

HOUSE BILL NO. 637

INTRODUCED BY J. DARLING, P. STRAND, A. GRIFFITH, M. CUNNINGHAM, E. TILLEMAN, B. CARTER, J. COHENOUR, S. HOWELL, G. NIKOLAKAKOS, M. THANE, M. MARLER, J. LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL AID IN DYING WHEN AN INDIVIDUAL HAS A TERMINAL ILLNESS AND CAPACITY TO MAKE END-OF-LIFE DECISIONS; PROVIDING REQUIREMENTS FOR PRESCRIBING MEDICAL AID IN DYING MEDICATION; REQUIRING A WAITING PERIOD BEFORE A PRESCRIPTION FOR MEDICAL AID IN DYING MEDICATION IS FILLED; PROVIDING IMMUNITIES AND CONSCIENCE-BASED PROTECTIONS FOR HEALTH CARE PROVIDERS; REQUIRING REPORTING TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ESTABLISHING CRIMINAL PENALTIES FOR ALTERING OR FORGING A REQUEST OR CONCEALING OR DESTROYING A RESCISSION OF A REQUEST FOR MEDICAL AID IN DYING; ESTABLISHING CRIMINAL PENALTIES FOR COERCING OR EXERTING UNDUE INFLUENCE ON AN INDIVIDUAL TO REQUEST MEDICAL AID IN DYING; PROVIDING A CLAIM FOR GOVERNMENT ENTITIES FOR CERTAIN COSTS INCURRED; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING DEFINITIONS."

WHEREAS, Montanans may currently seek medical aid in dying under the Montana Supreme Court decision in *Baxter v. State*, 2009 MT 449, 354 Mont. 234, 224 P.3d 1211; the Legislature seeks to provide protections for Montanans who seek and health care providers who provide medical aid in dying.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Patient and Physician Protections in Care Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 14], unless the context clearly indicates otherwise, the following definitions apply:

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

1 Relationship

2 to Patient: _____

3 Date: _____

4 NOTE: The witness may not be (1) a relative of the patient by blood, marriage, or adoption; (2) a
5 person who, at the time the request is signed, would be entitled to any portion of the estate of the qualified
6 patient upon death, under any will or by operation of law; or (3) an owner, operator, or employee of a health
7 care entity where the qualified patient is receiving medical treatment or is a resident."
8

9 NEW SECTION. Section 4. Determining capacity. If an individual has a recent history of a mental
10 health disorder or an intellectual disability that could cause impaired judgment with regard to end-of-life medical
11 decisionmaking, or if, in the opinion of the prescribing health care provider or consulting health care provider,
12 an individual currently has a mental health disorder or an intellectual disability that may cause impaired
13 judgment with regard to end-of-life medical decisionmaking, the individual may not be determined to have
14 capacity to make end-of-life decisions until:

15 (1) the health care provider refers the individual for evaluation by a mental health professional with
16 the training and expertise to assess a person with such a disorder or disability; and

17 (2) the mental health professional determines the individual has capacity to make end-of-life
18 decisions after evaluating the individual during one or more visits with the individual.
19

20 NEW SECTION. Section 5. Waiting period. (1) A prescription for medical aid in dying medication
21 may not be filled until ~~48~~ 96 hours after the prescription for medical aid in dying medication has been written,
22 unless the qualified individual's prescribing health care provider has medically confirmed that the qualified
23 individual may, within reasonable medical judgment, die before the expiration of the waiting period required in
24 this section, in which case the prescription may be filled after the prescribing health care provider affirms that all
25 requirements have been fulfilled pursuant to [section 3].

26 (2) A prescription for medical aid in dying medication must indicate the date and time that the
27 prescription for medical aid in dying medication was written and indicate the first allowable date and time when
28 it may be filled.