

HOUSE BILL No. 5415

December 12, 1991, Introduced by Rep. Wallace and referred to the Committee on Judiciary.

A bill to provide a process for requesting and authorizing or refusing aid-in-dying; to provide that aid-in-dying be provided or not provided in response to a written directive; to provide for the revocation of a directive; to exempt certain persons from penalties and liabilities; and to prescribe liabilities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "death with dignity act of 1992".

3 Sec. 2. As used in this act:

4 (a) "Aid-in-dying" means the intravenous injection of a sub-
5 stance causing painless and swift termination of life.

6 (b) "Attending physician" means the physician who has pri-
7 mary responsibility for the treatment and care of a patient.

8 (c) "Directive" means a document setting forth a patient's
9 wishes concerning the provision of aid-in-dying.

1 (d) "Health facility" means a health facility or agency as
2 defined in section 20106 of the public health code, Act No. 368
3 of the Public Acts of 1978, being section 333.20106 of the
4 Michigan Compiled Laws.

5 (e) "Home for the aged" means that term as defined in
6 section 20106 of Act No. 368 of the Public Acts of 1978.

7 (f) "Patient" means a person who executes a directive in
8 accordance with the provisions of this act.

9 (g) "Patient advocate" means a person who has been desig-
10 nated to exercise powers concerning care, custody, and medical
11 treatment decisions of another person pursuant to section 496 of
12 the revised probate code, Act No. 642 of the Public Acts of 1978,
13 being section 700.496 of the Michigan Compiled Laws.

14 (h) "Physician" means a person licensed by the state to
15 engage in the practice of medicine or osteopathic medicine and
16 surgery under article 15 of the public health code, Act No. 368
17 of the Public Acts of 1978, being sections 333.16101 to 333.18838
18 of the Michigan Compiled Laws.

19 (i) "Psychologist" means a person licensed to engage in the
20 practice of psychology under article 15 of Act No. 368 of the
21 Public Acts of 1978.

22 (j) "Social worker" means a person registered in this state
23 under article 16 of the occupational code, Act No. 299 of the
24 Public Acts of 1980, being sections 339.1601 to 339.1610 of the
25 Michigan Compiled Laws.

1 Sec. 3. (1) A person 18 years of age or older who is of
2 sound mind may execute a directive to authorize or reject
3 aid-in-dying.

4 (2) A directive shall be in writing, dated, and executed
5 voluntarily. The directive shall be signed by the patient, or in
6 the patient's presence at his or her direction.

7 (3) A directive shall be signed by 2 persons 18 years of age
8 or older, other than the patient, who witnessed the signing of
9 the directive. The witnesses shall attest to the best of their
10 knowledge and belief that the person signing the writing is
11 acting voluntarily and in an informed manner, is of sound mind,
12 and is under no duress, fraud, or undue influence. The witnesses
13 shall not be the patient's spouse, parent, child, grandchild,
14 sibling, presumptive heir, known devisee at the time of witness-
15 ing, physician, patient advocate, employee of a life or health
16 insurance provider for the patient, employee of a health facility
17 treating the patient, or an employee of a home for the aged where
18 the patient resides.

19 (4) A directive shall be signed by a psychologist or physi-
20 cian specializing in psychiatry who has examined the patient
21 within 7 days after the patient has signed the directive and cer-
22 tifies that the patient is of sound mind, not suffering from
23 depression or other mental illness, and able to give informed
24 consent to aid-in-dying.

25 Sec. 4. Aid-in-dying is to be provided pursuant to a valid
26 directive only if all the following conditions are satisfied:

1 (a) The attending physician has seen the directive.

2 (b) The attending physician has treated the patient for at
3 least 6 months prior to implementing the directive.

4 (c) The attending physician and 1 other physician, after
5 personal examination, have determined the patient to be suffering
6 from both of the following:

7 (i) An incurable, irreversible, and uncontrollable disease
8 or condition which will likely result in death within 6 months.

9 (ii) Physical pain, the elimination of which would require
10 the regular application of medication that would render the
11 patient unaware of self or environment beyond simple reflex or
12 reaction to noxious stimuli.

13 (d) At least 60 days have elapsed since the directive was
14 executed.

15 (e) At least 30 days after the directive was executed, the
16 patient spontaneously at least twice communicated to the attend-
17 ing physician the patient's desire that the directive be carried
18 out, and all of the following conditions are satisfied:

19 (i) The patient is of sound mind at the time both
20 communications.

21 (ii) At least 7 days elapse between each communication.

