House
Legislative
Analysis
Section
Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

ENDING ONE'S OWN LIFE

House Bill 5474
Sponsor: Rep. Ted Wallace
Committee: Judiciary

Complete to 1-16-98

A SUMMARY OF HOUSE BILL 5474 AS INTRODUCED 1-14-98

The bill would amend the Public Health Code to set procedures whereby certain terminally ill patients could request and receive from a physician medication to end their lives. The bill's provisions would not take effect unless submitted to the voters of this state at the general election held November 5, 1998, and approved by a majority of those voting on the question. If approved, the bill would take effect on January 1, 1999.

The bill would specifically state that it would not authorize a physician or other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. It would also state that an action taken by a physician under the bill's provisions would not, for any purpose, constitute suicide, assisted suicide, mercy killing, euthanasia, or homicide under the law. No health facility or other health care provider would be legally obligated to participate in the provision of medication to end a patient's life. If a provider or facility was unwilling to carry out a patient's request, and the patient transferred his or her care to another facility or provider, the prior facility or provider would be required to transfer a copy of the patient's relevant medical records upon request.

Eligibility. In order to end one's life under the bill a person would have to be an adult resident of this state. The individual would have to have been determined to have a terminal illness by his or her attending physician. (A terminal illness would be defined as a disease that was incurable and irreversible and would, within reasonable medical judgment, produce death within six months or less.) The diagnosis and prognosis would have to be confirmed by a consulting physician who was qualified by speciality or experience to make a professional diagnosis and prognosis regarding the patient's terminal illness. In addition, the attending and consulting physicians would have to determine that the patient was acting voluntarily and was capable of making and communicating his or her health care decisions to a health care provider. (Determination of whether the patient was capable of such communication could be made by a court or the patient's attending physician or consulting physician, and could include communication through individuals familiar with the patient's manner of communicating, if available). Furthermore, the patient would be required to undergo a consultation with a licensed psychiatrist or licensed psychologist to determine whether the patient was suffering from a psychiatric or psychological disorder that might impair the patient's judgment. After undergoing the counseling, the patient would have to obtain a written statement from the psychiatrist or psychologist indicating that the patient was not suffering from a disorder or condition that might cause impaired judgement.

Request. If a terminally ill state resident met the other requirements of the bill he or she could make an oral and written request for medication to end his or her life in a "humane and dignified manner." The patient would then be required to repeat the request, both orally and in writing, not less than 15 days after the first request. No less than 15 days after the second request, the patient would be required to make a third and final oral request. At the time of both the second and final requests, the attending physician would be required to offer the patient an opportunity to rescind his or her request. After the final request and the physician's offer to the patient to rescind his or her decision, the physician would have to allow at least 48 hours to pass before writing the prescription. The patient could rescind his or her request at any time and in any manner without regard to his or her mental state.

The bill would provide a form to be used in making the requests. The form would have to be signed and dated by the patient and witnessed by at least two other persons. The witnesses would be required to attest that to the best of their knowledge and belief the patient was not being coerced, was acting voluntarily, and was capable of making and communicating his or her health care decisions to a health care provider. The patient's attending physician would be prohibited from signing as a witness and no more than one of the witnesses could be any of the following: a) related to the patient by blood, marriage, or adoption; b) entitled to control over a portion of the patient's estate upon the patient's death under a will or trust, or by operation of law; or c) an owner, operator, or employee of a health facility where the patient was a resident or was receiving treatment. If the patient was in a nursing home, home for the aged, hospital long-term care unit, or county medical care facility at the time of the request, one of the witnesses would be required to be an individual designated by the health facility with the qualifications as specified by the Department of Community Health. The bill would grant the department the authority to promulgate rules setting witness qualifications for this purpose.

