HOUSE BILL 814

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; PROVIDING FOR DIGNIFIED ACCESS TO DEATH FOR TERMINALLY ILL INDIVIDUALS; ENACTING THE DEATH WITH DIGNITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Death with Dignity Act".

Section 2. DEFINITIONS.--As used in the Death with Dignity Act:

A. "adult" means an individual who is eighteen years of age or older;

B. "attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease;

C. "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 make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available;

D. "consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease;

E. "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;

F. "department" means the department of health;

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

H. "informed decision" means a decision by a qualified patient to request and obtain a prescription to end the qualified patient's 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:
(1) a qualified patient's medical diagnosis;
(2) a qualified patient's prognosis;
(3) the potential risks associated with taking
the medication to be prescribed;
(4) the probable result of taking the
medication to be prescribed; and
(5) the feasible alternatives, including
comfort care, hospice care and pain control;

I. "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;

J. "patient" means a person who is under the care
of a physician;

K. "physician" means a doctor of medicine licensed
to practice medicine pursuant to Chapter 61, Article 6 NMSA
1978 or a doctor of osteopathy licensed to practice medicine
pursuant to Chapter 61, Article 10 NMSA 1978;

L. "qualified patient" means a capable adult who is
a resident of New Mexico and has satisfied the requirements of
the Death with Dignity Act in order to obtain a prescription
for medication to end the adult's life in a humane and
dignified manner; and

M. "terminal disease" means an incurable and
irreversible disease that has been medically confirmed and

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will, within reasonable medical judgment, produce death within six months.

Section 3. MEDICATION--INITIATION OF REQUEST.--

A. An adult who is capable, is a resident of New Mexico, is determined by the adult's attending physician and consulting physician to be suffering from a terminal disease and who has voluntarily expressed the adult's wish to die may make a written request for medication for the purpose of ending the adult's life in a humane and dignified manner in accordance with the Death with Dignity Act.

B. No person shall be classified as a qualified patient pursuant to the Death with Dignity Act solely because of age or disability.

Section 4. REQUEST FOR MEDICATION.--

A. A valid request for medication pursuant to the Death with Dignity Act shall be in substantially the form set forth in that act. The form shall be signed and dated by the qualified 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, is acting voluntarily and is not being coerced to sign the request.

B. At least one of the witnesses shall be a person who is not:
   (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.

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 by the facility and having the qualifications specified by rule of the department.

Section 5. 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 residency;

(3) ensure that the patient is making an informed decision by informing the patient of:

(a) the patient's medical diagnosis;

(b) the patient's prognosis;

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

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

(e) the feasible alternatives, including comfort care, hospice care and pain control;

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

(5) refer the patient for counseling, if appropriate;

(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 the Death with Dignity Act and of not taking the medication in a public place;

(8) inform the patient that the patient 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 fifteen-day waiting period;

(9) verify, immediately prior to writing the prescription for medication pursuant to the Death with Dignity Act, that the patient is making an informed decision;

(10) fulfill the medical record documentation
requirements of the Death with Dignity Act;

(11) ensure that all appropriate steps are
carried out in accordance with the Death with Dignity Act prior
to writing a prescription for medication to enable a qualified
patient to end the qualified patient's life in a humane and
dignified manner; and

(12) dispense medications directly, including
ancillary medications intended to facilitate the desired effect
to minimize the patient's discomfort; provided the attending
physician is registered as a dispensing physician pursuant to
the Death with Dignity Act and complies with any applicable
rules of the department, or with the patient's written consent:

(a) contact a pharmacist and inform the
pharmacist of the prescription; and

(b) deliver the written prescription
personally, electronically or by mail to the pharmacist, who
will dispense the medications to either the patient, the
attending physician or an expressly identified agent of the
patient.

B. Notwithstanding any other provision of law, the
attending physician may sign the patient's death certificate.

Section 6. CONSULTING PHYSICIAN'S CONFIRMATION.--Before a
patient is qualified pursuant to the Death with Dignity Act, a
consulting physician shall examine the patient and the
patient's relevant medical records and confirm, in writing, the
attending physician's diagnosis that the patient is suffering
from a terminal disease, and verify that the patient is
capable, is acting voluntarily and has made an informed
decision.

Section 7. 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, either an attending
physician or a consulting 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.

Section 8. INFORMED DECISION.--A patient shall not
receive a prescription for medication to end the patient's life
in a humane and dignified manner unless the patient has made an
informed decision as defined in the Death with Dignity Act.
Immediately prior to writing a prescription for medication
pursuant to the Death with Dignity Act, the attending physician
shall verify that the patient is making an informed decision.

Section 9. FAMILY NOTIFICATION.--The attending physician
shall recommend that the patient notify the next of kin of the
patient's request for medication pursuant to the Death with
Dignity Act. A patient who declines or is unable to notify
next of kin shall not have the patient's request denied for that reason.

