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SENATE BILL 153

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Elizabeth "Liz" Stefanics and Deborah A. Armstrong

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ELIZABETH WHITEFIELD 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; ESTABLISHING REPORTING REQUIREMENTS; REMOVING CRIMINAL LIABILITY FOR PROVIDING ASSISTANCE PURSUANT TO THE ELIZABETH WHITEFIELD 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 9 of this act may be cited as the "Elizabeth Whitefield End of Life Options Act".

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

A. "adult" means a resident of the state who is

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1 eighteen years of age or older;

2 B. "capacity" means an individual's ability to
3 understand and appreciate health care options available to that
4 individual, including significant benefits and risks, and to
5 make and communicate an informed health care decision. A
6 determination of capacity shall be made only according to
7 professional standards of care and the provisions of Section
8 24-7A-11 NMSA 1978;

9 C. "health care entity" means an entity, other than
10 an individual, that is licensed to provide any form of health
11 care in the state, including a hospital; clinic; hospice
12 provider; home health agency; long-term care agency; pharmacy;
13 group medical practice; managed care organization; medical
14 home; or any similar entity;

15 D. "health care provider" means any of the
16 following individuals authorized pursuant to the New Mexico
17 Drug, Device and Cosmetic Act to prescribe a medication to be
18 used in medical aid in dying:

19 (1) a physician licensed pursuant to the
20 Medical Practice Act;

21 (2) an osteopathic physician licensed pursuant
22 to the Osteopathic Medicine Act;

23 (3) a nurse licensed in advanced practice
24 pursuant to the Nursing Practice Act; or

25 (4) a physician assistant licensed pursuant to

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1 the Physician Assistant Act or the Osteopathic Medicine Act;

2 E. "medical aid in dying" means the medical
3 practice wherein a health care provider prescribes medication
4 to a qualified individual who may self-administer that
5 medication to bring about a peaceful death;

6 F. "mental health professional" means a state-
7 licensed psychiatrist, psychologist, master social worker,
8 psychiatric nurse practitioner or professional clinical mental
9 health counselor;

10 G. "prescribing health care provider" means a
11 health care provider who prescribes medical aid in dying
12 medication;

13 H. "qualified individual" means an individual who
14 has met the requirements of Section 3 of the Elizabeth
15 Whitefield End of Life Options Act;

16 I. "self-administer" means taking an affirmative,
17 conscious, voluntary action to give oneself a pharmaceutical
18 substance;

19 J. "telemedicine" means the remote consultation,
20 diagnosis or treatment of patients by means of
21 telecommunications technology; and

22 K. "terminal illness" means a disease or condition
23 that is incurable and irreversible and that, in accordance with
24 reasonable medical judgment, will result in death within the
25 foreseeable future.

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1 SECTION 3. [NEW MATERIAL] MEDICAL AID IN DYING--

2 PRESCRIBING HEALTH CARE PROVIDER DETERMINATION--FORM.--A

3 prescribing health care provider shall not provide a
4 prescription for medical aid in dying medication to an
5 individual until the prescribing health care provider has:

6 A. determined that the individual has:

7 (1) capacity;

8 (2) a terminal illness;

9 (3) voluntarily made the request for medical
10 aid in dying; and

11 (4) the ability to self-administer the medical
12 aid in dying medication;

13 B. provided medical care to the individual in
14 accordance with accepted medical standards of care;

15 C. determined that the individual is making an
16 informed decision after discussing with the individual the:

17 (1) individual's medical diagnosis and
18 prognosis;

19 (2) potential risks associated with self-
20 administering the medical aid in dying medication that the
21 individual has requested the health care provider to prescribe;

22 (3) probable result of self-administering the
23 medical aid in dying medication to be prescribed;

24 (4) individual's option of choosing to obtain
25 the medical aid in dying medication and then deciding not to

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1 use it; and

2 (5) feasible alternative, concurrent or
3 additional treatment opportunities, including hospice care and
4 palliative care focused on relieving symptoms and reducing
5 suffering;

6 D. determined in good faith that the individual's
7 request does not arise from coercion or undue influence by
8 another person;

9 E. noted in the individual's health record the
10 prescribing health care provider's determination that the
11 individual qualifies to receive medical aid in dying;

12 F. after the requirements set forth in Subsections
13 A through E of this section have been fulfilled, provided
14 substantially the following form to the individual and enters
15 the form into the individual's health record after the form has
16 been completed with all of the required signatures and
17 initials:

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

20 I, _____, am an
21 adult of sound mind.

22 I am suffering from a terminal illness, which is a disease
23 or condition that is incurable and irreversible and that,
24 according to reasonable medical judgment, will result in death
25 within the foreseeable future. _____ (Patient Initials)

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1 I have been fully informed of my diagnosis and prognosis,
2 the nature of the medical aid in dying medication to be
3 prescribed and the potential associated risks, the expected
4 result and the feasible alternative, concurrent or additional
5 treatment opportunities, including hospice care and palliative
6 care focused on relieving symptoms and reducing suffering.

