

1 SENATE BILL 308

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE ELIZABETH WHITEFIELD END-
12 OF-LIFE OPTIONS ACT; AMENDING A SECTION OF CHAPTER 30, ARTICLE
13 2 NMSA 1978 TO ESTABLISH RIGHTS, PROCEDURES AND PROTECTIONS
14 RELATING TO MEDICAL AID IN DYING; ESTABLISHING REPORTING
15 REQUIREMENTS; REMOVING CRIMINAL LIABILITY FOR PROVIDING
16 ASSISTANCE PURSUANT TO THE ELIZABETH WHITEFIELD END-OF-LIFE
17 OPTIONS ACT.
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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

25 A. "adult" means a resident of the state who is

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1 eighteen years of age or older;

2 B. "capacity" means an individual's ability to
3 understand and appreciate health care options available to that
4 individual, including significant benefits and risks, and to
5 make and communicate an informed health care decision. A
6 determination of capacity shall be made only according to
7 professional standards of care and the provisions of Section
8 24-7A-11 NMSA 1978;

9 C. "health care entity" means an entity, other than
10 an individual, that is licensed to provide any form of health
11 care in the state, including a hospital, clinic, hospice
12 agency, home health agency, long-term care agency, pharmacy,
13 group medical practice, medical home or any similar entity;

14 D. "health care provider" means any of the
15 following individuals authorized pursuant to the New Mexico
16 Drug, Device and Cosmetic Act to prescribe a medication to be
17 used in medical aid in dying:

18 (1) a physician licensed pursuant to the
19 Medical Practice Act;

20 (2) an osteopathic physician licensed pursuant
21 to the Osteopathic Medicine Act;

22 (3) a nurse licensed in advanced practice
23 pursuant to the Nursing Practice Act; or

24 (4) a physician assistant licensed pursuant to
25 the Physician Assistant Act or the Osteopathic Medicine Act;

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1 E. "medical aid in dying" means the medical
2 practice wherein a health care provider prescribes medication
3 to a qualified individual who may self-administer that
4 medication to bring about a peaceful death;

5 F. "mental health professional" means a state-
6 licensed psychiatrist, psychologist, master social worker,
7 psychiatric nurse practitioner or professional clinical mental
8 health counselor;

9 G. "prescribing health care provider" means a
10 health care provider who prescribes medical aid in dying
11 medication;

12 H. "qualified individual" means an individual who
13 has met the requirements of Section 3 of the Elizabeth
14 Whitefield End-of-Life Options Act;

15 I. "self-administer" means taking an affirmative,
16 conscious, voluntary action to ingest a pharmaceutical
17 substance; and

18 J. "terminal illness" means a disease or condition
19 that is incurable and irreversible and that, in accordance with
20 reasonable medical judgment, will result in death within six
21 months.

22 SECTION 3. [NEW MATERIAL] MEDICAL AID IN DYING--
23 PRESCRIBING HEALTH CARE PROVIDER DETERMINATION--FORM.--A
24 prescribing health care provider may provide a prescription for
25 medical aid in dying medication to an individual only after the

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1 prescribing health care provider has:

2 A. determined that the individual has:

3 (1) capacity;

4 (2) a terminal illness;

5 (3) voluntarily made the request for medical
6 aid in dying; and

7 (4) the ability to self-administer the medical
8 aid in dying medication;

9 B. provided medical care to the individual in
10 accordance with accepted medical standards of care;

11 C. determined that the individual is making an
12 informed decision after discussing with the individual the:

13 (1) individual's medical diagnosis and
14 prognosis;

15 (2) potential risks associated with self-
16 administering the medical aid in dying medication that the
17 individual has requested the health care provider to prescribe;

18 (3) probable result of self-administering the
19 medical aid in dying medication to be prescribed;

20 (4) individual's option of choosing to obtain
21 the medical aid in dying medication and then deciding not to
22 use it; and

23 (5) feasible alternative, concurrent or
24 additional treatment opportunities, including hospice care and
25 palliative care focused on relieving symptoms and reducing

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1 suffering;

2 D. determined in good faith that the individual's
3 request does not arise from coercion or undue influence by
4 another person;