Section 10. WRITTEN AND ORAL REQUESTS.--In order to receive a prescription for medication to end a patient's 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 the patient's attending physician no fewer than fifteen days after making the initial oral request. At the time the qualified patient makes the patient's second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

Section 11. RIGHT TO RESCIND REQUEST.--A qualified patient may rescind the patient's request at any time and in any manner without regard to the patient's mental state. No prescription for medication pursuant to the Death with Dignity Act may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

Section 12. WAITING PERIODS.--No fewer than fifteen days shall elapse between the patient's initial oral request and the writing of a prescription pursuant to the Death with Dignity Act. No fewer than forty-eight hours shall elapse between the patient's written request and the writing of a prescription pursuant to that act.

Section 13. 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 the patient's life in a humane and dignified manner;

B. all written requests by a patient for medication to end the patient's life in a humane and dignified manner;

C. the attending physician's diagnosis, prognosis and determination that the patient is capable, acting voluntarily and has made an informed decision;

D. the consulting physician's diagnosis, prognosis and verification that the patient is capable, 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 the patient's request at the time of the patient's second oral request as required by the Death with Dignity Act; and

G. a note by the attending physician indicating that all requirements of the Death with Dignity Act have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

Section 14. RESIDENCY REQUIREMENT.--Only requests made by New Mexico residents pursuant to the Death with Dignity Act shall be granted. Factors demonstrating New Mexico residency include:

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A. possession of a New Mexico driver's license;
B. registration to vote in the state;
C. evidence that the person owns or leases property in the state; or
D. filing of a New Mexico tax return for the most recent taxable year.

Section 15. REPORTING REQUIREMENTS.--

A. The department shall annually review a sample of records maintained pursuant to the Death with Dignity Act.
B. The department shall require a health care provider upon dispensing medication pursuant to the Death with Dignity Act to file a copy of the dispensing record with the department.
C. The department shall adopt rules to facilitate the collection of information regarding compliance with the Death with Dignity Act. 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.
D. The department shall generate and make available to the public an annual statistical report of information collected pursuant to this section.

Section 16. EFFECT ON CONSTRUCTION OF WILLS--CONTRACTS--STATUTES.--

A. No provision in a contract, will 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 the person's life in a humane and dignified manner shall be valid.

B. No obligation owing under an existing contract shall be conditioned or affected by the making or rescinding of a request by a person for medication to end the person's life in a humane and dignified manner.

Section 17. INSURANCE OR ANNUITY POLICIES.--The sale, procurement or issuance of a life, health or accident insurance or annuity policy or the rate charged for a policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication to end the person's life in a humane and dignified manner. A qualified patient's act of ingesting medication to end the qualified patient's life in a humane and dignified manner shall not have an effect upon a life, health or accident insurance or annuity policy purchased, renewed or entered into after the effective date of the Death with Dignity Act.

Section 18. CONSTRUCTION OF ACT.--Nothing in the Death with Dignity Act 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 the Death with Dignity Act shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide under the law.
Section 19. IMMUNITIES AND LIABILITIES--BASIS FOR
PROHIBITING HEALTH CARE PROVIDER FROM PARTICIPATION--
NOTIFICATION--PERMISSIBLE SANCTIONS.--

A. Except as otherwise provided in the Death with
Dignity Act:

(1) a person shall not be subject to civil or
criminal liability or professional disciplinary action for
participating in good-faith compliance with the Death with
Dignity Act, including being present when a qualified patient
takes the prescribed medication to end the patient's life in a
humane and dignified manner;

(2) a professional organization or association
or health care provider may not 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 the Death
with Dignity Act;

(3) a request by a patient for or provision by
an attending physician of medication in good-faith compliance
with the provisions of the Death with Dignity Act shall not
constitute neglect for any purpose of law or provide the sole
basis for the appointment of a guardian or conservator; and

(4) a health care provider shall not 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 the patient's life in a humane and
dignified manner; provided that if a health care provider is
unable or unwilling to carry out a patient's request pursuant
to the Death with Dignity Act, and the patient transfers the
patient's 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.

