, the attending physician shall verify that the patient is making an informed decision.

§ 2508A. Family notification.

The attending physician shall recommend that the patient notify the next of kin of his or her request for medication pursuant to § 2501A through § 2518A of this Chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

§ 2509A. Written and oral requests.

In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician no less than 15 days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the patient an additional opportunity to rescind the request.

§ 2510A. Right to rescind request.

A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under § 2501A through § 2518A of this Chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

§ 2511A. Waiting and expiration periods.

(a) No less than 15 days shall elapse between the patient's initial oral request and the writing of a prescription under § 2501A through § 2518A of this Chapter. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription under § 2501A through § 2518A of this Chapter.

(b) The patient's initial oral request shall automatically expire after 90 days if a prescription is not written pursuant to § 2501A through § 2518 of this Chapter during that time. If the initial oral request has expired a prescription shall not be written based on that initial oral request. However, the patient may make a subsequent initial oral request.

§ 2512A. Medical record documentation requirements.

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

(a) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(b) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

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

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

(e) A report of the outcome and determinations made during counseling, if performed;

(f) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request pursuant to § 2509A of this Chapter; and

(g) A note by the attending physician indicating that all requirements of § 2501A through § 2518A of this Chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

§ 2513A. Residency requirement.

Only requests made by Delaware residents under § 2501A through § 2518A of this Chapter shall be granted. Factors demonstrating Delaware residency may include but are not limited to:

(a) Possession of a Delaware driver license;

(b) Registration to vote in Delaware;

(c) Evidence that the person owns or leases property in Delaware; or

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

§ 2514A. Reporting requirements and comprehensive guidelines.

(a)(1) The Department shall annually review a sample of records maintained pursuant to § 2501A through § 2518A of this Chapter.

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

(b) The Department shall make rules and regulations to facilitate the collection of information regarding compliance with § 2501A through § 2518A of this Chapter. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

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

(d) The Department shall also develop comprehensive guidelines designed to be a resource for health care professionals and institutions implementing § 2501A through § 2518A of this Chapter.

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

(a) No provision in a will, contract, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid.

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

§ 2516A. Insurance or annuity policies.

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

restrict or influence an individual's decision to make or rescind a request for medication to end his or her life in a humane and dignified manner pursuant to this Chapter.

(b) Any obligation under a contract existing on the effective date of this Chapter may not be conditioned on or affected by the making or rescinding of a request for medication to end his or her life in a humane and dignified manner pursuant to this Chapter.

(c) The sale, procurement, or issuance of a life, a health, or an accident insurance or annuity policy or the rate charged for a life, a health, or an accident insurance or annuity policy may not be conditioned on or affected by the making or rescinding of a request for aid in dying under this Chapter.

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

§ 2517A. Construction of Act.

Nothing in this Chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with § 2501A through § 2518A of this Chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide.

§ 2518A. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions. Except as provided in this Chapter:

(a) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with§ 2501A through § 2518A of this Chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.

(b) No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with § 2501A through § 2518A of this Chapter.

(c) No request by a patient for or provision by an attending physician of medication in good faith compliance with the provisions of § 2501A through § 2518A of this Chapter shall constitute abuse or neglect for any purpose of law or provide the sole basis for the appointment of a guardian or involuntary commitment.

(d) No health care provider shall be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under § 2501A through § 2518A of this Chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(e)(1) Notwithstanding any other provision of law, a health care facility may prohibit a health care provider from participating in § 2501A through § 2518A of this Chapter on the premises of the prohibiting facility if the prohibiting facility has notified the health care provider of the prohibiting facility's policy regarding participating in § 2501A through § 2518A of this Chapter. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in § 2501A through § 2518A of this Chapter.

(2) Notwithstanding the provisions of subsections (a) through (d) of this section, a health care facility may subject a health care provider to the sanctions stated in this paragraph if the sanctioning health care facility has notified the sanctioned provider prior to participation in § 2501A through § 2518A of this Chapter that it prohibits such participation:

a. Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the sanctioning health care facility if the sanctioned provider is a member of the sanctioning facility's medical staff and participates in § 2501A through § 2518A of this Chapter while on the premises of the sanctioning health care facility, but not including the private medical office of the sanctioned provider;

b. Termination of lease or other property contract or other non-monetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in § 2501A through § 2518A of this Chapter while on the premises of the sanctioning health care facility or on property that is owned by or under the direct control of the sanctioning health care facility; or

c. Termination of contract or other non-monetary remedies provided by contract if the sanctioned provider participates in § 2501A through § 2518A of this Chapter while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care facility. Nothing in this paragraph shall be construed to prevent:

(i) A health care provider from participating in § 2501A through § 2518A of this Chapter while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(ii) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care facility.

(3) A health care facility that imposes sanctions pursuant to paragraph (2) of this subsection must follow all due process and other procedures the sanctioning health care provider has that are related to the imposition of sanctions on a health care provider.

(4) For purposes of this subsection:

a. "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider prior to the provider's participation in § 2501A through § 2518A of this Chapter of the sanctioning health care provider's policy about participation in activities covered by § 2501A through § 2518A of this Chapter.

b. "Participate in § 2501A through § 2518A of this Chapter" means to perform the duties of an attending physician in § 2504A of this Chapter, the consulting physician function in § 2505A of this Chapter, or the counseling function in § 2506A of this Chapter. "Participate in § 2501A through § 2518A of this Chapter" does not include:

(i) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(ii) Providing information about the Delaware Death with Dignity Act to a patient upon the request of the patient;

(iii) Providing a patient, upon the request of the patient, with a referral to another physician; or

(iv) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(f) Suspension or termination of staff membership or privileges under subsection (e) of this section is not reportable under this Chapter. Action taken pursuant to § 2504A, § 2505A, or § 2506A of this Chapter shall not be the sole basis for a report of unprofessional or dishonorable conduct.

(g) No provision of § 2501A through § 2518A of this Chapter shall be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community.

§ 2520A. Claims by governmental entity for costs incurred.

Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to the provisions of § 2501A through § 2518A of this Chapter in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim.

§ 2521A. Form of the request.

A request for a medication as authorized by § 2501A through § 2518A of this Chapter shall be in substantially the following form:

REQUEST FOR MEDICATION

TO END MY LIFE IN A HUMANE

AND DIGNIFIED MANNER

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care and pain control.

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

INITIAL ONE:

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

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

_____ I have no family to inform of my decision.

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

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

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

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

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

(b) Signed this request in our presence;

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

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

_____Witness 1/Date

_____Witness 2/Date

NOTE: Neither witness shall be a relative (by blood, marriage or adoption) of the person signing this request, shall be entitled to any portion of the person's estate upon death, or shall own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated and trained as a patient advocate or ombudsperson by the Department.

_____

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

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

SYNOPSIS

This act will allow a competent terminally ill patient the ability to request medication to end the patient's life. The bill clarifies the procedures necessary for making the request, such as but not limited to: the receipt of counseling, a physician's evaluation, the passage of a waiting period, and the completion of a formally witnessed request for such medication. The bill further provides the right to rescind any request for such medication; as well as immunity for persons participating in good faith compliance with the procedures.