

SENATE BILL NO. 681

November 09, 2023, Introduced by Senators CAVANAGH, HERTEL, KLINEFELT, SINGH, MOSS, GEISS, CHANG, POLEHANKI, MCCANN, IRWIN, BAYER and WOJNO 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 a patient is qualified to receive life-ending 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 may be cited as the "death with dignity act".

2 Sec. 2. As used in this act:

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

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

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

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

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

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

28 (g) "Informed decision" means a decision by a qualified
29 patient to request and obtain a prescription for medication to end

1 the qualified patient's life in a humane and dignified manner, that
2 is based on an appreciation of the relevant facts and is made after
3 being fully informed of information as provided in section 5.

4 (h) "Medically confirmed" means the medical opinion of the
5 attending physician has been confirmed by a consulting physician
6 who has examined the patient and the patient's relevant medical
7 records.

8 (i) "Patient" means an adult who is under the care of a
9 physician.

10 (j) "Physician" means that term as defined in section 17001 or
11 17501 of the public health code, 1978 PA 368, MCL 333.17001 and
12 333.17501.

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

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

18 (ii) A physician who devotes a substantial portion of the
19 physician's time to the practice of psychiatry.

20 (l) "Psychologist" means that term as defined in section 18201
21 of the public health code, 1978 PA 368, MCL 333.18201.

22 (m) "Qualified patient" means an adult who has satisfied the
23 requirements of this act to obtain a prescription for medication to
24 end the adult's life in a humane and dignified manner.

25 (n) "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,
28 produce death within 6 months.

29 Sec. 3. (1) A patient who is capable, has been determined by

1 the attending physician and consulting physician to be suffering
2 from a terminal disease, and has voluntarily expressed the wish to
3 die may make a written request for medication for the purpose of
4 ending the patient's life in a humane and dignified manner in
5 accordance with this act.

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

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

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

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

17 (b) An individual who would be entitled to a portion of the
18 estate of the qualified patient upon the qualified patient's death
19 under a will or by operation of law.

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

23 (d) The patient's attending physician.

24 (3) If the patient is in a long-term care facility at the time
25 the written request is made, 1 of the witnesses must be an
26 individual designated by the long-term care facility who has the
27 qualifications specified by the department of health and human
28 services by rule. The department of health and human services shall
29 promulgate rules under the administrative procedures act of 1969,

1 1969 PA 306, MCL 24.201 to 24.328, to implement this subsection.

2 Sec. 5. The attending physician shall do all of the following:

3 (a) Make the initial determination of whether the patient has
4 a terminal disease, is capable, and has made the request for
5 medication to end the patient's life voluntarily.

6 (b) To ensure that the patient is making an informed decision,
7 inform the patient of all of the following:

8 (i) The patient's medical diagnosis.

9 (ii) The patient's prognosis.

10 (iii) The potential risks associated with taking the medication
11 to be prescribed.

12 (iv) The probable result of taking the medication to be
13 prescribed.

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

16 (c) Refer the patient to a consulting physician for medical
17 confirmation of the diagnosis and for a determination that the
18 patient is capable and acting voluntarily.

19 (d) Refer the patient for counseling, if appropriate, under
20 section 7.

21 (e) Recommend that the patient notify the patient's next of
22 kin.

23 (f) Inform the patient about the importance of having another
24 individual present when the patient takes the medication prescribed
25 under this act and of not taking the medication in a public place.

26 (g) Inform the patient that he or she may rescind the request
27 for medication at any time and in any manner, and again inform the
28 patient of the opportunity to rescind the request at the end of the
29 waiting period described in section 10.

1 (h) Immediately before writing the prescription for medication
2 under this act, verify that the patient is making an informed
3 decision.

4 (i) Fulfill the medical record documentation requirements of
5 section 13.

6 (j) Ensure that all appropriate steps are carried out in
7 accordance with this act before writing a prescription for
8 medication to enable the qualified patient to end the qualified
9 patient's life in a humane and dignified manner.

