

# HOUSE BILL No. 5802

August 3, 2016, Introduced by Reps. Singh and Cochran and referred to the Committee on Health Policy.

A bill to regulate physician assistance for patient-requested life-ending medication; to require safeguards for determining that the patient has a terminal disease, receives adequate counseling, and makes a voluntary request for medication; to require documentation and reporting; to specify certain legal consequences regarding insurance; to provide for civil and criminal immunity and freedom from professional sanctions for persons acting in conformity with this act; to provide for penalties and sanctions for violations of this act; and to repeal acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3       Sec. 2. As used in this act:

4       (a) "Adult" means an individual who is 18 years of age or

1 older.

2 (b) "Attending physician" means the physician who has primary  
3 responsibility for the care of a patient and treatment of the  
4 patient's terminal disease.

5 (c) "Capable" means that, in the opinion of a court or in the  
6 opinion of a patient's attending physician or consulting physician,  
7 psychiatrist, or psychologist, the patient has the ability to make  
8 and communicate health care decisions to health care providers,  
9 including communication through individuals familiar with the  
10 patient's manner of communicating if those individuals are  
11 available.

12 (d) "Consulting physician" means a physician who is qualified  
13 by specialty or experience to make a professional diagnosis and  
14 prognosis regarding a patient's terminal disease.

15 (e) "Counseling" means 1 or more consultations as necessary  
16 between a state licensed psychiatrist or psychologist and a patient  
17 for the purpose of determining that the patient is capable and not  
18 suffering from a psychiatric or psychological disorder or  
19 depression causing impaired judgment.

20 (f) "Health care provider" means a person licensed, certified,  
21 or otherwise authorized or permitted by the law of this state to  
22 administer health care or dispense medication in the ordinary  
23 course of business or practice of a profession, and includes a  
24 health care facility.

25 (g) "Informed decision" means a decision by a qualified  
26 patient to request and obtain a prescription for medication to end  
27 his or her life in a humane and dignified manner, that is based on

1 an appreciation of the relevant facts and is made after being fully  
2 informed by the attending physician of all of the following:

3 (i) The qualified patient's medical diagnosis.

4 (ii) The qualified patient's prognosis.

5 (iii) The potential risks associated with taking the  
6 medication to be prescribed.

7 (iv) The probable result of taking the medication to be  
8 prescribed.

9 (v) The feasible alternatives, including, but not limited to,  
10 comfort care, hospice care, and pain control.

11 (h) "Medically confirmed" means the medical opinion of the  
12 attending physician has been confirmed by a consulting physician  
13 who has examined the patient and the patient's relevant medical  
14 records.

15 (i) "Patient" means an individual who is under the care of a  
16 physician.

17 (j) "Physician" means an individual who is licensed or  
18 otherwise authorized to engage in the practice of medicine or  
19 osteopathic medicine and surgery under article 15 of the public  
20 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

21 (k) "Qualified patient" means an adult who is capable, who is  
22 a resident of this state, and who has satisfied the requirements of  
23 this act to obtain a prescription for medication to end his or her  
24 life in a humane and dignified manner.

25 (l) "Terminal disease" means an incurable and irreversible  
26 disease or progressive pathological condition that has been  
27 medically confirmed and will, within reasonable medical judgment,

1 produce death within 6 months.

2       Sec. 3. (1) An adult who is capable, is a resident of this  
3 state, has been determined by the attending and consulting  
4 physicians to be suffering from a terminal disease, and has  
5 voluntarily expressed his or her wish to die may make a written  
6 request for medication for the purpose of ending his or her life in  
7 a humane and dignified manner in accordance with this act.

8       (2) An individual is not qualified to make a request for  
9 medication under this act solely because of age or disability.

10       Sec. 4. (1) A written request for medication under this act  
11 must be in substantially the form described in section 22, signed  
12 and dated by the patient, and, subject to subsections (2) and (3),  
13 witnessed by 2 or more individuals who, in the presence of the  
14 patient, attest that to the best of their knowledge and belief the  
15 patient is capable, acting voluntarily, and not being coerced to  
16 sign the request.

17       (2) One of the witnesses must be an individual who, at the  
18 time the request is signed, is not any of the following:

19       (a) A relative of the patient by blood, marriage, or adoption.