7 _____ (Patient Initials)

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

12 (Patient Initials)

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

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

20 (Patient Initials)

21 I make this request voluntarily and without reservation.

22 Signed: _____

23 Date: _____ Time: _____

24 DECLARATION OF WITNESSES:

25 We declare that the person signing this request:

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1 A. is personally known to us or has provided proof
2 of identity;

3 B. signed this request in our presence;

4 C. appears to be of sound mind and not under
5 duress, fraud or undue influence; and

6 D. is not a patient for whom either of us is a
7 health care provider.

8	Witness 1:	Witness 2:
9	Signature: _____	_____
10	Printed Name: _____	_____
11	Relationship	
12	to Patient: _____	_____
13	Date: _____	_____.

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

19 G. affirmed that the individual is:
20 (1) enrolled in a medicare-certified hospice
21 program; or
22 (2) eligible to receive medical aid in dying
23 after the prescribing health care provider has referred the
24 individual to a consulting health care provider and the
25 consulting health care provider has:

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1 (a) examined the individual, in person
2 or using telemedicine;

3 (b) reviewed the individual's relevant
4 medical records; and

5 (c) confirmed, in writing, the
6 prescribing health care provider's prognosis that the
7 individual is suffering from a terminal illness.

8 SECTION 4. [NEW MATERIAL] DETERMINING CAPACITY.--If an
9 individual has a history of a mental health disorder or an
10 intellectual disability, or if, in the opinion of the
11 prescribing health care provider or consulting health care
12 provider, an individual has a mental health disorder or an
13 intellectual disability causing impaired judgment with regard
14 to end of life medical decision making, the individual shall
15 not be determined to have capacity to make end of life
16 decisions until the:

17 A. health care provider refers the individual for
18 evaluation by a mental health professional; and

19 B. mental health professional determines the
20 individual to have capacity to make end of life decisions after
21 evaluating the individual during one or more visits with the
22 individual, in person or through telemedicine.

23 SECTION 5. [NEW MATERIAL] WAITING PERIOD.--A prescription
24 for medical aid in dying medication shall:

25 A. not be filled until forty-eight hours after the

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1 prescription for medical aid in dying medication has been
2 written; and

3 B. indicate the date and time that the prescription
4 for medical aid in dying medication was written and indicate
5 the first allowable date and time when it may be filled.

6 SECTION 6. [NEW MATERIAL] MEDICAL AID IN DYING--RIGHT TO
7 KNOW.--A health care provider shall inform a terminally ill
8 patient of all options related to the patient's care that are
9 legally available to terminally ill patients that meet the
10 medical standards of care for end of life care.

11 SECTION 7. [NEW MATERIAL] DEATH CERTIFICATE--CAUSE OF
12 DEATH.--The cause of death of a qualified individual who is
13 deceased pursuant to self-administration of medical aid in
14 dying medication pursuant to the Elizabeth Whitefield End of
15 Life Options Act shall be the qualified individual's underlying
16 terminal illness.

17 SECTION 8. [NEW MATERIAL] MEDICAL AID IN DYING--EFFECT ON
18 WILLS--CONTRACTS--LIFE INSURANCE--ANNUITIES.--

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

24 B. An obligation owing under any currently existing
25 contract shall not be conditioned or affected by an individual

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1 making or rescinding a request for medical aid in dying.

2 SECTION 9. [NEW MATERIAL] IMMUNITIES--CONSCIENCE-BASED
3 DECISIONS.--

4 A. A person shall not be subject to civil or
5 criminal liability or professional disciplinary action for:

6 (1) participating, or refusing to participate,
7 in medical aid in dying in good faith compliance with the
8 provisions of the Elizabeth Whitefield End of Life Options Act;
9 or

10 (2) being present when a qualified patient
11 takes the prescribed medical aid in dying medication to end the
12 qualified individual's life in accordance with the provisions
13 of the Elizabeth Whitefield End of Life Options Act.

14 B. A health care entity, professional organization
15 or association or a health care provider shall not subject a
16 person to censure, discipline, suspension, loss of license,
17 loss of privileges, loss of membership or other penalty for
18 participating, or refusing to participate, in the provision of
19 medical aid in dying in good faith compliance with the
20 provisions of the Elizabeth Whitefield End of Life Options Act.

21 C. A patient's request for, or provision by a
22 prescribing health care provider of, medical aid in dying
23 medication in good faith compliance with this section does not
24 constitute neglect for any purpose of law or provide the basis
25 for the appointment of a guardian or conservator.

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1 D. No health care provider who objects for reasons
2 of conscience to participating in the provision of medical aid
3 in dying shall be required to participate in the provision of
4 medical aid in dying under any circumstance. If a health care
5 provider is unable or unwilling to carry out an individual's
6 request pursuant to the Elizabeth Whitefield End of Life
7 Options Act, that health care provider shall so inform the
8 individual and refer the individual to a health care provider
9 who is able and willing to carry out the individual's request
10 or to another individual or entity to assist the requesting
11 individual in seeking medical aid in dying. If the health care
12 provider transfers the individual's care to a new health care
13 provider, the prior health care provider shall transfer, upon
14 request, a copy of the individual's relevant medical records to
15 the new health care provider.

