


Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide procedures and requirements regarding the request for and dispensation of covered medications to qualified patients seeking to die in a humane and dignified manner; to define the duties of attending physicians and consulting physicians; to provide for counseling of patients and family notification; to require informed decision-making and waiting periods; to require reporting from the Department of Health; to define the effect of the act on contracts, wills, insurance, and annuity policies; to provide for immunities, liabilities, and penalties; to provide an opt-out provision for health care providers; to provide for claims by a government for costs incurred.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Death with Dignity Act of 2015”.

Sec. 2. Definitions.

For purposes of this act, the term:

(1) “Adult” means an individual who has attained 18 years of age.

(2) “Attending physician” means the physician selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(3) “Capable” means that, in the opinion of a court or the patient’s attending physician, consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers.

(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 and who is willing to participate in the provision of a covered medication to a qualified patient in accordance with this act.

(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) "Covered medication" means a medication prescribed pursuant to this act for the purpose of ending a person's life in a humane and dignified manner.

(7) "Department" means the Department of Health.

(8) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(9) "Informed decision" means a decision by a qualified patient to request and obtain a prescription for a covered medication 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 covered medication to be prescribed;

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

(E) The feasible alternatives, including comfort care, hospice care, and pain control.

(10) "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.

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

(12) "Physician" means a person authorized to practice medicine in the District of Columbia.

(13) "Qualified patient" means a capable adult who is a resident of the District of Columbia who satisfies the requirements of this act in order to obtain a prescription for a covered medication.

(14) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

Sec. 3. Requests for a covered medication.

(a) To request a covered medication, a patient shall:

(1) Make 2 oral requests, separated by at least 15 days, to an attending physician.

(2) Submit a written request, signed and dated by the patient, to the attending physician before the patient makes his or her second oral request and at least 48 hours before a covered medication may be prescribed or dispensed.

(b)(1) A written request made pursuant to subsection (a)(2) of this section shall be witnessed by at least two individuals who, in the presence of the patient, attest to the best of their

knowledge and belief the patient is capable, acting voluntarily, and not being unduly influenced to sign the request.

(2) One of the witnesses shall be a person who is not:

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

(B) 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

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

(3) The patient's attending physician at the time of the request shall not be a witness.

(4) 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 in the Department's regulations.

(c) A written request made pursuant to subsection (a)(2) of this section 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.

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

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

106 "INITIAL ONE:

107 [] I have informed my family of my decision and taken their opinion into consideration.

108 [] I have decided not to inform my family of my decision.

109 [] I have no family to inform of my decision.

110 "I understand that I have the right to rescind this request as any time.

111 "I understand the full import of this request, and I expect to die when I take the medication to be
112 prescribed. I further understand that although most deaths occur within 3 hours of taking the
113 medication to be prescribed, my death may take longer, and my physician has counseled me
114 about this possibility.

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

117 "Signed:

118 "Dated:

119 "DECLARATION OF WITNESSES:

120 "We declare that the person signing this request:

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

122 (b) Signed this request in our presence;

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

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

125 "Date:

126 "Witness 1:

127 "Address:

128 "Witness 1 signature:

129 "Date:

130 "Witness 2:

131 "Address:

132 "Witness 2 signature:

133 "NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person
134 signing this request, shall not be entitled to any portion of the person's estate upon death and
135 shall not own, operate, or be employed at the health care facility where the person is a patient or
136 resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an
137 individual designated by the facility."