Responsibilities of the attending physician. The patient's attending physician would be required to inform the patient of the diagnosis and prognosis of his or her terminal illness, the potential risks and probable result of taking the medication prescribed to end the patient's life, the feasible alternatives to ending the patient's life, including, but not limited to, comfort care, hospice care, and pain control, and that the patient could rescind his or her decision at any time and in any manner. In addition, the attending physician would also be required to ask the patient to notify his or her next of kin. However, a patient's request to die could not be denied solely because the patient refused or was unable to contact his or her next of kin. The attending physician would also be required to refer the patient to a consulting physician, and immediately prior to writing the prescription, verify that the patient was making an informed decision.

The attending physician would be required to follow all of the appropriate and required steps in accordance with bill's provisions, and document and file in the patient's medical record all of the following:

* Each of the patient's oral and written requests to die.

*The physician's offers to the patient to rescind the request.

*The attending physician's diagnosis and prognosis and the consulting physician's confirmation of that diagnosis and prognosis.

*The attending physician's determinations that the patient was capable of making and communicating his or her health care decisions to a health care provider, had made an informed decision, and was acting voluntarily and the consulting physician's independent verification of those same determinations.

*The written statement made by the psychiatrist or psychologist.

*A note that the attending physician met all of the bill's requirements and indicating the steps taken to carry out the patient's request, including, but not limited to, a notation of the medication prescribed.

Responsibilities of the consulting physician. The consulting physician would be required to examine the patient and the relevant medical records. If the consulting physician agreed with the attending physician's diagnosis, the consulting physician would be required to confirm the diagnosis in writing. In addition, the consulting physician would be required to verify that the patient was capable of making and communicating his or her health care decisions to a health care provider, was making an informed decision, and was acting voluntarily.

Annual Report. The Department of Community Health would be required to review a sample of the medical records maintained under the bill's requirements. An attending physician could release statistical information contained in medical records to the department upon request as long as the information did not contain material that could identify a particular patient. The department would be required to create rules to facilitate the collection of this information. The information would not be considered a public record, would not be made available to the public, and would be exempt from disclosure under the Freedom of Information Act. However, the department would be required to use the information collected to generate an annual statistical report and this report would have to be made available to the public.

Prohibitions. The bill would make it a felony to willfully alter or forge a patient's request for termination or to conceal or destroy a patient's rescission of that request with the intent or effect of causing the patient's death. It would also be a felony to coerce or exert undue influence on a patient to make a request to end his or her life or to destroy a rescission of such a request. These felonies would be punishable by imprisonment for term of years up to life.

Furthermore, it would also be a felony for someone other than a physician to prescribe medication to end someone's life. The bill would not limit further liability for civil damages resulting from negligent conduct or intentional misconduct, and the penalties imposed under the bill would not preclude any criminal penalties applicable under other laws for actions that were inconsistent with the bill's provisions.

Good faith participation in and compliance with the bill's provisions, including, but not limited to, being present when a patient took the medication to end his or her life, would not subject a person to civil or criminal liability or administrative disciplinary action.

Neither participation nor refusal to participate in good faith compliance with a request to die could be used to subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty by a professional organization or association, a health facility, or other health care provider.

A request for or provision of medication in good faith compliance with the bill's provisions could not constitute negligence for any purpose of law and could not provide the sole basis for an appointment of a guardian or conservator.

Effect on contracts, etc. Any written or oral provisions in a contract, will, or other agreement that attempted to affect whether an individual could make or rescind a request to end his or her life would be invalid. Further, any obligation owed under a currently existing contract could not be conditioned or affected by making or rescinding a request to die under the bill.

In addition, making or rescinding a request to die could not be used as a condition or to affect the sale, procurement, or issuance of a life, health, or accident insurance policy or certificate, or an annuity policy or the rate charged for such a policy or certificate. Further, a patient's act of ingesting medication to end his or her life under the bill's provisions would not have an effect upon a life, health, or accident insurance policy or certificate or an annuity policy.

Repealer. The bill also would repeal Public Act 270 of 1992, which established the Commission on Death and Dying.

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.