

# HOUSE BILL No. 4461

March 30, 2017, Introduced by Reps. Cochran and Faris 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 psychiatrist or psychologist and a patient for the  
17 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 the  
19 practice of osteopathic medicine and surgery under article 15 of  
20 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

21 (k) "Psychiatrist" means 1 or more of the following:

22 (i) A physician who has completed a residency program in  
23 psychiatry approved by the Accreditation Council for Graduate  
24 Medical Education or the American Osteopathic Association, or who  
25 has completed 12 months of psychiatric rotation.

26 (ii) A physician who devotes a substantial portion of his or  
27 her time to the practice of psychiatry.

1       (l) "Psychologist" means an individual who is licensed or  
2 otherwise authorized to engage in the practice of psychology under  
3 part 182 of the public health code, 1978 PA 368, MCL 333.18201 to  
4 333.18237.

5       (m) "Qualified patient" means an adult who is capable, who is  
6 a resident of this state, and who has satisfied the requirements of  
7 this act to obtain a prescription for medication to end his or her  
8 life in a humane and dignified manner.

9       (n) "Terminal disease" means an incurable and irreversible  
10 disease or progressive pathological condition that has been  
11 medically confirmed and will, within reasonable medical judgment,  
12 produce death within 6 months.

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

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

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

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

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

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

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

10          (d) The patient's attending physician.

11          (3) If the patient is in a long-term care facility at the time  
12 the written request is made, 1 of the witnesses must be an  
13 individual designated by the facility who has the qualifications  
14 specified by the department of health and human services by rule.  
15 The department of health and human services shall promulgate rules  
16 under the administrative procedures act of 1969, 1969 PA 306, MCL  
17 24.201 to 24.328, to implement this subsection.

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

20           (a) Make the initial determination of whether the patient has  
21 a terminal disease, is capable, and has made the request for  
22 medication voluntarily.

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

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

27           (i) The patient's medical diagnosis.

1           (ii) The patient's prognosis.

2           (iii) The potential risks associated with taking the  
3 medication to be prescribed.

4           (iv) The probable result of taking the medication to be  
5 prescribed.

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

8           (d) Refer the patient to a consulting physician for medical  
9 confirmation of the diagnosis and for a determination that the  
10 patient is capable and acting voluntarily.

11          (e) Refer the patient for counseling, if appropriate, under  
12 section 7.

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

14          (g) Inform the patient about the importance of having another  
15 individual present when the patient takes the medication prescribed  
16 under this act and of not taking the medication in a public place.

17          (h) Inform the patient that he or she may rescind the request  
18 for medication at any time and in any manner, and again inform the  
19 patient of the opportunity to rescind the request at the end of the  
20 15-day waiting period described in section 10.

21          (i) Immediately before writing the prescription for medication  
22 under this act, verify that the patient is making an informed  
23 decision.

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

26          (k) Ensure that all appropriate steps are carried out in  
27 accordance with this act before writing a prescription for

1 medication to enable the qualified patient to end his or her life  
2 in a humane and dignified manner.

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

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

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

11 (b) Verified that the patient is capable, is acting  
12 voluntarily, and has made an informed decision.

13 Sec. 7. If, in the opinion of the attending physician or the  
14 consulting physician, a patient may be suffering from a psychiatric  
15 or psychological disorder or depression that causes impaired  
16 judgment, 1 of the physicians shall refer the patient for  
17 counseling. After referral, a physician shall not prescribe  
18 medication to end the patient's life in a humane and dignified  
19 manner until the psychiatrist or psychologist who is performing the  
20 counseling determines that the patient is not suffering from a  
21 psychiatric or psychological disorder or depression causing  
22 impaired judgment.

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

1       Sec. 9. The attending physician shall recommend that the  
2 patient notify next of kin of the patient's request for medication  
3 under this act. The physician shall not deny a request for  
4 medication because the patient declines or is unable to notify his  
5 or her next of kin.