138 Sec. 4. Responsibilities of the attending physician.

139 Upon receiving a request for a covered medication pursuant to section 3, the attending
140 physician shall:

141 (1) Determine that the patient:

142 (A) Has a terminal disease;

143 (B) Is capable;

144 (C) Has made the request voluntarily; and

145 (D) Is a resident of the District of Columbia;

146 (2) Inform the patient of:

147 (A) His or her medical diagnosis;
148 (B) His or her prognosis;
149 (C) The potential risks associated with taking a covered medication;
150 (D) The probable result of taking a covered medication; and
151 (E) The feasible alternatives to taking a covered medication, including
152 comfort care, hospice care, and pain control;

153 (4) Refer the patient to a consulting physician, who shall:

154 (A) Examine the patient and his or her relevant medical records to
155 confirm, in writing, the attending physician's diagnosis that the patient is suffering from a
156 terminal disease;

157 (B) Verify, in writing, to the attending physician that the patient:

158 (i) Is capable;
159 (ii) Is acting voluntarily; and
160 (iii) Has made an informed decision; and

161 (C) Refer the patient to counseling if appropriate, pursuant to section 5;

162 (5) Refer the patient to counseling if appropriate, pursuant to section 5;

163 (6) Recommend that the patient notify next of kin of his or her decision to request
164 a covered medication;

165 (7) Counsel the patient about the importance of having another person present
166 when the patient takes a covered medication and of not taking a covered medication in a public
167 place;

168 (8) Inform the patient that he or she has an opportunity to rescind a request for a
169 covered medication at any time and in any manner;

(9) Verify, immediately prior to writing the prescription for a covered medication, that the patient is making an informed decision; and

(10) Fulfill the medical record documentation requirements of section 7.

Sec. 5. Counseling referral.

(a) 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 physician shall refer the patient for required counseling.

(b) No covered medication 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.

Sec. 6. Dispensing a covered medication.

(a) An attending physician may not prescribe or dispense a covered medication, unless:

(1) At least 15 days have elapsed between the patient's 2 oral requests for a covered medication pursuant to section 3(a);

(2) The patient submitted a written request for a covered medication pursuant to section 3 before making his or her second oral request;

(3) At least 48 hours have elapsed since the patient submitted a written request for a covered medication pursuant to section 3; and

(4) The attending physician offered the patient an opportunity to rescind his or her request for a covered medication immediately before prescribing or dispensing the covered medication.

(b) After the attending physician ensures that the requirements provided in subsection (a) of this section and section 4 have been satisfied, an attending physician may:

(1) Dispense a covered medication, including ancillary medications intended to minimize the patient's discomfort, directly to the qualified patient; provided, that the attending physician is authorized to do so in the District of Columbia and has a current Drug Enforcement Administration certificate; and

(2) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription for a covered medication; and

(B) Deliver the written prescription for a covered medication personally or by mail to the pharmacist, who will dispense the covered medication to the patient, the attending physician, or an expressly identified agent of the patient.

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

Sec. 7. Medical record documentation requirements.

The following must be documented and filed in the patient's medical record:

(1) All oral requests by a patient for a covered medication;

(2) All written requests by a patient for a covered medication;

(3) The attending physician's diagnosis and prognosis, determination that the patient is a District resident and is capable, acting voluntarily, and has made an informed decision;

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

(5) If a patient is referred to counseling pursuant to section 5, a report of the outcome and determinations made during counseling;

(6) The attending physician's offer to the patient to rescind his or her request before the patient makes his or her second oral request; and

(7) A note by the attending physician indicating that all requirements under this act have been met and indicating the steps taken to carry out the request, including a notation of the covered medication prescribed.

Sec. 8. Reporting requirements.

(a)(1) The Department shall annually review a sample of records maintained pursuant to this act.

(2) The Department shall require a health care provider, upon dispensing a covered medication pursuant to this act, to file a copy of the dispensing record with the Department.

(b) The Mayor shall issue regulations to facilitate the collection of information regarding compliance with this act. Except as otherwise required by law, the information collected will not be a public record and may not be made available for inspection by the public.

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

Sec. 9. Effect on construction of wills and contracts.

(a) No provision in a contract, will, or other agreement, whether written or oral, will be valid to the extent the provision would affect whether a person may make or rescind a request for a covered medication.

(b) No obligation owing under any currently existing contract may be conditioned or affected by the making or rescinding of a request, by a person, for a covered medication.