22 (iii) Each communication has been videotaped and witnessed
23 by 2 persons qualified under this act to witness the execution of
24 the directive.

25 (iv) The attending physician has caused reasonable steps to
26 be taken to notify the patient's spouse, parents, children,

1 siblings, and patient advocate of at least 1 of the
2 communications.

3 (f) The attending physician has no knowledge that the direc-
4 tive has been revoked.

5 (g) The attending physician and a social worker have coun-
6 selled the patient regarding the following:

7 (i) The patient's diagnosis and prognosis.

8 (ii) The nature, risks, and probable result of the
9 aid-in-dying procedure.

10 (iii) The patient's motivations underlying his or her
11 request for aid-in-dying.

12 (iv) Alternatives to aid-in-dying.

13 (h) The decision of the attending physician to administer
14 aid-in-dying is reviewed and approved by at least 2 members of a
15 3-member committee to ensure compliance with the provisions of
16 this section. At least 1 member of the committee shall not be a
17 physician and no member of the committee shall have any prior
18 relationship or acquaintance with the patient. If the patient is
19 in a health facility, the members of the committee shall be
20 appointed by the administrator of the health facility. If the
21 patient is not in a health facility, the members of the committee
22 shall be appointed by the county medical examiner of the county
23 in which the patient resides.

24 (i) The patient is conscious and of sound mind at the time
25 the directive is carried out.

26 (j) The directive is carried out by a physician present
27 throughout the entire procedure until the death of the patient.

1 (k) Implementation of the directive is videotaped.

2 Sec. 5. (1) A patient may revoke a directive requesting
3 aid-in-dying at any time and in any manner by which he or she is
4 able to communicate an intent to revoke the directive. If the
5 revocation is not in writing, a person who observes a revocation
6 of a directive shall describe the circumstances of the revocation
7 in writing and sign the writing.

8 (2) A revocation of a directive is binding upon a physician
9 or a health facility upon actual notice of the revocation.

10 Sec. 6. (1) A physician or health facility that is provided
11 a copy of a directive shall immediately make the directive part
12 of the patient's medical record.

13 (2) A physician or health facility that has notice of a
14 revocation of a directive shall immediately make the revocation
15 part of the patient's medical record and note the revocation on
16 the directive.

17 (3) Upon determining that a patient suffers from both of the
18 conditions described in section 4(c), an attending physician who
19 has notice of a directive shall record in the patient's medical
20 record that the patient suffers from both of these conditions and
21 shall communicate that determination to the patient.

22 Sec. 7. An attending physician shall implement a directive
23 under section 4, or shall take all reasonable steps to transfer
24 the care and treatment of the patient to another physician will-
25 ing to comply with the terms of the directive. A physician shall
26 not be subject to civil or criminal liability for failing to

1 comply with a valid directive unless the physician willfully
2 fails to transfer a patient upon the patient's request.

3 Sec. 8. After implementing a directive, the attending phy-
4 sician shall report his or her actions to the county medical
5 examiner for the county in which the implementation occurred.

6 Sec. 9. Except for damages arising from negligence, a
7 person or health facility shall not be subject to civil or crimi-
8 nal liability or administrative sanction, including license or
9 permit suspension, revocation, or nonrenewal, for causing or par-
10 ticipating in aid-in-dying, in accordance with a valid directive
11 and with this act.

12 Sec. 10. A patient or the patient's spouse, parent, child,
13 or sibling may bring an action for injunctive relief to ensure
14 compliance with the terms of a valid directive in accordance with
15 the provisions of this act.

16 Sec. 11. A person shall not be required to execute a direc-
17 tive as a condition for any benefit, services, or contract,
18 including insurance coverage or health care benefits or
19 services. Any contract requiring a directive is void.

20 Sec. 12. A health facility shall not deny admission to an
21 individual because he or she has executed a directive. A health
22 facility may adopt a policy of refusing to comply with the terms
23 of a directive, or of refusing to permit aid-in-dying in its
24 facilities, only if that policy is clearly communicated to all
25 patients upon admittance to the facility. If a patient with a
26 valid directive suffers from both of the conditions described in
27 section 4(c), and requests aid-in-dying, a health facility with a

1 policy of refusing aid-in-dying shall take all reasonable steps
2 to transfer the care and treatment of the patient to another
3 health facility willing to comply with the terms of the
4 directive. A health facility that violates this section shall be
5 subject to civil liability for actual damages, including pain and
6 suffering.

