

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.

(2) "Capacity" means an individual's ability to understand and appreciate health care options available to the individual, including significant benefits and risks, and to make and communicate an informed health care decision. A determination of capacity must be made only according to the professional standards of care and the provisions of 50-5-1302.

(3) "Health care entity" means an entity, other than an individual, that is licensed under Title 50 to provide any form of health care in the state, including but not limited to a hospital, clinic, hospice, home health agency, long-term care facility, pharmacy, group medical practice, medical home, or any similar entity.

(4) "Health care provider" means any of the following individuals authorized to prescribe a medication to be used in medical aid in dying:

(a) a physician licensed pursuant to Title 37, chapter 3;

(b) an advanced practice registered nurse licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409; or

(c) a physician assistant licensed pursuant to Title 37, chapter 20.

(5) "Medical aid in dying" means the medical practice in which a health care provider prescribes medication to a qualified individual who may self-administer that medication to bring about a peaceful death.

(6) "Mental health professional" means:

(a) a physician licensed under Title 37, chapter 3;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a psychologist licensed under Title 37, chapter 17;

(d) a social worker licensed under 37-39-308; or

(e) a professional counselor licensed under 37-39-309.

(7) "Prescribing health care provider" means a health care provider who prescribes medical aid in dying medication.

(8) "Qualified individual" means an individual who has met the requirements of [section 3].

(9) "Self-administer" means taking an affirmative, conscious, voluntary act to ingest a pharmaceutical substance.

(10) "Terminal condition" means a disease, illness, or condition that is incurable and irreversible and that, in accordance with reasonable medical judgment, will result in death within 6 months.

NEW SECTION. Section 3. Medical aid in dying -- prescribing health care provider

determination -- form. A prescribing health care provider may provide a prescription for medical aid in dying medication to an adult only after the prescribing health care provider has:

- (1) determined that the individual has:
 - (a) capacity;
 - (b) a terminal illness;
 - (c) voluntarily made the request for medical aid in dying; and
 - (d) the ability to self-administer the medical aid in dying medication;
- (2) provided medical care to the individual in accordance with accepted medical standards of care;
- (3) determined that the individual is making an informed decision after discussing with the individual the:
 - (a) individual's medical diagnosis and prognosis;
 - (b) potential risks associated with self-administering the medical aid in dying medication that the individual has requested the health care provider to prescribe;
 - (c) probable result of self-administering the medical aid in dying medication to be prescribed;
 - (d) individual's option of choosing to obtain the medical aid in dying medication and then deciding not to use it; and
 - (e) feasible alternative, concurrent, or additional treatment opportunities, including hospice care and palliative care focused on relieving symptoms and reducing suffering;
- (4) determined in good faith that the individual's request does not arise from coercion or undue influence by another person;
- (5) noted in the individual's health record the prescribing health care provider's determination that the individual qualifies to receive medical aid in dying;
- (6) affirmed that the individual is:
 - (a) enrolled in a medicare-certified hospice program; or

(b) eligible to receive medical aid in dying after the prescribing health care provider has referred the individual to a consulting health care provider who has experience with the underlying condition that renders the qualified individual terminally ill, and the consulting health care provider has:

- (i) examined the individual;
- (ii) reviewed the individual's relevant medical records;
- (iii) determined the individual has capacity and has voluntarily made the request for medical aid in dying; and
- (iv) confirmed, in writing, the prescribing health care provider's prognosis that the individual is suffering from a terminal illness;

(7) informed the individual of the importance of notifying the next of kin or any person who plays a significant role in an individual's life, which may include persons not legally related to the individual, of the individual's decision to request medication pursuant to [sections 1 through 14];

(8) educated the individual on:

- (a) the recommended procedure for self-administering the medication to be prescribed;
- (b) the safe-keeping and proper disposal of unused medication in accordance with state and federal law;
- (c) the importance of having another person present when the individual self-administers the medication to be prescribed; and
- (d) not taking the medical aid in dying medication in a public place; and

(9) provided substantially the following form to the individual and entered the form into the individual's health record after the form has been completed with all the required signatures and initials:

"REQUEST FOR MEDICATION TO END MY LIFE IN A PEACEFUL MANNER

I, _____, am an adult of sound mind.

I am suffering from a terminal illness, which is a disease or condition that is incurable and irreversible and that, according to reasonable medical judgment, will result in my death within six months. My health care provider has determined that the illness is in its terminal phase.

_____ (Patient Initials)

I have been fully informed of my diagnosis and prognosis, the nature of the medical aid in dying

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medication to be prescribed and the potential associated risks, the expected result, and the feasible alternative, concurrent, or additional treatment opportunities, including hospice care and palliative care focused on relieving symptoms and reducing suffering.

____ (Patient Initials)

I request that my health care provider prescribe medication that will end my life in a peaceful manner if I choose to self-administer the medication, and I authorize my health care provider to contact a willing pharmacist to fulfill this request.

____ (Patient Initials)

I understand that I have the right to rescind this request at any time. I understand that I am under no obligation to fill the prescription once written or to self-administer the medication if I obtain it.

