

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 252

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO HEALTH CARE; ENACTING THE END OF LIFE OPTIONS ACT;
AMENDING A SECTION OF CHAPTER 30, ARTICLE 2 NMSA 1978 TO
ESTABLISH RIGHTS, PROCEDURES AND PROTECTIONS RELATING TO
MEDICAL AID IN DYING; REMOVING CRIMINAL LIABILITY FOR HEALTH
CARE PROVIDERS WHO PROVIDE ASSISTANCE PURSUANT TO THE END OF
LIFE OPTIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 10 of this act may be cited as the "End of Life Options
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
End of Life Options Act:

A. "adult" means a resident of the state who is
eighteen years of age or older;

.208091.4

underscored material = new
[bracketed material] = delete

1 B. "capacity" means an individual's ability to
2 understand and appreciate the nature and consequences of
3 proposed health care, including its significant benefits, risks
4 and alternatives to proposed health care and to make and
5 communicate an informed health care decision. A determination
6 of capacity shall be made only according to professional
7 standards of care and the provisions of Section 24-7A-11 NMSA
8 1978 of the Uniform Health-Care Decisions Act;

9 C. "health care provider" means a physician
10 licensed pursuant to the Medical Practice Act or an osteopathic
11 physician licensed pursuant to the Osteopathic Medicine Act who
12 provides treatment to a patient;

13 D. "licensed mental health professional" means a
14 state-licensed psychiatrist, psychologist, master social
15 worker, psychiatric nurse practitioner or licensed professional
16 clinical mental health counselor;

17 E. "medical aid in dying" means the medical
18 practice wherein a health care provider prescribes medication
19 to an individual who may self-administer that medication to
20 bring about the individual's death;

21 F. "self-administer" means taking an affirmative,
22 voluntary physical action to give oneself a pharmaceutical
23 substance; and

24 G. "terminal illness" means a disease or condition
25 that is incurable and irreversible and that, in accordance with

1 reasonable medical judgment, will result in death within six
2 months.

3 SECTION 3. [NEW MATERIAL] MEDICAL AID IN DYING--HEALTH
4 CARE PROVIDER DETERMINATION.--A health care provider may
5 provide medical aid in dying to an adult patient if the health
6 care provider:

7 A. determines that the patient:

- 8 (1) has capacity;
9 (2) has a terminal illness;
10 (3) has voluntarily made the request for
11 medical aid in dying; and
12 (4) has the ability to self-administer the
13 medical aid in dying medication;

14 B. treats the patient in accordance with accepted
15 medical standards of care;

16 C. determines that the patient is making an
17 informed decision by discussing with the patient:

- 18 (1) the patient's medical diagnosis and
19 prognosis;
20 (2) the potential risks associated with taking
21 the medical aid in dying medication that the patient has
22 requested the health care provider to prescribe;
23 (3) the probable result of taking the medical
24 aid in dying medication to be prescribed;
25 (4) the patient's option of choosing to obtain

.208091.4

1 the medical aid in dying medication and not taking it; and

2 (5) the feasible alternatives to medical aid
3 in dying or additional treatment opportunities, including care
4 focusing on palliating symptoms and reducing suffering; and

5 D. believes in good faith that the patient's
6 request does not arise from coercion or undue influence by
7 another person.

8 SECTION 4. [NEW MATERIAL] CONSULTATION.--

9 A. Except for a patient enrolled in a hospice
10 program, a consulting health care provider shall examine the
11 patient and the patient's relevant medical records and confirm,
12 in writing, the referring health care provider's diagnosis that
13 the patient is suffering from a terminal illness and verify
14 that the patient has capacity, is acting voluntarily and has
15 made an informed decision.

16 B. If, in the opinion of the referring health care
17 provider, consulting health care provider or a hospice medical
18 director, a patient has a mental health disorder or an
19 intellectual disability causing impaired judgment, the health
20 care provider shall refer the patient for counseling by a
21 licensed mental health professional. The counseling shall
22 include one or more in-person visits between the patient and
23 the licensed mental health professional for the purpose of
24 determining that the patient has capacity and does not have a
25 mental health disorder or an intellectual disability causing

.208091.4

1 impaired judgment. If a patient has been referred for
 2 counseling pursuant to this subsection, medication to end a
 3 patient's life shall not be prescribed until the licensed
 4 mental health professional performing counseling has determined
 5 that the patient does not have impaired judgment.

6 SECTION 5. [NEW MATERIAL] MEDICAL AID IN DYING--REQUEST--
 7 FORM.--A patient seeking medical aid in dying shall make a
 8 request to the patient's health care provider for medical aid
 9 in dying using substantially the following form, which shall be
 10 made part of the patient's medical record:

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

12 I, _____, am an
 13 adult of sound mind.

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

19 I have been fully informed of my diagnosis and prognosis,
 20 the nature of the medical aid in dying medication to be
 21 prescribed and potential associated risks, the expected result
 22 and the feasible alternatives or additional treatment
 23 opportunities, including palliating symptoms and reducing
 24 suffering. _____ Patient Initials.

25 I request that my health care provider prescribe

.208091.4

1 medication that will end my life in a peaceful manner if I
2 choose to take it, and I authorize my health care provider to
3 contact a willing pharmacist about my request. _____ Patient
4 Initials.