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

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

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

18 Sec. 7. If, in the opinion of the attending physician or the
19 consulting physician, a patient may be suffering from a psychiatric
20 or psychological disorder or depression that causes impaired
21 judgment, the attending physician or consulting physician shall
22 refer the patient for counseling. After referral, a physician shall
23 not prescribe medication to end the patient's life in a humane and
24 dignified manner under this act until the psychiatrist or
25 psychologist who is performing the counseling determines that the
26 patient is not suffering from a psychiatric or psychological
27 disorder or depression causing impaired judgment.

28 Sec. 8. An attending physician shall not prescribe medication
29 to end a patient's life in a humane and dignified manner unless the

1 patient has made an informed decision. Immediately before writing a
2 prescription for medication under this act, the attending physician
3 shall verify that the patient is making an informed decision.

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

9 Sec. 10. For a qualified patient to receive a prescription for
10 medication to end the qualified patient's life in a humane and
11 dignified manner, the qualified patient shall make both an oral
12 request and a written request as described in section 4, and shall
13 reiterate the oral request to the qualified patient's attending
14 physician not less than 15 days after making the initial oral
15 request. At the time the qualified patient makes the second oral
16 request, the attending physician shall offer the qualified patient
17 an opportunity to rescind the request.

18 Sec. 11. A patient may rescind the patient's request at any
19 time and in any manner without regard to the patient's mental
20 state. The attending physician shall not prescribe medication under
21 this act unless the physician has offered the qualified patient an
22 opportunity to rescind the request.

23 Sec. 12. An attending physician shall not write a prescription
24 for medication under this act until 15 days or more after the
25 patient's initial oral request and 48 hours or more after the
26 patient's written request described in section 4.

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

29 (a) Each oral request by the patient for medication to end the

1 patient's life in a humane and dignified manner.

2 (b) Each written request as described in section 4 by the
3 patient for medication to end the patient's life in a humane and
4 dignified manner.

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

8 (d) The consulting physician's diagnosis and prognosis, and
9 the consulting physician's verification that the patient is
10 capable, is acting voluntarily, and has made an informed decision.

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

13 (f) The attending physician's offer to the patient to rescind
14 the patient's request at the time of the patient's second oral
15 request as required under section 10.

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

20 Sec. 15. (1) The department of health and human services shall
21 annually review a sample of records maintained under this act. The
22 department of health and human services shall require a health care
23 provider that dispenses medication under this act to file a copy of
24 the dispensing record with the department.

25 (2) The department of health and human services shall
26 promulgate rules under the administrative procedures act of 1969,
27 1969 PA 306, MCL 24.201 to 24.328, to facilitate collecting
28 information regarding compliance with this act. The information
29 collected is privileged; is exempt from disclosure under the

1 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246; and
2 is not available for inspection by the public.

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

7 Sec. 16. (1) A provision in a contract, will, or other
8 agreement, whether written or oral, is not valid to the extent it
9 would affect whether an individual may make or rescind a request
10 for medication to end the individual's life in a humane and
11 dignified manner under this act.

12 (2) An obligation owed under any existing contract must not be
13 conditioned on or affected by an individual's request or rescission
14 of a request for medication to end the individual's life in a
15 humane and dignified manner under this act.

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

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

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

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

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

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

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

28 (2) Notwithstanding any other provision of law, a health care
29 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 under the medical staff bylaws, policies, and procedures
13 of the sanctioning health care provider, if the sanctioned health
14 care provider is a member of the sanctioning health care 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 a health care provider
18 that participates in this act at the private medical office of a
19 physician or other provider.

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

27 (c) Termination of contract or other nonmonetary remedies
28 provided by contract if the sanctioned health care provider
29 participates in this act while acting in the course and scope of

1 the sanctioned health care provider's capacity as an employee or
2 independent contractor of the sanctioning health care provider.