Sec. 10. Insurance and annuity policies.

239 The sale, procurement, or issuance of any life, health, accident insurance, or annuity
240 policy or the rate charged for any policy may not be conditioned upon or affected by the making
241 or rescinding of a request, by a person, for a covered medication. Neither may a qualified
242 patient's act of ingesting a covered medication have an effect upon a life, health, accident,
243 insurance, or annuity policy.

244 Sec. 11. Immunities and liabilities.

245 (a) Except as provided in subsections (b), (c), (d), and (e) of this section:

246 (1) No person shall be subject to civil or criminal liability or professional
247 disciplinary action for:

248 (A) Participating in good faith compliance with this act; or

249 (B) Being present when a qualified patient takes a covered medication.

250 (2) No professional organization or association or health care provider may
251 subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss or
252 membership or other penalty for participating or refusing to participate in good faith compliance
253 with this act.

254 (3) No request by a patient for or provision by an attending physician of a covered
255 medication in good faith compliance with the provisions of this act shall constitute neglect for
256 any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

257 (b) A person who, without authorization of the patient, willfully alters or forges a request
258 for medication or conceals or destroys a rescission of that request with the intent or effect of
259 causing the patient's death shall not be immune from criminal liability under this section.

(c) A person who coerces or exerts undue influence on a patient to request a covered medication, or who prevents or destroys a rescission of such request, shall not be immune from criminal liability under this section.

(d) Nothing under this act limits liability for civil damages resulting from negligent or intentional misconduct by any person.

(e) The penalties pursuant to this act do not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of this act.

Sec. 12. Health care provider participation; notification; permissible sanctions.

(a) No health care provider is under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision of a covered medication to a qualified patient. If a healthcare provider is unable or unwilling to carry out a patient's request under this act 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.

(b) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider on the prohibiting provider's premises from participating under this act if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating pursuant to this act. Nothing in this subsection prevents a health care provider from providing health care services to a patient that does not constitute participation under this act.

(c) Notwithstanding subsection (a) of this section or section 11, a health care provider may subject another health care provider to the following sanctions if prior to participation, the

sanctioning health care provider has notified the sanctioned provider that it prohibits participation under this act:

(1) 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 under this act while on the premises of a health care facility of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(2) Termination of lease or other property contract or other nonmonetary 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 under this 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

(3) Termination of any contract or other nonmonetary remedies provided by contract if the sanctioned provider participates pursuant to this act while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this paragraph shall be construed to prevent:

(A) A health care provider from participating under this act while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(B) 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 provider.

(d) A health care provider that imposes sanctions under subsection (c) of this section must 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.

(e) Suspension or termination of staff membership or privileges under subsection (b) of this section is not reportable under section 513 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.13). Action taken pursuant to sections 4, 5, 6, or 7 of this act may not be the sole basis for a report of unprofessional or dishonorable conduct under section 514 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.14).

(f) Nothing contained in this act shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this act.

Sec. 13. Claims by governmental entity for costs incurred.

Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to this act 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.

Sec. 14. Penalties.

(a) A person who, without authorization of the patient, willfully alters, forges, conceals, or destroys an instrument, a reinstatement or revocation of an instrument, or any other evidence or document reflecting the 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 which hastens the death of the patient commits a Class A felony.

(b) Except as provided in subsection (a) of this section, a person who, without authorization of the principal, willfully alters, forges, conceals, or destroys an instrument, a reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a health care decision shall be fined no more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 190317; D.C. Official Code § 22-3571.01), or incarcerated for no more than 180 days, or both.

Sec. 15. Safe disposal of unused covered medications.

Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), the Mayor shall issue rules providing for the safe disposal of unused covered medications.

Sec. 16. Construction.

Nothing in this act may 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 this act do not constitute suicide, assisted suicide, mercy killing, or homicide, under the law.

Sec. 17. Fiscal impact.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 18. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

350 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
351 Columbia Register.