6       Sec. 10. To receive a prescription for medication to end his  
7 or her life in a humane and dignified manner, a qualified patient  
8 shall make both an oral request and a written request, and shall  
9 reiterate the oral request to his or her attending physician not  
10 less than 15 days after making the initial oral request. At the  
11 time the qualified patient makes his or her second oral request,  
12 the attending physician shall offer the patient an opportunity to  
13 rescind the request.

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

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

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

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

27       (b) Each written request by the patient for medication to end



1 his or her life in a humane and dignified manner.

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

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

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

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

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

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

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

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

23 (c) Evidence that the patient owns or leases property in this  
24 state.

25 (d) A Michigan income tax return filed for the most recent tax  
26 year.

27 Sec. 15. (1) The department of health and human services shall

1 annually review a sample of records maintained under this act. It  
2 shall require a health care provider that dispenses medication  
3 under this act to file a copy of the dispensing record with the  
4 department.

5 (2) The department of health and human services shall  
6 promulgate rules under the administrative procedures act of 1969,  
7 1969 PA 306, MCL 24.201 to 24.328, to facilitate collecting  
8 information regarding compliance with this act. The information  
9 collected is privileged; is exempt from disclosure under the  
10 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246; and  
11 is not available for inspection by the public.

12 (3) The department of health and human services shall generate  
13 and make available to the public an annual statistical report of  
14 information collected under subsection (2) that does not disclose  
15 identifying information.

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

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

25 Sec. 17. The sale, procurement, or issuance of a life, health,  
26 or accident insurance or annuity policy or the rate charged for a  
27 policy must not be conditioned upon or affected by the individual's

1 making or rescinding a request for medication to end his or her  
2 life in a humane and dignified manner. A qualified patient's act of  
3 ingesting medication to end his or her life in a humane and  
4 dignified manner must not have any effect on a life, health, or  
5 accident insurance or annuity policy.

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

11       Sec. 19. (1) Except as otherwise provided in this section and  
12 section 20, all of the following apply to actions taken in  
13 accordance with this act:

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

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

24       (c) A request by a patient for, or an attending physician's  
25 provision of, medication in good-faith compliance with this act is  
26 not neglect for any purpose of law and does not, in itself,  
27 constitute sufficient basis for the appointment of a guardian or

1 conservator.

2 (d) A health care provider is not under a duty, whether by  
3 contract, statute, or other legal requirement, to participate in  
4 providing a qualified patient with medication to end his or her  
5 life in a humane and dignified manner. If a health care provider is  
6 unable or unwilling to carry out a patient's request under this act  
7 and the patient transfers his or her care to a new health care  
8 provider, the prior health care provider shall transfer, upon  
9 request, a copy of the patient's relevant medical records to the  
10 new health care provider.

11 (2) Notwithstanding any other provision of law, a health care  
12 provider may prohibit another health care provider from  
13 participating in this act on the premises of the prohibiting  
14 provider if the prohibiting provider has notified the health care  
15 provider of the prohibiting provider's policy regarding  
16 participating in this act. This section does not prevent a health  
17 care provider from providing health care services to a patient that  
18 do not constitute participation in this act. Notwithstanding  
19 subsection (1), a health care provider that has given notice that  
20 it prohibits participation in this act may subject another health  
21 care provider that participates in this act after that notification  
22 to any of the following sanctions:

23 (a) Loss of privileges, loss of membership, or other sanction  
24 provided under the medical staff bylaws, policies, and procedures  
25 of the sanctioning health care provider, if the sanctioned health  
26 care provider is a member of the sanctioning health care provider's  
27 medical staff and participates in this act while on the premises of

1 the health care facility of the sanctioning health care provider.  
2 However, this subdivision does not apply to a health care provider  
3 that participates in this act at the private medical office of a  
4 physician or other provider.

5 (b) Termination of a lease, other property contract, or other  
6 nonmonetary remedies provided by a lease contract, not including  
7 loss or restriction of medical staff privileges or exclusion from a  
8 provider panel, if the sanctioned health care provider participates  
9 in this act while on the premises of the sanctioning health care  
10 provider or on property that is owned by or under the direct  
11 control of the sanctioning health care provider.