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

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

8 (b) An attending physician's or consulting physician's
9 contract with the attending physician's or consulting physician's
10 patient to act outside the course and scope of the attending
11 physician's or consulting physician's capacity as an employee or
12 independent 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) Suspension or termination of staff membership or
19 privileges under subsection (2) is not reportable for purposes of
20 qualification for licensure under article 15 of the public health
21 code, 1978 PA 368, MCL 333.16101 to 333.18838. Action taken in
22 accordance with section 4, 5, 6, or 7 is not grounds for
23 investigation or discipline under section 16221 of the public
24 health code, 1978 PA 368, MCL 333.16221.

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

28 (7) As used in this section:

29 (a) "Notify" means a separate statement in writing to the

1 health care provider specifically informing the health care
2 provider before the health care provider participates in this act
3 of the sanctioning health care provider's policy about
4 participating in an activity that is covered by this act.

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

9 (i) Making an initial determination that a patient has a
10 terminal disease and informing the patient of the medical
11 prognosis.

12 (ii) Providing information about this act to a patient on the
13 request of the patient.

14 (iii) Providing a patient, on the request of the patient, with a
15 referral to another physician.

16 (iv) An attending physician's or consulting physician's
17 contracting with the attending physician's or consulting
18 physician's patient to act outside of the course and scope of the
19 attending physician's or consulting physician's capacity as an
20 employee or independent contractor of a health care provider.

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

27 (2) A person who coerces or exerts undue influence on a
28 patient to either request medication for the purpose of ending the
29 patient's life under this act or destroy the patient's rescission

1 of a request for medication for the purpose of ending the patient's
2 life is guilty of a felony punishable by imprisonment for not more
3 than 20 years or a fine of not more than \$375,000.00, or both.

4 (3) This act does not limit liability for civil damages
5 resulting from negligent conduct or intentional misconduct by any
6 person.

7 (4) The penalties in this act do not preclude criminal
8 penalties applicable under other law for conduct that is
9 inconsistent with this act.

10 Sec. 21. A governmental entity that incurs costs resulting
11 from an individual terminating the individual's life under this act
12 in a public place may recover those costs and reasonable and
13 necessary attorney fees related to enforcing the claim from the
14 estate of the individual.

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

17 REQUEST FOR MEDICATION TO END MY LIFE
18 IN A HUMANE AND DIGNIFIED MANNER

19 I, _____, am an adult of sound mind.

20 I am suffering from _____, which my attending physician has
21 determined is a terminal disease and which has been medically
22 confirmed by a consulting physician.

23 I have been fully informed of my diagnosis, the prognosis, the
24 nature of medication to be prescribed and potential associated
25 risks, the expected result, and the feasible alternatives,
26 including comfort care, hospice care, and pain control.

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

29 (INITIAL ONLY 1 OF THE FOLLOWING)

1 _____ I have informed my family of my decision and taken their
2 opinions into consideration.

3 _____ I have decided not to inform my family of my decision.

4 _____ I have no family to inform of my decision.

5 I understand that I have the right to rescind this request at
6 any time.

7 I understand the full import of this request, and I expect to
8 die when I take the medication to be prescribed. I further
9 understand that although most deaths occur within 3 hours, my death
10 may take longer and my physician has counseled me about this
11 possibility.

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

14 Signed: _____ Dated: _____

15 DECLARATION OF WITNESSES

16 I declare all of the following:

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

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

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

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

24 _____ Witness 1 Dated _____

25 _____ Witness 2 Dated _____

26 NOTE: One of the witnesses must not be a relative (by blood,
27 marriage, or adoption) of the individual signing this request, must
28 not be entitled to any portion of the individual's estate upon
29 death, and must not own, operate, or be employed at a health care

1 facility where the individual is a patient or resident. If the
2 individual signing this request is an inpatient at a health care
3 facility, one of the witnesses must be an individual designated by
4 the health care facility.

5 Enacting section 1. The following acts and parts of acts are
6 repealed:

7 (a) Section 329a of the Michigan penal code, 1931 PA 328, MCL
8 750.329a.

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

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

12 Enacting section 3. This act does not take effect unless all
13 of the following bills of the 102nd Legislature are enacted into
14 law:

15 (a) Senate Bill No. 680.

16

17 (b) Senate Bill No. 678.

18