5 E. noted in the individual's health record the
6 prescribing health care provider's determination that the
7 individual qualifies to receive medical aid in dying;

8 F. confirmed in the individual's health record that
9 at least one physician or osteopathic physician licensed
10 pursuant to the Medical Practice Act or the Osteopathic
11 Medicine Act has determined that the individual has capacity, a
12 terminal illness and the ability to self-administer the medical
13 aid in dying medication. That physician may be the prescribing
14 health care provider pursuant to this section, the individual's
15 hospice health care provider or another physician who meets the
16 requirements of this subsection;

17 G. affirmed that the individual is:

18 (1) enrolled in a medicare-certified hospice
19 program; or

20 (2) eligible to receive medical aid in dying
21 after the prescribing health care provider has referred the
22 individual to a consulting health care provider, who has
23 experience with the underlying condition rendering the
24 qualified individual terminally ill, and the consulting health
25 care provider has:

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1 (a) examined the individual;
2 (b) reviewed the individual's relevant
3 medical records; and

4 (c) confirmed, in writing, the
5 prescribing health care provider's prognosis that the
6 individual is suffering from a terminal illness; and

7 H. provided substantially the following form to the
8 individual and enters the form into the individual's health
9 record after the form has been completed with all of the
10 required signatures and initials:

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 my
17 death within six months. My health care provider has
18 determined that the illness is in its terminal phase.

19 _____ (Patient Initials)

20 I have been fully informed of my diagnosis and prognosis,
21 the nature of the medical aid in dying medication to be
22 prescribed and the potential associated risks, the expected
23 result and the feasible alternative, concurrent or additional
24 treatment opportunities, including hospice care and palliative
25 care focused on relieving symptoms and reducing suffering.

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1 _____ (Patient Initials)

2 I request that my health care provider prescribe
3 medication that will end my life in a peaceful manner if I
4 choose to self-administer the medication, and I authorize my
5 health care provider to contact a willing pharmacist to fulfill
6 this request. _____ (Patient Initials)

7 I understand that I have the right to rescind this request
8 at any time. _____ (Patient Initials)

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

14 _____ (Patient Initials)

15 I make this request voluntarily and without reservation.

16 Signed: _____

17 Date: _____ Time: _____

18 DECLARATION OF WITNESSES:

19 We declare that the person signing this request:

- 20 1. is personally known to us or has provided proof
21 of identity;
- 22 2. signed this request in our presence;
- 23 3. appears to be of sound mind and not under
24 duress, fraud or undue influence; and
- 25 4. is not a patient for whom either of us is a

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1 health care provider.

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

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

13 SECTION 4. [NEW MATERIAL] DETERMINING CAPACITY.--If an
14 individual has a recent history of a mental health disorder or
15 an intellectual disability that could cause impaired judgment
16 with regard to end-of-life medical decision making, or if, in
17 the opinion of the prescribing health care provider or
18 consulting health care provider, an individual currently has a
19 mental health disorder or an intellectual disability that may
20 cause impaired judgment with regard to end-of-life medical
21 decision making, the individual shall not be determined to have
22 capacity to make end-of-life decisions until the:

23 A. health care provider refers the individual for
24 evaluation by a mental health professional with the training
25 and expertise to assess a person with such a disorder or

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1 disability; and

2 B. mental health professional determines the
3 individual to have capacity to make end-of-life decisions after
4 evaluating the individual during one or more visits with the
5 individual.

6 SECTION 5. [NEW MATERIAL] WAITING PERIOD.--A prescription
7 for medical aid in dying medication shall:

8 A. not be filled until forty-eight hours after the
9 prescription for medical aid in dying medication has been
10 written, unless the qualified individual's prescribing health
11 care provider has medically confirmed that the qualified
12 individual may, within reasonable medical judgment, die before
13 the expiration of the waiting period identified herein, in
14 which case, the prescription may be filled once the prescribing
15 health care provider affirms that all requirements have been
16 fulfilled pursuant to Section 3 of the Elizabeth Whitefield
17 End-of-Life Options Act; and

18 B. indicate the date and time that the prescription
19 for medical aid in dying medication was written and indicate
20 the first allowable date and time when it may be filled.