20       (b) An individual who would be entitled to a portion of the  
21 estate of the qualified patient upon death under a will or by  
22 operation of law.

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

26       (d) The patient's attending physician.

27       (3) If the patient is in a long-term care facility at the time

1 the written request is made, 1 of the witnesses must be an  
2 individual designated by the facility who has the qualifications  
3 specified by the department of health and human services by rule.  
4 The department of health and human services shall promulgate rules  
5 under the administrative procedures act of 1969, 1969 PA 306, MCL  
6 24.201 to 24.328, to implement this subsection.

7 Sec. 5. (1) The attending physician shall do all of the  
8 following:

9 (a) Make the initial determination of whether the patient has  
10 a terminal disease, is capable, and has made the request for  
11 medication voluntarily.

12 (b) Request that the patient demonstrate residency in this  
13 state as described in section 14.

14 (c) To ensure that the patient is making an informed decision,  
15 inform the patient of all of the following:

16 (i) The patient's medical diagnosis.

17 (ii) The patient's prognosis.

18 (iii) The potential risks associated with taking the  
19 medication to be prescribed.

20 (iv) The probable result of taking the medication to be  
21 prescribed.

22 (v) The feasible alternatives, including, but not limited to,  
23 comfort care, hospice care, and pain control.

24 (d) Refer the patient to a consulting physician for medical  
25 confirmation of the diagnosis and for a determination that the  
26 patient is capable and acting voluntarily.

27 (e) Refer the patient for counseling, if appropriate, under

1 section 7.

2 (f) Recommend that the patient notify his or her next of kin.

3 (g) Counsel the patient about the importance of having another  
4 individual present when the patient takes the medication prescribed  
5 under this act and of not taking the medication in a public place.

6 (h) Inform the patient that he or she may rescind the request  
7 for medication at any time and in any manner, and again inform the  
8 patient of the opportunity to rescind the request at the end of the  
9 15-day waiting period described in section 10.

10 (i) Immediately before writing the prescription for medication  
11 under this act, verify that the patient is making an informed  
12 decision.

13 (j) Fulfill the medical record documentation requirements of  
14 section 13.

15 (k) Ensure that all appropriate steps are carried out in  
16 accordance with this act before writing a prescription for  
17 medication to enable the qualified patient to end his or her life  
18 in a humane and dignified manner.

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

21 Sec. 6. A patient is not qualified to make a request for  
22 medication under this act until a consulting physician has done  
23 both of the following:

24 (a) Examined the patient and the patient's relevant medical  
25 records and confirmed, in writing, the attending physician's  
26 diagnosis that the patient is suffering from a terminal disease.

27 (b) Verified that the patient is capable, is acting

1 voluntarily, and has made an informed decision.

2       Sec. 7. If, in the opinion of the attending physician or the  
3 consulting physician, a patient may be suffering from a psychiatric  
4 or psychological disorder or depression that causes impaired  
5 judgment, 1 of the physicians shall refer the patient for  
6 counseling. After referral, a physician shall not prescribe  
7 medication to end the patient's life in a humane and dignified  
8 manner until the licensee who is performing the counseling  
9 determines that the patient is not suffering from a psychiatric or  
10 psychological disorder or depression causing impaired judgment.

11       Sec. 8. A physician shall not prescribe medication to end a  
12 patient's life in a humane and dignified manner unless the patient  
13 has made an informed decision. Immediately before writing a  
14 prescription for medication under this act, the attending physician  
15 shall verify that the patient is making an informed decision.

16       Sec. 9. The attending physician shall recommend that the  
17 patient notify next of kin of the patient's request for medication  
18 under this act. The physician shall not deny a request for  
19 medication because the patient declines or is unable to notify his  
20 or her next of kin.

21       Sec. 10. To receive a prescription for medication to end his  
22 or her life in a humane and dignified manner, a qualified patient  
23 shall make both an oral request and a written request, and shall  
24 reiterate the oral request to his or her attending physician not  
25 less than 15 days after making the initial oral request. At the  
26 time the qualified patient makes his or her second oral request,  
27 the attending physician shall offer the patient an opportunity to

1 rescind the request.