16 E. A health care entity shall not forbid or
17 otherwise sanction a health care provider who provides medical
18 aid in dying in accordance with the Elizabeth Whitefield End of
19 Life Options Act off the premises of the health care entity or
20 when the health care provider is not acting within the course
21 and scope of the health care provider's employment with the
22 health care entity.

23 F. A health care entity may prohibit a health care
24 provider from participating in medical aid in dying on the
25 premises of the prohibiting health care entity only if the

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1 health care entity has given written notice to the health care
2 provider of the prohibiting entity's written policy forbidding
3 participation in medical aid in dying and the health care
4 provider participates in medical aid in dying:

5 (1) on the premises of the health care entity;

6 or

7 (2) within the course and scope of the health
8 care provider's employment for the health care entity.

9 G. Nothing in this section shall be construed to
10 prevent:

11 (1) a health care provider from participating
12 in medical aid in dying while the health care provider is
13 acting outside the health care entity's premises or outside the
14 course and scope of the health care provider's capacity as an
15 employee; or

16 (2) an individual who seeks medical aid in
17 dying from contracting with the individual's prescribing health
18 care provider or consulting health care provider to act outside
19 the course and scope of the provider's affiliation with the
20 sanctioning health care entity.

21 H. A health care entity that imposes sanctions on a
22 health care provider pursuant to the Elizabeth Whitefield End
23 of Life Options Act shall act reasonably, both substantively
24 and procedurally, and shall be neither arbitrary nor capricious
25 in its imposition of sanctions.

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1 I. A sanction imposed by a health care entity
2 against a health care provider pursuant to this section shall
3 not be considered the imposition of a sanction based on quality
4 of care.

5 J. Participating in medical aid in dying shall not
6 be the basis for a report of unprofessional conduct.

7 K. A health care entity that prohibits medical aid
8 in dying shall accurately and clearly articulate this in an
9 appropriate location on any website maintained by the entity
10 and in any appropriate materials given to patients to whom the
11 health care entity provides health care in words to be
12 determined by the health care entity.

13 SECTION 10. A new section of the Public Health Act is
14 enacted to read:

15 "[NEW MATERIAL] REPORTING--MEDICAL AID IN DYING.--

16 A. A health care provider who prescribes medical
17 aid in dying to a qualified individual in accordance with the
18 provisions of the Elizabeth Whitefield End of Life Options Act
19 shall provide, in accordance with department rules, a report of
20 that provider's participation. The department shall adopt and
21 promulgate rules that establish the time frames and forms for
22 reporting pursuant to this section and shall limit the
23 reporting of data relating to qualified individuals who
24 received prescriptions for medical aid in dying medication to
25 the following:

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- 1 (1) the qualified individual's age at death;
- 2 (2) the qualified individual's race and
- 3 ethnicity;
- 4 (3) the qualified individual's sex;
- 5 (4) whether the qualified individual was
- 6 enrolled in hospice at the time of death;
- 7 (5) the qualified individual's underlying
- 8 medical condition; and
- 9 (6) whether the qualified individual self-
- 10 administered the medical aid in dying medication and, if so,
- 11 the date of self-administration.

12 B. The department shall promulgate an annual
13 statistical report, containing aggregated data, on the
14 information it collects pursuant to Subsection A of this
15 section on the total number of medical aid in dying medication
16 prescriptions written statewide and on the number of health
17 care providers who have issued prescriptions for medical aid in
18 dying medication during that year. Data reported pursuant to
19 this subsection shall not contain individually identifiable
20 health information and are exempt from disclosure pursuant to
21 the Inspection of Public Records Act.

22 C. As used in this section:

- 23 (1) "health care provider" means an individual
24 authorized pursuant to the Elizabeth Whitefield End of Life
25 Options Act to prescribe medical aid in dying;

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1 (2) "medical aid in dying" means the medical
2 practice wherein a health care provider prescribes medication
3 to a qualified individual who may self-administer that
4 medication to end that individual's life in accordance with the
5 provisions of the Elizabeth Whitefield End of Life Options Act;
6 and

7 (3) "qualified individual" means an individual
8 who has met the requirements to receive medical aid in dying
9 pursuant to the provisions of the Elizabeth Whitefield End of
10 Life Options Act."

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

13 "30-2-4. ASSISTING SUICIDE.--

14 A. Assisting suicide consists of deliberately
15 aiding another in the taking of [his] the person's own life,
16 [Whoever] unless the person aiding another in the taking of the
17 person's own life is a person acting in accordance with the
18 provisions of the Elizabeth Whitefield End of Life Options Act.

19 B. A person who commits assisting suicide is guilty
20 of a fourth degree felony."

21 SECTION 12. SEVERABILITY.--If any part or application of
22 the Elizabeth Whitefield End of Life Options Act is held
23 invalid, the remainder or its application to other situations
24 or persons shall not be affected.