12 (c) Termination of contract or other nonmonetary remedies  
13 provided by contract if the sanctioned health care provider  
14 participates in this act while acting in the course and scope of  
15 the sanctioned health care provider's capacity as an employee or  
16 independent contractor of the sanctioning health care provider.

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

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

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

26 (4) A health care provider that imposes sanctions under  
27 subsection (2) shall follow all due process and other policies and

1 procedures that the sanctioning health care provider has adopted  
2 that are related to the imposition of sanctions on another health  
3 care provider.

4 (5) As used in this section:

5 (a) "Notify" means a separate statement in writing to the  
6 health care provider specifically informing the health care  
7 provider before the provider participates in this act of the  
8 sanctioning health care provider's policy about participating in an  
9 activity that is covered by this act.

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

14 (i) Making an initial determination that a patient has a  
15 terminal disease and informing the patient of the medical  
16 prognosis.

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

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

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

25 (6) Suspension or termination of staff membership or  
26 privileges under subsection (2) is not reportable for purposes of  
27 qualification for licensure under article 15 of the public health

1 code, 1978 PA 368, MCL 333.16101 to 333.18838. Action taken in  
2 accordance with section 4, 5, 6, or 7 is not grounds for  
3 investigation or discipline under section 16221 of the public  
4 health code, 1978 PA 368, MCL 333.16221.

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

8 Sec. 20. (1) A person who without authorization of the patient  
9 willfully alters or forges a request for medication or conceals or  
10 destroys a rescission of that request with the intent or effect of  
11 causing the patient's death is guilty of a felony punishable by  
12 imprisonment for not more than 20 years or a fine of not more than  
13 \$375,000.00, or both.

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

20 (3) This act does not limit liability for civil damages  
21 resulting from negligent conduct or intentional misconduct by any  
22 person.

23 (4) The penalties in this act do not preclude criminal  
24 penalties applicable under other law for conduct that is  
25 inconsistent with this act.

26 Sec. 21. Any governmental entity that incurs costs resulting  
27 from an individual terminating his or her life under this act in a

1 public place may recover those costs and reasonable and necessary  
2 attorney fees related to enforcing the claim from the estate of the  
3 individual.

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

6 REQUEST FOR MEDICATION TO END MY LIFE

7 IN A HUMANE AND DIGNIFIED MANNER

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

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

12 I have been fully informed of my diagnosis, the prognosis, the  
13 nature of medication to be prescribed and potential associated  
14 risks, the expected result, and the feasible alternatives,  
15 including comfort care, hospice care, and pain control.

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

18 (INITIAL ONLY 1 OF THE FOLLOWING)

19 \_\_\_\_\_ I have informed my family of my decision and taken their  
20 opinions into consideration.

21 \_\_\_\_\_ I have decided not to inform my family of my decision.

22 \_\_\_\_\_ I have no family to inform of my decision.

23 I understand that I have the right to rescind this request at  
24 any time.

25 I understand the full import of this request, and I expect to  
26 die when I take the medication to be prescribed. I further  
27 understand that although most deaths occur within 3 hours, my death



1 may take longer and my physician has counseled me about this  
2 possibility.

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

5 Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

6 DECLARATION OF WITNESSES

7 I declare all of the following:

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

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

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

13 (d) The individual is not a patient for whom I am an attending  
14 physician.

15 \_\_\_\_\_ Witness 1 Dated \_\_\_\_\_

16 \_\_\_\_\_ Witness 2 Dated \_\_\_\_\_

17 NOTE: One of the witnesses must not be a relative (by blood,  
18 marriage, or adoption) of the individual signing this request, must  
19 not be entitled to any portion of the individual's estate upon  
20 death, and must not own, operate, or be employed at a health care  
21 facility where the individual is a patient or resident. If the  
22 individual signing this request is an inpatient at a health care  
23 facility, one of the witnesses must be an individual designated by  
24 the health care facility.

25 Enacting section 1. The following acts and parts of acts are  
26 repealed:

27 (a) Section 329a of the Michigan penal code, 1931 PA 328, MCL

1 750.329a.

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

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