SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 252

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT
RELATING TO HEALTH CARE; ENACTING THE END OF LIFE OPTIONS ACT;
amending a section of chapter 30, article 2 NMSA 1978 to establish rights, procedures and protections relating to medical aid in dying; removing criminal liability for health care providers who provide assistance pursuant to the End of Life Options Act.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "End of Life Options Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the End of Life Options Act:

A. "adult" means a resident of the state who is eighteen years of age or older;
B. "capacity" means an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health care decision. A determination of capacity shall be made only according to professional standards of care and the provisions of Section 24-7A-11 NMSA 1978 of the Uniform Health-Care Decisions Act;

C. "health care provider" means a physician licensed pursuant to the Medical Practice Act or an osteopathic physician licensed pursuant to the Osteopathic Medicine Act who provides treatment to a patient;

D. "licensed mental health professional" means a state-licensed psychiatrist, psychologist, master social worker, psychiatric nurse practitioner or licensed professional clinical mental health counselor;

E. "medical aid in dying" means the medical practice wherein a health care provider prescribes medication to an individual who may self-administer that medication to bring about the individual's death;

F. "self-administer" means taking an affirmative, voluntary physical action to give oneself a pharmaceutical substance; and

G. "terminal illness" means a disease or condition that is incurable and irreversible and that, in accordance with
reasonable medical judgment, will result in death within six months.

SECTION 3. [NEW MATERIAL] MEDICAL AID IN DYING--HEALTH CARE PROVIDER DETERMINATION.--A health care provider may provide medical aid in dying to an adult patient if the health care provider:

A. determines that the patient:
   (1) has capacity;
   (2) has a terminal illness;
   (3) has voluntarily made the request for medical aid in dying; and
   (4) has the ability to self-administer the medical aid in dying medication;

B. treats the patient in accordance with accepted medical standards of care;

C. determines that the patient is making an informed decision by discussing with the patient:
   (1) the patient's medical diagnosis and prognosis;
   (2) the potential risks associated with taking the medical aid in dying medication that the patient has requested the health care provider to prescribe;
   (3) the probable result of taking the medical aid in dying medication to be prescribed;
   (4) the patient's option of choosing to obtain
the medical aid in dying medication and not taking it; and

(5) the feasible alternatives to medical aid in dying or additional treatment opportunities, including care focusing on palliating symptoms and reducing suffering; and

D. believes in good faith that the patient's request does not arise from coercion or undue influence by another person.

SECTION 4. [NEW MATERIAL] CONSULTATION.--

A. Except for a patient enrolled in a hospice program, a consulting health care provider shall examine the patient and the patient's relevant medical records and confirm, in writing, the referring health care provider's diagnosis that the patient is suffering from a terminal illness and verify that the patient has capacity, is acting voluntarily and has made an informed decision.

B. If, in the opinion of the referring health care provider, consulting health care provider or a hospice medical director, a patient has a mental health disorder or an intellectual disability causing impaired judgment, the health care provider shall refer the patient for counseling by a licensed mental health professional. The counseling shall include one or more in-person visits between the patient and the licensed mental health professional for the purpose of determining that the patient has capacity and does not have a mental health disorder or an intellectual disability causing
impaired judgment. If a patient has been referred for
counseling pursuant to this subsection, medication to end a
patient's life shall not be prescribed until the licensed
mental health professional performing counseling has determined
that the patient does not have impaired judgment.

SECTION 5. [NEW MATERIAL] MEDICAL AID IN DYING--REQUEST--
FORM.--A patient seeking medical aid in dying shall make a
request to the patient's health care provider for medical aid
in dying using substantially the following form, which shall be
made part of the patient's medical record:

"REQUEST FOR MEDICATION TO END MY LIFE IN A PEACEFUL MANNER

I, ______________________________________________, am an
adult of sound mind.

I am suffering from a terminal illness, which is a disease
or condition that is incurable and irreversible and that,
according to reasonable medical judgment, will result in death
within six months. My health care provider has determined that
the illness is in its terminal phase. _____ Patient Initials.

I have been fully informed of my diagnosis and prognosis,
the nature of the medical aid in dying medication to be
prescribed and potential associated risks, the expected result
and the feasible alternatives or additional treatment
opportunities, including palliating symptoms and reducing
suffering. _____ Patient Initials.

I request that my health care provider prescribe
medication that will end my life in a peaceful manner if I choose to take it, and I authorize my health care provider to contact a willing pharmacist about my request. _____ Patient Initials.

