

2015 ABX2 15: Points to Consider 09 15 15

Under the "End of Life Option Act" (ABX2 15):

"Doctor shopping" could take place until a health care professional can be found to declare that the patient is qualified for the lethal prescription.

If an attending physician believes a patient does not have the ability to make an informed decision or that the patient is being pressured to request the prescription for assisted suicide, nothing in the bill prohibits a health care provider, family member or another person from arranging for the patient to be evaluated by other health care professionals until one is found who would declare the patient capable of choosing assisted suicide.

This has taken place in Oregon where it has been noted that “a psychological disorder — senility, for example — does not necessarily disqualify a person.”¹

A woman died of assisted suicide under Oregon’s “Death with Dignity Act,” even though she was suffering from early dementia. Her own physician had declined to provide a lethal prescription for her. When counseling to determine her capacity was sought, a psychiatrist determined that she was not eligible for assisted suicide since she was not explicitly pushing for it and her daughter seemed to be coaching her to do so. She was then taken to a psychologist who determined that she was competent but possibly under the influence of her daughter who was “somewhat coercive.”

Finally, she was assessed by a managed care ethicist who determined that she qualified for assisted suicide, and the lethal dose was prescribed.²

According to the last official Oregon report, the duration of the patient-physician relationship was, in some cases, less than one week.³

Effective investigation into violation of the law and patient abuse would be prevented.

443.19 (a) The State Department of Public Health shall collect and review the information submitted pursuant to Section 443.9. The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient’s family, and any medical provider or pharmacist involved with the patient under the provisions of this part. **The information shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.**

The first sentences would protect the privacy of patients and individuals participating in doctor-prescribed suicide. However, the last sentence (emphasis added in bold) is unique to ABX2 15.

It could prevent investigation into actions of a person who causes a vulnerable patient's death even if the person's actions were in violation of the "End of Life Option Act."

For example, if a family member finds out that someone coerced a loved one into signing the written assisted-suicide request and then forced the loved one to take the lethal drugs after the drugs were mailed to the patient's home, the provision would actually prohibit any investigation into the loved one's death.

This new wording sets the stage for massive patient abuse and complete protection for those engaged in criminal activity that culminates in a patient's death. Absolutely no information from records provided to the state could be disclosed to law enforcement or to any other investigating body.

Proponents of ABX2 15 claim that the new sentence is intended to make certain that the information submitted to a state agency for statistical and compliance purposes is not treated as a public record.

They further claim that it only refers to data submitted to the state but that all data regarding an individual patient would be available in the patient's medical records maintained by the patient's personal physician.

However, that is not necessarily true since the patient's personal physician may not be the patient's "attending physician" who prescribed the lethal dose. Instead, the prescribing physician may be one who was found after a process referred to as doctor shopping. Without the possibility of determining the name of the prescribing physician identified in the information provided to the state, no investigation into the patient's death would be possible. There would be no way to determine if criminal activity had taken place.

Making the records submitted to the state available for a criminal investigation would not cause that information to be treated as a public record. Why, then, must it be shielded?

The most marginalized individuals – poor hardworking people, including undocumented immigrants – would be in particular danger.

Inequity in health care is a harsh reality.

Under the bill, before writing a prescription for death, a doctor must discuss "the feasible alternatives or additional treatment opportunities, including but not limited to, comfort care, hospice care, palliative care, and pain control."⁴ However, discussing all options does not mean the patient will have the ability to access those options.

Patients who have insurance may find that it does not cover the "feasible alternatives." For example, most farm workers in California do have some type of insurance but it is limited in coverage and, generally, does not cover hospice care.

Likewise, although some California counties provide healthcare to undocumented immigrants,⁵ such care is limited and rarely covers hospice care. Yet those same immigrants would be eligible for doctor-prescribed suicide, after proving residency with a state issued driver's license.⁶

Doctor-prescribed suicide may well become a "choice" for the comfortably well off, but the only "medical treatment" the poor can afford. The last to receive health care could be the first to receive doctor-prescribed suicide.

Drugs for suicide could be mailed to a patient.

Nothing in the bill requires the patient to obtain the drugs in person. The bill permits the lethal drugs to be delivered by "personal delivery, or, with a signature required on delivery by United Parcel Service, United States Postal Service, Federal Express, or by messenger service."⁷

However, even with a required signature, services such as Federal Express, UPS and the USPS only require the signature of the person accepting the delivery, not the person to whom the package is addressed. There are no protections to prevent unintended individuals from signing for the package of drugs.

In addition, the bill permits the assisted-suicide drugs to be dispensed to "a person expressly designated by the qualified individual."⁸ That designated person could be an abusive family member or heir who persuaded the patient to request the prescription and who was one of the two witnesses to the patient's written request for doctor-prescribed suicide.

There are no protections for the person once the assisted-suicide prescription is filled and delivered.

Like the Oregon law, the bill only addresses activities taking place up until the individual receives the lethal drugs. There are no provisions to assure that the person is competent at the time the overdose is taken or that he or she knowingly and willingly takes the drugs.

Due to this lack of protection at the time of their deaths, the bill would put patients at enormous risk. For example, someone who would benefit from the individual's death could trick or even force the person into taking the fatal drugs, and no one would know.

Why are there no safeguards at the most important part of the process – at the time the patient takes the drugs that will cause death?

¹ "Physician-assisted suicide: A family struggles with the question of whether mom is capable of choosing to die," *Oregonian*, February 4, 2015. Available at: http://www.oregonlive.com/health/index.ssf/2015/02/physician-assisted_suicide_a_f.html (last accessed 4/20/15).

² Ibid.

³ Oregon Public Health Division, "Oregon's Death with Dignity Act – 2014," pg. 6. Available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year17.pdf>.

⁴ Section 443.5 (a) (2) (E).

⁵ "35 California counties grant healthcare to immigrants in U.S. illegally," *Los Angeles Times*, June 25, 2015.

Available at: <http://www.latimes.com/local/california/la-me-0626-uninsured-norcal-counties-20150627-story.html> (last accessed 9/15/15).

⁶ Section 443.2 (a) (3) (A).

⁷ Section 443.5 (c).

⁸ Ibid.