7 Sec. 13. If a dispute arises as to whether a patient has
8 requested aid-in-dying or revoked a directive, or whether the
9 requirements of this act for aid-in-dying have been satisfied, a
10 petition may be filed with the probate court in the county in
11 which the patient resides or is found, requesting the court's
12 determination. If a petition is filed under this subsection, the
13 court may appoint a guardian ad litem to represent the patient
14 for the purposes of this subsection. The court shall conduct a
15 hearing on a petition under this subsection within 7 days of the
16 court's receipt of the petition. Within 7 days after the hear-
17 ing, the court shall issue its decision. The court may impose
18 appropriate sanctions for the filing of a frivolous petition.

19 Sec. 14. Aid-in-dying shall not be provided or refused on
20 the basis of age, gender, race, color, height, weight, marital
21 status, national origin, sexual orientation, religion, physical
22 handicap, or creed, or solely because a patient has become a
23 burden, the patient's perceived usefulness to society has dimin-
24 ished, or the patient is indigent.

25 Sec. 15. A life insurer shall not do any of the following
26 because of the execution or implementation of a directive:

1 (a) Refuse to provide or continue coverage to the patient.

2 (b) Charge a patient a higher premium.

3 (c) Offer a patient different policy terms.

4 (d) Consider the terms of an existing policy to have been
5 breached or modified.

6 (e) Invoke any suicide or intentional death exemption.

7 Sec. 16. Aid-in-dying shall not be a superseding cause to
8 affect the chain of proximate cause between the conduct of any
9 person that placed the patient in the position of requesting
10 aid-in-dying and the death of the patient.

11 Sec. 17. The provisions of this act are cumulative and do
12 not impair or supersede a legal right that a person may have to
13 consent to or refuse medical intervention.

14 Sec. 18. This act does not authorize mercy killing or any
15 other deliberate act or omission to end human life, other than
16 aid-in-dying by a physician when voluntarily requested by a con-
17 scious patient of sound mind at the time aid-in-dying is provided
18 in accordance with the provisions of this act.

19 Sec. 19. (1) The following, if it causes the patient's
20 death, shall constitute murder, punishable as provided in
21 section 316 or 317 of the Michigan penal code, Act No. 328 of the
22 Public Acts of 1931, being sections 750.316 and 750.317 of the
23 Michigan Compiled Laws; and, if it does not cause the patient's
24 death, shall constitute attempted murder, punishable as provided
25 in section 91 of Act No. 328 of the Public Acts of 1931, being
26 section 750.91 of the Michigan Compiled Laws:

1 (a) Providing aid-in-dying knowingly against the wishes of
2 the patient.

3 (b) Forging or falsifying a directive with the intent to
4 cause aid-in-dying contrary to the wishes of the patient.

5 (c) Coercing or fraudulently inducing a patient to execute a
6 directive.

7 (d) Willfully concealing or withholding personal knowledge
8 from the attending physician of a revocation with the intent to
9 induce aid-in-dying contrary to the wishes of the patient, if
10 defendant is any of the following: the patient's spouse, parent,
11 child, grandchild, sibling, presumptive heir, known devisee at
12 the time of witnessing, physician, patient advocate, employee of
13 a life or health insurance provider for the patient, employee of
14 a health facility treating the patient, or employee of a home for
15 the aged where the patient resides.

16 (2) The following shall constitute a felony, punishable by
17 imprisonment for not more than 5 years or a fine of not more than
18 \$10,000.00, or both:

19 (a) Providing aid-in-dying in knowing violation of the pro-
20 visions of section 4 if defendant presents clear and convincing
21 evidence of compliance with the wishes of the patient.

22 (b) For a person other than a patient, entering into a con-
23 tract prohibited by section 11.

24 (3) Providing aid-in-dying in negligent violation of the
25 provisions of section 4 shall constitute a felony, punishable by
26 imprisonment for not more than 2 years or a fine of not more than

1 \$4,000.00, or both, if defendant presents clear and convincing
2 evidence of compliance with the wishes of the patient.

3 (4) Any person who fails to communicate, to the attending
4 physician, knowledge of the patient's intent not to receive
5 aid-in-dying, with intent to cause the patient's death, shall be
6 considered to have predeceased the patient for inheritance law
7 and life insurance coverage if the patient does receive
8 aid-in-dying.

9 Sec. 20. This act shall not take effect unless submitted to
10 the qualified electors of the state at the general election to be
11 held November 3, 1992, in the same manner as provided by law for
12 proposed amendments to the state constitution of 1963, and
13 approved by a majority of the electors voting on the question.