2       Sec. 11. A patient may rescind his or her request at any time  
3 and in any manner without regard to his or her mental state. The  
4 attending physician shall not prescribe medication under this act  
5 unless he or she has offered the qualified patient an opportunity  
6 to rescind the request.

7       Sec. 12. A physician shall not write a prescription for  
8 medication under this act until 15 days or more after the patient's  
9 initial oral request and 48 hours or more after the patient's  
10 written request.

11       Sec. 13. All of the following must be documented or filed in a  
12 patient's medical record:

13       (a) Each oral request by the patient for medication to end his  
14 or her life in a humane and dignified manner.

15       (b) Each written request by the patient for medication to end  
16 his or her life in a humane and dignified manner.

17       (c) The attending physician's diagnosis; prognosis; and  
18 determination that the patient is capable, is acting voluntarily,  
19 and has made an informed decision.

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

23       (e) A report of the outcome and determinations made during  
24 counseling, if performed.

25       (f) The attending physician's offer to the patient to rescind  
26 his or her request at the time of the patient's second oral request  
27 required under section 10.



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

5 Sec. 14. A physician shall comply with a request under this  
6 act only if the request is made by a resident of this state.  
7 Factors that the physician may consider to demonstrate residency in  
8 this state include, but are not limited to, any of the following:

9 (a) A driver license issued by this state.

10 (b) Documentation of registration to vote in this state.

11 (c) Evidence that the patient owns or leases property in this  
12 state.

13 (d) A Michigan income tax return filed for the most recent tax  
14 year.

15 Sec. 15. (1) The department of health and human services shall  
16 annually review a sample of records maintained under this act. It  
17 shall require a health care provider that dispenses medication  
18 under this act to file a copy of the dispensing record with the  
19 department.

20 (2) The department of health and human services shall  
21 promulgate rules under the administrative procedures act of 1969,  
22 1969 PA 306, MCL 24.201 to 24.328, to facilitate collecting  
23 information regarding compliance with this act. The information  
24 collected is privileged; is exempt from disclosure under the  
25 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246; and  
26 shall not be made available for inspection by the public.

27 (3) The department of health and human services shall generate

1 and make available to the public an annual statistical report of  
2 information collected under subsection (2) that does not disclose  
3 identifying information.

4       Sec. 16. (1) A provision in a contract, will, or other  
5 agreement, whether written or oral, is not valid to the extent it  
6 would affect whether an individual may make or rescind a request  
7 for medication to end his or her life in a humane and dignified  
8 manner.

9       (2) An obligation owed under any existing contract must not be  
10 conditioned on or affected by an individual's request or rescission  
11 of a request for medication to end his or her life in a humane and  
12 dignified manner.

13       Sec. 17. The sale, procurement, or issuance of a life, health,  
14 or accident insurance or annuity policy or the rate charged for a  
15 policy must not be conditioned upon or affected by the individual's  
16 making or rescinding a request for medication to end his or her  
17 life in a humane and dignified manner. A qualified patient's act of  
18 ingesting medication to end his or her life in a humane and  
19 dignified manner must not have any effect on a life, health, or  
20 accident insurance or annuity policy.

21       Sec. 18. This act does not authorize a physician or any other  
22 person to end a patient's life by lethal injection, mercy killing,  
23 or active euthanasia. Actions taken in accordance with this act do  
24 not, for any purpose, constitute suicide, assisted suicide, mercy  
25 killing, or homicide under the law.

26       Sec. 19. (1) Except as otherwise provided in this section and  
27 section 20, all of the following apply to actions taken in accord

1 with this act:

2 (a) A person is not subject to civil or criminal liability or  
3 professional disciplinary action for participating in good-faith  
4 compliance with this act. This includes being present when a  
5 qualified patient takes the prescribed medication to end his or her  
6 life in a humane and dignified manner.

7 (b) A professional organization or association or a health  
8 care provider shall not subject a person to censure, discipline,  
9 suspension, loss of license, loss of privileges, loss of  
10 membership, or other penalty for refusing to participate in this  
11 act or for participating in good-faith compliance with this act.