____ (Patient Initials)

I understand the full import of this request, and I expect to die if I self-administer the medical aid-in-dying medication prescribed. I further understand that although most deaths occur within three hours, my death may take longer. My health care provider has counseled me about this possibility.

____ (Patient Initials)

I make this request voluntarily and without reservation.

Signed: _____

Date: _____ Time: _____

DECLARATION OF WITNESSES:

I declare that the person signing this request:

- (1) is personally known to me or has provided proof of identity;
- (2) signed this request in my presence;
- (3) appears to be of sound mind and not under duress, fraud, or undue influence;
- (4) is not a relative of me by blood, marriage, or adoption; and
- (5) is not a patient for whom I am a health care provider.

Witness:

Signature: _____

Printed Name: _____

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.

1

2 NEW SECTION. Section 6. Medical aid in dying -- right to know. (1) A health care provider shall
3 inform a terminally ill patient of all reasonable options related to the patient's care that are legally available to
4 terminally ill patients who meet the medical standards of care for end-of-life care.

5 (2) A health care provider fails to obtain informed consent for subsequent medical treatment if an
6 individual requests information about medical aid in dying and within a reasonable time, the provider has failed,
7 at a minimum, to do either of the following:

8 (a) provide information to the individual about medical aid in dying and other legal end-of-life
9 options; or

10 (b) refer the individual to a health care provider who is able and willing to carry out the individual's
11 request or to another individual or entity to assist the requesting individual in seeking medical aid in dying.

12 (3) If the health care provider transfers the individual's care to a new health care provider, the prior
13 health care provider shall transfer, upon request, a copy of the individual's relevant medical records to the new
14 health care provider.

15

16 NEW SECTION. Section 7. Safe disposal of unused medication. A person who has custody or
17 control of medication prescribed pursuant to [sections 1 through 14] after the qualified individual's death shall
18 dispose of the medication by lawful means in accordance with state and federal guidelines.

19

20 NEW SECTION. Section 8. Immunities -- conscience-based decisions. (1) A person may not be
21 subject to civil or criminal liability, licensing sanctions, or other professional disciplinary action for:

22 (a) participating, or refusing to participate, in medical aid in dying in good faith compliance with the
23 provisions of [sections 1 through 14]; or

24 (b) being present when a qualified patient self-administers the prescribed medical aid in dying
25 medication to end the qualified individual's life in accordance with the provisions of [sections 1 through 14].

26 (2) A health care entity, professional organization or association, health insurer, managed care
27 organization, or health care provider may not subject a person to censure, discipline, suspension, loss or denial
28 of license, credential, privileges, or membership, or other penalty for participating, or refusing to participate, in

the provision of medical aid in dying in good faith compliance with the provisions of [sections 1 through 14].

(3) A health care provider who objects for reasons of conscience to participating in the provision of medical aid in dying is not required to participate in the provision of medical aid in dying under any circumstance. If a health care provider is unable or unwilling to carry out an individual's request pursuant to [sections 1 through 14], the health care provider shall inform the individual the health care provider is unwilling or unable to carry out the individual's request and refer the individual to a health care provider who is able and willing to carry out the individual's request or to another individual or entity to assist the requesting individual in seeking medical aid in dying as provided in [section 6].

(4) A health care entity may not forbid or otherwise sanction a health care provider who provides:

(a) medical aid in dying in accordance with [sections 1 through 14] off the premises of the health care entity when the health care provider is not acting within the normal course and scope of the health care provider's employment with the health care entity; or

(b) scientific and accurate information about medical aid in dying to an individual when discussing end-of-life care options.

(5) A health care entity may sanction a health care provider for participating in medical aid in dying in accordance with [sections 1 through 14] on the premises of the prohibiting health care entity only if the health care entity has given written notice to the health care provider of the prohibiting entity's written policy forbidding participation in medical aid in dying and the health care provider participates in medical aid in dying:

(a) on the premises of the health care entity; or

(b) within the course and scope of the health care provider's employment for the health care entity.

(6) Nothing in this section may be construed to prevent:

(a) a health care provider from participating in medical aid in dying in accordance with [sections 1 through 14] while the health care provider is acting outside the health care entity's premises or outside the course and scope of the health care provider's capacity as an employee; or

(b) an individual who seeks medical aid in dying in accordance with [sections 1 through 14] from contracting with the individual's prescribing health provider or consulting health care provider to act outside the course and scope of the provider's affiliation with the sanctioning health care entity.

(7) A health care entity that imposes sanctions on a health care provider pursuant to [sections 1

through 14] shall act reasonably, both substantively and procedurally, and may not be arbitrary or capricious in its imposition of sanctions.

(8) Participating in medical aid in dying in accordance with [sections 1 through 14] may not be the basis for a report of unprofessional conduct. Nothing in this section prevents the board of medical examiners from investigating unprofessional conduct related to a failure to follow the requirements of [sections 1 through 14].

(9) A request by an individual for medical aid in dying alone does not constitute grounds for neglect or elder abuse for any purpose of law and may not be the sole basis for appointment of a guardian or conservator.

