F I S C A L I M P A C T R E P O R T

SPONSOR Giannini **ORIGINAL DATE** 3/6/09 **LAST UPDATED** **HB** 814

SHORT TITLE Death With Dignity Act **SB**

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$0.1 minimal			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Office of the Attorney General (AG)
Governor's Commission on Disability (GCD)
New Mexico Corrections Department (NMCD)
Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 814, the Death With Dignity Act, provides for dignified access to death for capable adults who are terminally ill that are requesting life ending medication from their physicians.

Section 2; defines terms in the act including "capable", "informed decision", "qualified patient" and "terminal disease".

Section 3; provides that a capable adult who is a New Mexico resident suffering from a terminal disease and who has voluntarily expressed the wish to die, may make a written request for medication for the purpose of ending their life.

Section 4; defines the requirements of the request and witnesses.

Section 5; defines the duties and responsibilities of the attending physician.

Section 6; requires that a consulting physician must examine the patient and the patient's medical records and confirm, in writing, the attending physician's diagnosis.

Section 7; requires that the attending physician or the consulting physician refer the patient to counseling if the physician believes that the patient may be suffering from a psychological or psychiatric disorder, or depression causing impaired judgment.

Section 8; requires that the patient make an informed decision.

Section 9; requires that the attending physician recommend that the patient notify their next of kin of the request for end of life medication.

Section 10; allows the patient to make an oral and written request to the attending physician.

Section 11; allows the patient to rescind the request.

Section 12; establishes a 15-day waiting period between oral requests and the writing of a prescription, and a 48-hour waiting period between written requests and the writing of a prescription.

Section 13; requires all written and oral requests to be documented with the attending physician's and the consulting physician's diagnosis, prognosis and determination that the patient is capable, acting voluntarily, and has made an informed decision; any counseling report, offer to rescind the request, and confirmation that all requirements of the act have been met; and, a notation of the medication prescribed.

Section 14; the act has a New Mexico residency requirement.

Section 15; requires DOH to adopt rules regarding the collection of information regarding compliance with the act and to annually review a sample of records maintained pursuant to the act.

Section 16; provides that an adult's right to make or rescind a request for end of life medication shall not affect any contract, will or other obligation.

Section 17; addresses the impact of the act on life, health, accident insurance or annuity policies.

Section 18; clarifies that the act does not authorize lethal injection, mercy killing or active euthanasia.

Section 19; provides that persons participating in good-faith are not subject to civil, criminal, or professional disciplinary action; a request for end of life medication may not be the sole basis for the appointment of a guardian or conservator; allows health care providers the right to refuse to participate in the act on their premises; and, with appropriate notice, to impose sanctions for those who do participate.

Section 20; imposes criminal penalties upon a person, who willfully alters or forges a request for medication, coerces or exerts undue influence on a person to request medication for the purpose of ending the patient's life, or conceals or destroys a rescission of that request.

Section 21; allows a governmental entity to seek attorney fees and costs related to enforcing a claim against a person who terminates their life in a public place.

Section 22; requires DOH to create forms to carry out the purposes of the act.

Section 23; imposes criminal penalties upon persons who, without authorization from a patient requesting life-ending medication, interfere with health care decisions or cause the withholding or withdrawal of life sustaining procedures.

FISCAL IMPLICATIONS

HB 814 would impact DOH staff and resources to create and disseminate forms and regulations related to the act.

The bill provides that a governmental entity that incurs costs resulting from a person terminating their life in a public place shall have a claim against the estate of that person to recover those costs and reasonable attorney fees.

NMCD notes that the bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department's inmate population or probation/parole caseloads.

SIGNIFICANT ISSUES

DFA reports that the bill provides that actions taken in accordance with that act shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide under the law. The act would also remove both civil and criminal liability for a person who "participate in good faith compliance with" the act. HB 814 prohibits any professional organization or association or health care provider from subjecting a person to censure, discipline, loss of license or loss of membership or privileges or any other penalty for participating or refusing to participate in good faith compliance with the act. The proposed act also would require that neither a request by a patient for medication nor the provision of an attending physician of medication in good faith compliance with the act shall constitute neglect for any purpose of the law, nor shall it constitute a basis for the appointment of a guardian or conservator.

PERFORMANCE IMPLICATIONS

The AOC and AG report that two states, Washington and Oregon, allow physician assisted suicide. HB 814 appears to be based upon Oregon's Death With Dignity Act. On October 27, 1997 Oregon enacted the Death with Dignity Act which allows terminally-ill Oregonians to end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose. The Oregon Death with Dignity Act requires the Oregon Department of Human Services to collect information about the patients and physicians who participate in the Act, and publish an annual statistical report. The Oregon law has since been challenged and upheld in the U.S. Supreme Court.

HPC notes that Washington State will become the second state to allow physicians to prescribe lethal doses of medication for terminally ill patients seeking to hasten their deaths. The Death

with Dignity Act will go into effect March 5. It allows terminally ill adults seeking to end their life to request lethal doses of medication from physicians. They must be Washington residents and have less than six months to live.

ADMINISTRATIVE IMPLICATIONS

The bill directs the DOH to adopt rules regarding compliance and to review medical records to ensure compliance with documentation requirements.

TECHNICAL ISSUES

DOH notes that Section 5A (12) only permits a physician to administer medications to a patient if "registered as a dispensing physician…of the Department." This "registration" requirement may have been intended to refer to the provision in Section 15 that a provider "upon dispensing medication…file a copy of the dispensing record with the department." However, by the terms of Section 15 B, the dispensing record wouldn't be submitted until after dispensing, whereas the requirement at Section 5A (12) would require a physician to register before dispensing.

DOH further notes if "registration" refers to something other than the submission requirements at Section 15, then the act needs to identify the entity with whom the dispensing physician should register. If the intention of the bill is to permit DOH to register dispensing physicians by rule, then the bill should be clarified. Failure to clarify this section could raise questions regarding physicians' potential liability. Any potential for liability could in turn impact physicians' willingness to dispense medications under the act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Patients suffering from terminal diseases will not have the legal right to die at a time and place of their own choosing.

AHO/mt