12 (c) A request by a patient for, or an attending physician's  
13 provision of, medication in good-faith compliance with this act is  
14 not neglect for any purpose of law and does not, in itself,  
15 constitute sufficient basis for the appointment of a guardian or  
16 conservator.

17 (d) A health care provider is not under a duty, whether by  
18 contract, statute, or other legal requirement, to participate in  
19 providing a qualified patient with medication to end his or her  
20 life in a humane and dignified manner. If a health care provider is  
21 unable or unwilling to carry out a patient's request under this act  
22 and the patient transfers his or her care to a new health care  
23 provider, the prior health care provider shall transfer, upon  
24 request, a copy of the patient's relevant medical records to the  
25 new health care provider.

26 (2) Notwithstanding any other provision of law, a health care  
27 provider may prohibit another health care provider from

1 participating in this act on the premises of the prohibiting  
2 provider if the prohibiting provider has notified the health care  
3 provider of the prohibiting provider's policy regarding  
4 participating in this act. This section does not prevent a health  
5 care provider from providing health care services to a patient that  
6 do not constitute participation in this act. Notwithstanding  
7 subsection (1), a health care provider that has given notice that  
8 it prohibits participation in this act may subject another health  
9 care provider that participates in this act after that notification  
10 to any of the following sanctions:

11 (a) Loss of privileges, loss of membership, or other sanction  
12 provided pursuant to the medical staff bylaws, policies, and  
13 procedures of the sanctioning health care provider, if the  
14 sanctioned provider is a member of the sanctioning provider's  
15 medical staff and participates in this act while on the premises of  
16 the health care facility of the sanctioning health care provider.  
17 However, this subdivision does not apply to participation at the  
18 private medical office of a physician or other provider.

19 (b) Termination of a lease, other property contract, or other  
20 nonmonetary remedies provided by a lease contract, not including  
21 loss or restriction of medical staff privileges or exclusion from a  
22 provider panel, if the sanctioned provider participates in this act  
23 while on the premises of the sanctioning health care provider or on  
24 property that is owned by or under the direct control of the  
25 sanctioning health care provider.

26 (c) Termination of contract or other nonmonetary remedies  
27 provided by contract if the sanctioned provider participates in

1 this act while acting in the course and scope of the sanctioned  
2 provider's capacity as an employee or independent contractor of the  
3 sanctioning health care provider.

4 (3) Subsection (2) does not prevent or allow sanctions for  
5 either of the following:

6 (a) Participation in this act while acting outside the course  
7 and scope of the provider's capacity as an employee or independent  
8 contractor.

9 (b) An attending physician's or consulting physician's  
10 contract with the physician's patient to act outside the course and  
11 scope of the physician's capacity as an employee or independent  
12 contractor of the sanctioning health care provider.

13 (4) A health care provider that imposes sanctions under  
14 subsection (2) shall follow all due process and other policies and  
15 procedures that the sanctioning health care provider has adopted  
16 that are related to the imposition of sanctions on another health  
17 care provider.

18 (5) As used in this section:

19 (a) "Notify" means a separate statement in writing to the  
20 health care provider specifically informing the health care  
21 provider before the provider participates in this act of the  
22 sanctioning health care provider's policy about participating in an  
23 activity that is covered by this act.

24 (b) "Participate in this act" means to perform the duties of  
25 an attending physician in section 5, the consulting physician  
26 function in section 6, or the counseling function in section 7, but  
27 does not include any of the following:

1           (i) Making an initial determination that a patient has a  
2 terminal disease and informing the patient of the medical  
3 prognosis.

4           (ii) Providing information about this act to a patient upon  
5 the request of the patient.

6           (iii) Providing a patient, upon the request of the patient,  
7 with a referral to another physician.

8           (iv) An attending physician's or consulting physician's  
9 contracting with the physician's patient to act outside of the  
10 course and scope of the physician's capacity as an employee or  
11 independent contractor of a health care provider.

12           (6) Suspension or termination of staff membership or  
13 privileges under subsection (2) is not reportable for purposes of  
14 qualification for licensure under article 15 of the public health  
15 code, 1978 PA 368, MCL 333.16101 to 333.18838. Action taken in  
16 accordance with section 4, 5, 6, or 7 is not grounds for  
17 investigation or discipline under section 16221 of the public  
18 health code, 1978 PA 368, MCL 333.16221.