21 SECTION 6. [NEW MATERIAL] MEDICAL AID IN DYING--RIGHT TO
22 KNOW.--A health care provider shall inform a terminally ill
23 patient of all reasonable options related to the patient's care
24 that are legally available to terminally ill patients that meet
25 the medical standards of care for end-of-life care.

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1 SECTION 7. [NEW MATERIAL] DEATH CERTIFICATE--CAUSE OF
2 DEATH.--The cause of death of a qualified individual who is
3 deceased pursuant to self-administration of medical aid in
4 dying medication pursuant to the Elizabeth Whitefield End-of-
5 Life Options Act shall be the qualified individual's underlying
6 terminal illness.

7 SECTION 8. [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 contract
11 or 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 shall not be conditioned or affected by an individual
16 making or rescinding a request for medical aid in dying.

17 C. It is unlawful for an insurer to deny or alter
18 health care benefits that would otherwise be available to an
19 individual with a terminal illness based on the availability of
20 medical aid in dying, or to otherwise attempt to influence an
21 individual with a terminal illness to make or not make a
22 request for medical aid in dying medication.

23 SECTION 9. [NEW MATERIAL] IMMUNITIES--CONSCIENCE-BASED
24 DECISIONS.--

25 A. A person shall not be subject to civil or

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1 criminal liability, licensing sanctions or other professional
2 disciplinary action for:

3 (1) participating, or refusing to participate,
4 in medical aid in dying in good faith compliance with the
5 provisions of the Elizabeth Whitefield End-of-Life Options Act;
6 or

7 (2) being present when a qualified patient
8 self-administers the prescribed medical aid in dying medication
9 to end the qualified individual's life in accordance with the
10 provisions of the Elizabeth Whitefield End-of-Life Options Act.

11 B. A health care entity, professional organization
12 or association, health insurer, managed care organization or
13 health care provider shall not subject a person to censure,
14 discipline, suspension, loss or denial of license, credential,
15 privileges or membership or other penalty for participating, or
16 refusing to participate, in the provision of medical aid in
17 dying in good faith compliance with the provisions of the
18 Elizabeth Whitefield End-of-Life Options Act.

19 C. A patient's request for, or provision by a
20 prescribing health care provider of, medical aid in dying
21 medication in good faith compliance with this section does not
22 constitute evidence of neglect or adult abuse for any purpose
23 of law or provide the basis for the appointment of a guardian
24 or conservator.

25 D. No health care provider who objects for reasons

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1 of conscience to participating in the provision of medical aid
2 in dying shall be required to participate in the provision of
3 medical aid in dying under any circumstance. If a health care
4 provider is unable or unwilling to carry out an individual's
5 request pursuant to the Elizabeth Whitefield End-of-Life
6 Options Act, that health care provider shall so inform the
7 individual and refer the individual to a health care provider
8 who is able and willing to carry out the individual's request
9 or to another individual or entity to assist the requesting
10 individual in seeking medical aid in dying. If the health care
11 provider transfers the individual's care to a new health care
12 provider, the prior health care provider shall transfer, upon
13 request, a copy of the individual's relevant medical records to
14 the new health care provider.

15 E. A health care entity shall not forbid or
16 otherwise sanction a health care provider who provides medical
17 aid in dying in accordance with the Elizabeth Whitefield End-
18 of-Life Options Act off the premises of the health care entity
19 or when the health care provider is not acting within the
20 normal course and scope of the health care provider's
21 employment with the health care entity.

22 F. A health care entity may sanction a health care
23 provider for participating in medical aid in dying on the
24 premises of the prohibiting health care entity only if the
25 health care entity has given written notice to the health care

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1 provider of the prohibiting entity's written policy forbidding
2 participation in medical aid in dying and the health care
3 provider participates in medical aid in dying:

4 (1) on the premises of the health care entity;
5 or

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

8 G. Nothing in this section shall be construed to
9 prevent:

10 (1) a health care provider from participating
11 in medical aid in dying while the health care provider is
12 acting outside the health care entity's premises or outside the
13 course and scope of the health care provider's capacity as an
14 employee; or

15 (2) an individual who seeks medical aid in
16 dying from contracting with the individual's prescribing health
17 care provider or consulting health care provider to act outside
18 the course and scope of the provider's affiliation with the
19 sanctioning health care entity.