B. A health care provider may:

(1) prohibit another health care provider from
participating in the Death with Dignity Act on the premises of
the prohibiting provider if the prohibiting provider has
notified the other health care provider of the prohibiting
provider's policy against participating in activities
authorized by the Death with Dignity Act; however, nothing in
this paragraph prevents a health care provider that is not the
prohibiting health care provider from providing health care
services to a patient that do not constitute participation in
the Death with Dignity Act; and

(2) subject another health care provider to
the sanctions stated in this paragraph if the sanctioning
health care provider has notified the sanctioned health care
provider prior to the sanctioned health care provider's
participation in activities authorized pursuant to the Death
with Dignity Act that the sanctioning health care provider may

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prohibit participation in activities authorized in that act and may provide the following sanctions:

(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 provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in activities authorized by the Death with Dignity Act while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(b) termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in activities authorized by the Death with Dignity Act while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(c) termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in activities authorized by the Death with Dignity Act while acting in the course and scope of the sanctioned provider's capacity as an employee or independent professional.
contractor of the sanctioning health care provider; provided
that nothing in this subparagraph shall be construed to
prevent: 1) a health care provider from participating in the
activities authorized by the Death with Dignity Act while
acting outside the course and scope of the provider's capacity
as an employee or independent contractor; or 2) a patient from
contracting with the patient's 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 provider.

C. A health care provider that imposes sanctions
pursuant to this section shall follow all due process and other
procedures that the sanctioning health care provider may have
that are related to the imposition of sanctions on another
health care provider.

D. As used in this section:

   (1) "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
activities authorized by the Death with Dignity Act of the
sanctioning health care provider's policy about participation
in activities covered by that act; and

   (2) "participate in activities authorized by
the Death with Dignity Act" means to perform the duties of an
attending physician, the functions of a consulting physician or
the counseling function described in that act; "participate in activities authorized by the Death with Dignity Act" does not include:

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

(b) providing information about the Death with Dignity Act to a patient upon the request of the patient;

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

(d) a patient contracting with the patient's 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.

E. Suspension or termination of staff membership or privileges under this section shall not be the sole basis for a report of unprofessional or dishonorable conduct pursuant to the provisions of Chapter 61, Article 6 NMSA 1978 or Chapter 61, Article 10 NMSA 1978.

F. The Death with Dignity Act shall not be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community.
Section 20. LIABILITIES.---

A. A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a third degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

B. A person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient's life, or to destroy a rescission of such a request, is guilty of a third degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

C. The Death with Dignity Act shall not be construed to limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by a person.

D. The penalties in the Death with Dignity Act do not preclude criminal penalties applicable under other law for conduct that is inconsistent with the provisions of that act.

Section 21. CLAIMS BY GOVERNMENTAL ENTITIES FOR COSTS INCURRED.---A governmental entity that incurs costs resulting from a person terminating the person's life pursuant to the provisions of the Death with Dignity Act in a public place shall have a claim against the estate of the person to recover those costs and reasonable attorney fees related to enforcing.
the claim.

Section 22. FORM OF THE REQUEST.--

A. The department shall create forms necessary to carry out the purposes of the Death with Dignity Act.

B. A request for a medication shall include:

(1) a heading noting that the form is for medication to end the life of the patient in a dignified and humane manner;

(2) a statement that the person making the request is an adult of sound mind;

(3) a statement of the medical conditions and prognosis of the patient;

(4) a statement that the patient has been fully informed of the patient's 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;

(5) a request that the patient's attending physician prescribe medication that is intended to end the patient's life in a humane and dignified manner;

(6) a place for the patient to indicate whether:

(a) the patient's family or next of kin has been informed of the patient's decision and has taken the opinions of the family or next of kin into consideration;
(b) the patient has decided not to inform the patient's family or next of kin; or
(c) the patient has no family or next of kin;

(7) a statement that the patient is aware that the patient has the right to rescind a request for medication at any time;

(8) statements that the patient understands:
(a) the full import of this request and the patient expects to die when the patient takes the medication to be prescribed; and
(b) that although most deaths occur within three hours, the patient's death may take longer and the patient's physician has counseled the patient about this possibility;

(9) the patient makes the request for medication voluntarily and without reservation, and the patient accepts full moral responsibility for the patient's actions;

(10) a signature and date line for the patient to complete; and

(11) signature lines for two witnesses and a method for the witnesses to affirm that:
(a) the patient signing the request: 1) is personally known to the witnesses or has provided proof of identity; 2) signed this request in the presence of the

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witnesses; 3) appears to be of sound mind and not under duress, fraud or undue influence; and (4) is not a patient for whom either of the witnesses is an attending physician;

(b) neither witness: 1) is a relative by blood, marriage or adoption of the person signing the request; 2) is entitled to any portion of the person's estate upon death; and 3) is not an owner, operator or employee of a health care facility where the person is a patient or resident; and

(c) if the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Section 23. PENALTIES.--

A. A person without authorization from a patient requesting medication pursuant to the Death with Dignity Act, who willfully alters, forges, conceals or destroys an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting a patient's desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration that hastens the death of the patient is guilty of a third degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

B. A person without authorization from a patient
who willfully alters, forges, conceals or destroys an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting the patient's desires and interests with the intent or effect of affecting a health care decision is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978.