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

7 I understand the full import of this request and I expect
8 to die if I take the medical aid in dying medication
9 prescribed. I further understand that although most deaths
10 occur within three hours, my death may take longer. My health
11 care provider has counseled me about this possibility. _____
12 Patient Initials.

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

15 Signed: _____

16 Date: _____ Time: _____

17 DECLARATION OF WITNESSES:

18 We declare that the person signing this request:

19 A. is personally known to us or has provided proof
20 of identity;

21 B. signed this request in our presence;

22 C. appears to be of sound mind and not under
23 duress, fraud or undue influence; and

24 D. is not a patient for whom either of us is a
25 health care provider.

underscored material = new
[bracketed material] = delete

1 Witness 1: Witness 2:
2 Signature: _____ _____
3 Printed Name: _____ _____
4 Relationship
5 to Patient: _____ _____
6 Date: _____ _____".

7 NOTE: No more than one witness shall be a relative by blood,
8 marriage or adoption of the person signing this request. No
9 more that one witness shall own, operate or be employed at a
10 health care facility where the person signing that request is a
11 patient or resident.

12 **SECTION 6.** [NEW MATERIAL] WAITING PERIOD.--A prescription
13 for aid in dying medication shall:

14 A. not be filled until forty-eight hours after the
15 request form for medical aid in dying is signed; and

16 B. indicate the date and time that the request form
17 for medical aid in dying was signed to ensure that the
18 prescription is not filled until forty-eight hours after the
19 request form for medical aid in dying is signed.

20 **SECTION 7.** [NEW MATERIAL] MEDICAL AID IN DYING--RIGHT TO
21 KNOW.--A health care provider shall inform terminally ill
22 patients of all options related to the patients' care that are
23 legally available to terminally ill patients and that meet or
24 exceed the medical standards of care for end of life medical
25 care.

.208091.4

underscored material = new
[bracketed material] = delete

1 SECTION 8. [NEW MATERIAL] DEATH CERTIFICATE--CAUSE OF
2 DEATH.--The cause of death listed on an individual's death
3 certificate who is deceased pursuant to self-administration of
4 medical aid in dying medication pursuant to the End of Life
5 Options Act shall be the individual's underlying terminal
6 illness.

7 SECTION 9. [NEW MATERIAL] MEDICAL AID IN DYING--EFFECT ON
8 WILLS--CONTRACTS--LIFE INSURANCE--ANNUITIES.--

9 A. A provision in a contract, will or other
10 agreement, whether written or oral, or life insurance policy or
11 annuity, to the extent the provision would affect whether a
12 person may make or rescind a request for medical aid in dying
13 medication, is not valid.

14 B. An obligation owing under any currently existing
15 contract may not be conditioned or affected by an individual
16 making or rescinding a request for medical aid in dying
17 medication.

18 SECTION 10. [NEW MATERIAL] STANDARD OF CARE--PATIENT AND
19 PROVIDER SELF-DETERMINATION.--

20 A. A licensed health care provider who acts with
21 reasonable care in compliance with the provisions of Section 3
22 of the End of Life Options Act shall not be subject to civil
23 liability or professional disciplinary action for such action.
24 A person who is not a licensed health care provider who acts in
25 good faith to comply with the provisions of Section 3 of the

1 End of Life Options Act shall not be subject to civil liability
2 for such action. Any person who complies with the provisions
3 of Section 3 of the End of Life Options Act shall not be
4 prosecuted pursuant to Section 30-2-4 NMSA 1978.

5 B. A person that declines for any reason to
6 participate in actions permitted pursuant to Section 3 of the
7 End of Life Options Act shall not be subject to civil or
8 criminal liability or professional disciplinary action for such
9 action.

10 C. A request by a terminally ill individual for
11 medical aid in dying medication in accordance with the
12 provisions of the End of Life Options Act shall not constitute
13 a basis per se for a finding that the requesting terminally ill
14 individual lacks capacity.

15 D. A request by a terminally ill individual for or
16 provision by a health care provider of medical aid in dying
17 medication in good faith compliance with the provisions of the
18 End of Life Options Act in accordance with medical standards of
19 care does not constitute neglect or adult abuse for any purpose
20 of law.

21 E. A health care provider may choose whether to
22 participate in providing medical aid in dying medication to an
23 individual pursuant to the End of Life Options Act.

24 F. If a health care provider is unable or unwilling
25 to carry out a patient's request for medical aid in dying

.208091.4

1 pursuant to the End of Life Options Act and the patient
2 transfers care to a new health care provider, the patient's
3 prior health care provider shall transfer, upon the patient's
4 request, a copy of the patient's relevant medical records to
5 the new health care provider.

6 G. Neither the state nor any person shall subject
7 any health care provider to discipline, suspension, loss of
8 license, loss of privilege or other penalty for actions taken
9 in good faith reliance on the provisions of the End of Life
10 Options Act or refusals to act under the End of Life Options
11 Act.

12 SECTION 11. Section 30-2-4 NMSA 1978 (being Laws 1963,
13 Chapter 303, Section 2-5) is amended to read:

14 "30-2-4. ASSISTING SUICIDE.--

15 A. Assisting suicide consists of deliberately
16 aiding another in the taking of ~~[his]~~ the person's own life
17 ~~[Whoever]~~ unless the person aiding another in the taking of the
18 person's own life is a person acting pursuant to the End of
19 Life Options Act.

20 B. A person who is not acting pursuant to the End
21 of Life Options Act and who commits assisting suicide is guilty
22 of a fourth degree felony."