(10) (a) Care that complies with [sections 1 through 14] meets the medical standard of care.

(b) Nothing in [sections 1 through 14] exempts a provider or other medical personnel from meeting medical standards of care for an individual's treatment. This section does not limit civil liability for intentional or negligent misconduct or failure to comply with the requirements of [sections 1 through 14].

NEW SECTION. Section 9. Prohibited acts. Nothing in [sections 1 through 14] may be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing, or euthanasia. Actions taken in accordance with [sections 1 through 14] may not be construed, for any purpose, to constitute suicide, assisted suicide, euthanasia, mercy killing, homicide, or adult abuse under the law.

NEW SECTION. Section 10. Reporting -- rulemaking. (1) A health care provider who prescribes medical aid in dying to a qualified individual in accordance with the provisions of [sections 1 through 14] shall provide, in accordance with department of public health and human services rules, a report of that provider's participation. The department shall adopt rules that establish the timeframes and forms for reporting pursuant to this section and shall limit the reporting of data relating to qualified individuals who received prescriptions for medical aid in dying medication to the following:

- (a) the qualified individual's age at death;
- (b) the qualified individual's race and ethnicity;
- (c) the qualified individual's gender;

(d) whether the qualified individual was enrolled in hospice at the time of death;

(e) the qualified individual's underlying medical condition; and

(f) whether the qualified individual self-administered the medical aid in dying medication and, if so, the date that this occurred.

(2) The department of public health and human services shall promulgate an annual statistical report containing aggregated data on the information collected pursuant to subsection (1) on the total number of medical aid in dying medication prescriptions written statewide and on the number of health care providers who have issued prescriptions for medical aid in dying medication during that year. Data reported pursuant to this subsection may not contain individually identifiable health information and individually identifiable health information is exempt from disclosure.

NEW SECTION. Section 11. Effect on insurance and construction of wills, contracts, and statutes. (1) Death resulting from medical aid in dying medication in accordance with [sections 1 through 14] does not constitute, for any purpose, a suicide or a homicide.

(2) The sale, procurement, or issuance of a policy of life, health, or accident insurance, or annuity policy, or the rate charged for the policy may not be conditioned on or affected by an individual's act of making or rescinding a request for medication pursuant to [sections 1 through 14].

(3) A qualified individual's act of self-administering medication pursuant to [sections 1 through 14] does not invalidate any part of a life, health, or accident insurance, or annuity policy, notwithstanding any term of the policy to the contrary.

(4) It is unlawful for an insurer to deny or alter health care benefits otherwise available to an individual with a terminal disease based on the availability of medical aid in dying or otherwise attempt to coerce an individual with a terminal disease to make or rescind a request for medical aid in dying medication.

(5) A provision in a contract, will, or other agreement, whether written or oral, that would determine whether an individual may make or rescind a request pursuant to [sections 1 through 14] is not valid.

(6) An obligation owing under any currently existing contract may not be conditioned or affected by an individual's act of making or rescinding a request pursuant to [sections 1 through 14].

1 **NEW SECTION. Section 12. Death certificate.** (1) Unless otherwise prohibited by law, the
2 prescribing provider may sign the death certificate of an individual who obtained and self-administered a
3 prescription for medication pursuant to [sections 1 through 14].

4 (2) (a) When a death has occurred in accordance with [sections 1 through 14], the death must be
5 attributed to the underlying terminal condition.

6 (b) Death following self-administering medication under [sections 1 through 14] does not constitute
7 grounds for a postmortem inquiry.

8 (c) Death in accordance with [sections 1 through 14] may not be designated as a suicide or a
9 homicide.

10 (3) An individual's act of self-administering medication prescribed pursuant to [sections 1 through
11 14] may not be indicated on the death certificate.

12
13 **NEW SECTION. Section 13. Liabilities and penalties.** (1) A person who intentionally or knowingly
14 alters or forges an individual's request for medication pursuant to [sections 1 through 14] or conceals or
15 destroys a rescission for medication pursuant to [sections 1 through 14] is guilty of a felony and subject to the
16 penalties set forth in 46-18-213.

17 (2) A person who intentionally or knowingly coerces or exerts undue influence on an individual with
18 a terminal disease to request medication pursuant to [sections 1 through 14] or to request or use medication
19 pursuant to [sections 1 through 14] is guilty of a felony and subject to the penalties set forth in 46-18-213.

20 (3) Nothing in [sections 1 through 14] limits civil liability or damages arising from negligent conduct
21 or intentional misconduct by the health care provider or health care entity.

22 (4) The penalties specified in [sections 1 through 14] do not preclude criminal penalties under
23 other laws for conduct inconsistent with [sections 1 through 14].
24

25 **NEW SECTION. Section 14. Claim by government entity for costs incurred.** A government entity
26 that incurs costs resulting from self-administration of medication prescribed under [sections 1 through 14] in a
27 public place has a claim against the estate of the qualified individual to recover the costs and reasonable
28 attorney fees related to enforcing the claim.

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