House
Legislative
Analysis
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DEATH WITH DIGNITY ACT

House Bill 5415 (Substitute H-2)
Sponsor: Rep. Ted Wallace
Committee: Judiciary

Complete to 10-10-92

A SUMMARY OF HOUSE BILL 5415 (SUBSTITUTE H-2) AS INTRODUCED 12-12-91

The bill would create the "Death with Dignity Act," to establish procedures under which a physician could administer "aid-in-dying," defined as the administration of a lethal agent with the primary purpose of substantially increasing the probability of another person's death. To receive aid-in-dying, a patient would have to sign a written directive and reiterate his or her wishes at least 15 days before aid-in-dying was administered. The bill is tie-barred to House Bill 4501 or Senate Bill 149, which would establish the Michigan Commission on Death and Dying. The provisions of the Death with Dignity Act would be repealed six months after the Commission on Death and Dying was established by enactment of either House Bill 4501 or Senate 149.

Aid-in-dying directive. An adult of sound mind could execute a directive authorizing or rejecting aid-in-dying. A directive would have to be in writing, dated, and executed voluntarily. It would have to be signed by the patient, or in the patient's presence at his or her direction. A directive could specify conditions under which aid-in-dying would be authorized, and would be made part of a patient's medical record.

Revocation of directive. A patient could revoke a directive at any time and in any manner. If the revocation was not in writing, then the person observing the revocation would describe its circumstances in writing and sign the description. A revocation would be binding upon a physician or a health facility upon actual notice of the revocation. A revocation would be made part of a patient's medical record, and a note of it would be made on the directive. If a directive were revoked, or a request rescinded, it would be as if it had never been executed or communicated.

Implementation of directive. A patient would have to communicate his or her request and deliver a copy of the aid-in-dying directive to the attending physician at least 15 days before aid-in-dying were given. The physician would be required to take reasonable steps to notify the patient's spouse, parents, children, and patient advocate at once. Between the time that the physician received a directive and the time that aid-in-dying was administered, the patient would have to be counseled by the attending physician and at least one other physician regarding the patient's diagnosis and prognosis; treatment options; and the nature and risks of the aid-in-dying procedure. In addition, at least three days before aid-in-dying was administered, a psychologist or a physician specializing in psychiatry -- other than the attending physician -- would have to certify in writing that the patient was mentally competent to consent to aid-in-dying, was acting voluntarily and in an informed manner; was under no duress, fraud, or undue influence; and the patient would have to receive counseling from a social worker on his or her motivations and on the alternatives to aid-in-dying.

Aid-in-dying could only be administered by an attending physician who had no knowledge that the directive had been revoked or that the request had been rescinded. The patient would have to be conscious and mentally competent at the time aid-in-dying was administered, and the lethal agent would have to be administered with the intent of causing swift and painless death.

Disputes. If a dispute arose over whether a person had requested aid-in-dying or revoked a directive, or whether the bill's requirements had been satisfied, a determination could be sought from the probate court. The patient's family, heir, devisee, physician, or patient advocate could obtain injunctive relief to ensure compliance with the terms of a valid directive. The court could appoint an attorney to represent the patient. The court would hold a hearing within seven days after receiving a petition and would issue its decision within seven days after that.

Insurance. A person could not be required to execute a directive as a condition of any benefit, services, or contract, including insurance coverage or health care benefits or services. Any contract requiring a directive would be void. A life insurer could not do any of the following because of the execution or implementation of a directive: refuse coverage, charge a higher premium, offer different policy terms, consider the terms of an existing policy to have been breached or modified, or invoke any suicide or intentional death exemption.

Hospitals. A health facility could adopt a policy specifying the conditions under which, if at all, it would comply with the terms of a directive, or permit aid-in-dying in its facilities. Otherwise, and except for damages arising from negligence, a person or health facility would not be subject to civil or criminal liability or administrative sanction for causing or participating in aid-in-dying under a valid directive.

Other provisions. Aid-in-dying would not necessarily be a superseding cause to affect the chain of proximate cause between the conduct of any person that placed the person in the position of requesting aid-in-dying and the death of the patient. The provisions of the bill would be cumulative and would not impair or supersede a legal right that a person may have to consent to or refuse medical intervention. The bill would not authorize mercy killing or other deliberate act or omission to end human life, other than as provided by the bill.

Penalties. Providing aid-in-dying in violation of the provisions of the bill would be a felony punishable by up to five years in prison, a fine of up to $10,000, or both.

Any of the following would constitute a felony, punishable by imprisonment for life if the patient died, or, if the patient did not die, by imprisonment for life or any term of years, or a fine of up to $100,000, or both:

-- Providing aid-in-dying contrary to the wishes of the patient.

-- Forging or falsifying a directive with the intent to cause aid-in-dying to be administered contrary to the wishes of the patient.

-- Coercing or fraudulently inducing a patient to execute a directive.

-- Willfully concealing or withholding personal knowledge from the attending physician of a revocation with the intent to induce aid-in-dying contrary to the wishes of a patient, if the defendant was an immediate family member, heir or devisee, physician or patient advocate, an employee of the patient's life or health insurance provider, an employee of a health facility treating the patient, or employee of a home for the aged where the patient resided.

In addition, anyone who, with the intent of causing the patient's death, failed to communicate to the attending physician knowledge of the patient's intent not to receive aid-in-dying would be considered to have predeceased the patient for inheritance law and life insurance coverage, and a violation of the insurance requirements of the bill would be a felony, punishable by imprisonment for up to five years, a $10,000 fine, or both.