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

I understand the full import of this request and I expect to die if I take the medical aid in dying medication prescribed. I further understand that although most deaths occur within three hours, my death may take longer. My health care provider has counseled me about this possibility. _____ Patient Initials.

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

Signed: ________________________________

Date: _______________ Time: _______________

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; and

D. is not a patient for whom either of us is a health care provider.
Witness 1:  
Signature: ____________________  ____________________

Printed Name: ____________________  ____________________

Relationship to Patient: ____________________  ____________________

Date: ____________________  ____________________

NOTE: No more than one witness shall be a relative by blood, marriage or adoption of the person signing this request. No more that one witness shall own, operate or be employed at a health care facility where the person signing that request is a patient or resident.

SECTION 6. [NEW MATERIAL] WAITING PERIOD.--A prescription for aid in dying medication shall:

A. not be filled until forty-eight hours after the request form for medical aid in dying is signed; and

B. indicate the date and time that the request form for medical aid in dying was signed to ensure that the prescription is not filled until forty-eight hours after the request form for medical aid in dying is signed.

SECTION 7. [NEW MATERIAL] MEDICAL AID IN DYING--RIGHT TO KNOW.--A health care provider shall inform terminally ill patients of all options related to the patients' care that are legally available to terminally ill patients and that meet or exceed the medical standards of care for end of life medical care.
SECTION 8. [NEW MATERIAL] DEATH CERTIFICATE--CAUSE OF DEATH.--The cause of death listed on an individual's death certificate who is deceased pursuant to self-administration of medical aid in dying medication pursuant to the End of Life Options Act shall be the individual's underlying terminal illness.

SECTION 9. [NEW MATERIAL] MEDICAL AID IN DYING--EFFECT ON WILLS--CONTRACTS--LIFE INSURANCE--ANNUITIES.--

A. A provision in a contract, will or other agreement, whether written or oral, or life insurance policy or annuity, to the extent the provision would affect whether a person may make or rescind a request for medical aid in dying medication, is not valid.

B. An obligation owing under any currently existing contract may not be conditioned or affected by an individual making or rescinding a request for medical aid in dying medication.

SECTION 10. [NEW MATERIAL] STANDARD OF CARE--PATIENT AND PROVIDER SELF-DETERMINATION.--

A. A licensed health care provider who acts with reasonable care in compliance with the provisions of Section 3 of the End of Life Options Act shall not be subject to civil liability or professional disciplinary action for such action. A person who is not a licensed health care provider who acts in good faith to comply with the provisions of Section 3 of the
End of Life Options Act shall not be subject to civil liability for such action. Any person who complies with the provisions of Section 3 of the End of Life Options Act shall not be prosecuted pursuant to Section 30-2-4 NMSA 1978.

B. A person that declines for any reason to participate in actions permitted pursuant to Section 3 of the End of Life Options Act shall not be subject to civil or criminal liability or professional disciplinary action for such action.

C. A request by a terminally ill individual for medical aid in dying medication in accordance with the provisions of the End of Life Options Act shall not constitute a basis per se for a finding that the requesting terminally ill individual lacks capacity.

D. A request by a terminally ill individual for or provision by a health care provider of medical aid in dying medication in good faith compliance with the provisions of the End of Life Options Act in accordance with medical standards of care does not constitute neglect or adult abuse for any purpose of law.

E. A health care provider may choose whether to participate in providing medical aid in dying medication to an individual pursuant to the End of Life Options Act.

F. If a health care provider is unable or unwilling to carry out a patient's request for medical aid in dying.
pursuant to the End of Life Options Act and the patient transfers care to a new health care provider, the patient's prior health care provider shall transfer, upon the patient's request, a copy of the patient's relevant medical records to the new health care provider.

G. Neither the state nor any person shall subject any health care provider to discipline, suspension, loss of license, loss of privilege or other penalty for actions taken in good faith reliance on the provisions of the End of Life Options Act or refusals to act under the End of Life Options Act.

SECTION 11. Section 30-2-4 NMSA 1978 (being Laws 1963, Chapter 303, Section 2-5) is amended to read:

"30-2-4. ASSISTING SUICIDE.--

A. Assisting suicide consists of deliberately aiding another in the taking of [his] the person's own life [Whoever] unless the person aiding another in the taking of the person's own life is a person acting pursuant to the End of Life Options Act.

B. A person who is not acting pursuant to the End of Life Options Act and who commits assisting suicide is guilty of a fourth degree felony."