19           (7) This act does not allow a lower standard of care for  
20 patients in the community where the patient is treated or in a  
21 similar community.

22           Sec. 20. (1) A person who without authorization of the patient  
23 willfully alters or forges a request for medication or conceals or  
24 destroys a rescission of that request with the intent or effect of  
25 causing the patient's death is guilty of a felony punishable by  
26 imprisonment for not more than 20 years or a fine of not more than  
27 \$375,000.00, or both.

1           (2) A person who coerces or exerts undue influence on a  
2 patient to either request medication for the purpose of ending the  
3 patient's life or destroy the patient's rescission of a request for  
4 medication for the purpose of ending the patient's life is guilty  
5 of a felony punishable by imprisonment for not more than 20 years  
6 or a fine of not more than \$375,000.00, or both.

7           (3) This act does not limit liability for civil damages  
8 resulting from negligent conduct or intentional misconduct by any  
9 person.

10          (4) The penalties in this act do not preclude criminal  
11 penalties applicable under other law for conduct that is  
12 inconsistent with this act.

13          Sec. 21. Any governmental entity that incurs costs resulting  
14 from an individual terminating his or her life pursuant to this act  
15 in a public place may recover those costs and reasonable and  
16 necessary attorney fees related to enforcing the claim from the  
17 estate of the individual.

18          Sec. 22. A request for a medication as authorized by this act  
19 must be in substantially the following form:

20                       REQUEST FOR MEDICATION TO END MY LIFE

21                               IN A HUMANE AND DIGNIFIED MANNER

22          I, \_\_\_\_\_, am an adult of sound mind.

23          I am suffering from \_\_\_\_\_, which my attending physician has  
24 determined is a terminal disease and which has been medically  
25 confirmed by a consulting physician.

26          I have been fully informed of my diagnosis, the prognosis, the  
27 nature of medication to be prescribed and potential associated

1 risks, the expected result, and the feasible alternatives,  
2 including comfort care, hospice care, and pain control.

3 I request that my attending physician prescribe medication  
4 that will end my life in a humane and dignified manner.

5 (INITIAL ONLY 1 OF THE FOLLOWING)

6 \_\_\_\_\_I have informed my family of my decision and taken their  
7 opinions into consideration.

8 \_\_\_\_\_I have decided not to inform my family of my decision.

9 \_\_\_\_\_I have no family to inform of my decision.

10 I understand that I have the right to rescind this request at  
11 any time.

12 I understand the full import of this request, and I expect to  
13 die when I take the medication to be prescribed. I further  
14 understand that although most deaths occur within 3 hours, my death  
15 may take longer and my physician has counseled me about this  
16 possibility.

17 I make this request voluntarily and without reservation, and I  
18 accept full moral responsibility for my actions.

19 Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

20 DECLARATION OF WITNESSES

21 I declare all of the following:

22 (a) The individual is personally known to me or has provided  
23 proof of identity.

24 (b) The individual signed this request in my presence.

25 (c) The individual appears to be of sound mind and not under  
26 duress, fraud, or undue influence.

27 (d) The individual is not a patient for whom I am an attending



1 physician.

2 \_\_\_\_\_ Witness 1 Dated \_\_\_\_\_

3 \_\_\_\_\_ Witness 2 Dated \_\_\_\_\_

4 NOTE: One of the witnesses must not be a relative (by blood,  
5 marriage, or adoption) of the individual signing this request, must  
6 not be entitled to any portion of the individual's estate upon  
7 death, and must not own, operate, or be employed at a health care  
8 facility where the individual is a patient or resident. If the  
9 individual signing this request is an inpatient at a health care  
10 facility, one of the witnesses must be an individual designated by  
11 the health care facility.

12 Enacting section 1. The following acts and parts of acts are  
13 repealed:

14 (a) Section 329a of the Michigan penal code, 1931 PA 328, MCL  
15 750.329a.

16 (b) 1992 PA 270, MCL 752.1021 to 752.1027.

17 Enacting section 2. This act takes effect 90 days after the  
18 date it is enacted into law.