20 H. A health care entity that imposes sanctions on a
21 health care provider pursuant to the Elizabeth Whitefield End-
22 of-Life Options Act shall act reasonably, both substantively
23 and procedurally, and shall be neither arbitrary nor capricious
24 in its imposition of sanctions.

25 I. A sanction imposed by a health care entity

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1 against a health care provider pursuant to this section shall
2 not be considered the imposition of a sanction based on quality
3 of care.

4 J. Participating in medical aid in dying shall not
5 be the basis for a report of unprofessional conduct.

6 K. A health care entity that prohibits medical aid
7 in dying shall accurately and clearly articulate this in an
8 appropriate location on any website maintained by the entity
9 and in any appropriate materials given to patients to whom the
10 health care entity provides health care in words to be
11 determined by the health care entity.

12 SECTION 10. [NEW MATERIAL] PROHIBITED ACTS.--Nothing in
13 the Elizabeth Whitefield End-of-Life Options Act shall be
14 construed to authorize a physician or any other person to end
15 an individual's life by lethal injection, mercy killing or
16 euthanasia. Actions taken in accordance with the Elizabeth
17 Whitefield End-of-Life Options Act shall not be construed, for
18 any purpose, to constitute suicide, assisted suicide,
19 euthanasia, mercy killing, homicide or adult abuse under the
20 law.

21 SECTION 11. A new section of the Public Health Act is
22 enacted to read:

23 "[NEW MATERIAL] REPORTING--MEDICAL AID IN DYING.--

24 A. A health care provider who prescribes medical
25 aid in dying to a qualified individual in accordance with the

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1 provisions of the Elizabeth Whitefield End-of-Life Options Act
2 shall provide, in accordance with department rules, a report of
3 that provider's participation. The department shall adopt and
4 promulgate rules that establish the time frames and forms for
5 reporting pursuant to this section and shall limit the
6 reporting of data relating to qualified individuals who
7 received prescriptions for medical aid in dying medication to
8 the following:

- 9 (1) the qualified individual's age at death;
- 10 (2) the qualified individual's race and
11 ethnicity;
- 12 (3) the qualified individual's gender;
- 13 (4) whether the qualified individual was
14 enrolled in hospice at the time of death;
- 15 (5) the qualified individual's underlying
16 medical condition; and
- 17 (6) whether the qualified individual self-
18 administered the medical aid in dying medication and, if so,
19 the date that this occurred.

20 B. The department shall promulgate an annual
21 statistical report, containing aggregated data, on the
22 information collected pursuant to Subsection A of this section
23 on the total number of medical aid in dying medication
24 prescriptions written statewide and on the number of health
25 care providers who have issued prescriptions for medical aid in

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1 dying medication during that year. Data reported pursuant to
2 this subsection shall not contain individually identifiable
3 health information and are exempt from disclosure pursuant to
4 the Inspection of Public Records Act.

5 C. As used in this section:

6 (1) "health care provider" means an individual
7 authorized pursuant to the Elizabeth Whitefield End-of-Life
8 Options Act to prescribe medical aid in dying;

9 (2) "medical aid in dying" means the medical
10 practice wherein a health care provider prescribes medication
11 to a qualified individual who may self-administer that
12 medication to end that individual's life in accordance with the
13 provisions of the Elizabeth Whitefield End-of-Life Options Act;
14 and

15 (3) "qualified individual" means an individual
16 who has met the requirements to receive medical aid in dying
17 pursuant to the provisions of the Elizabeth Whitefield End-of-
18 Life Options Act."

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

21 "30-2-4. ASSISTING SUICIDE.--

22 A. Assisting suicide consists of deliberately
23 aiding another in the taking of ~~[his]~~ the person's own life,
24 ~~[Whoever]~~ unless the person aiding another in the taking of the
25 person's own life is a person acting in accordance with the

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1 provisions of the Elizabeth Whitefield End-of-Life Options Act.

2 B. A person who commits assisting suicide is guilty
3 of a fourth degree felony."

4 SECTION 13. SEVERABILITY.--If any part or application of
5 the Elizabeth Whitefield End-of-Life Options Act is held
6 invalid, the remainder or its application to other situations
7 or persons shall not be affected.

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