



SPONSOR: Rep. Baumbach & Sen. Henry
Rep. B. Short; Sen. Sokola

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MEDICAL AID IN DYING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 16 of the Delaware Code by adding a new Chapter by making deletions as shown by strike
2 through and insertions as shown by underline as follows and redesignating accordingly:

3 CHAPTER 25B. MEDICAL AID IN DYING

4 § 2501B Definitions.

5 As used in this Chapter:

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

7 (2) "Attending physician" means the physician who has primary responsibility in the hospice program for the
8 treatment of the patient.

9 (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician, a
10 patient has the ability to:

11 a. understand and acknowledge the nature and consequences of health care decisions, including the
12 benefits and disadvantages of treatment;

13 b. make an informed decision;

14 c. communicate the informed decision to a health care provider, including communicating through an
15 individual familiar with the patient's manner of communicating; and

16 d. self-administer medication.

17 (5) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to
18 administer health care or dispense medication in the ordinary course of business or practice of a profession, and
19 includes a health care facility.

20 (6) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription to end his
21 or her life in a humane and dignified manner that is based on an appreciation of the relevant facts and after being fully
22 informed by the attending physician of:

- 23 a. His or her medical diagnosis;
24 b. His or her prognosis;
25 c. The potential risks associated with taking the medication to be prescribed; and
26 d. The probable result of taking the medication to be prescribed;

27 (7) "Patient" means a person who is under the care of a physician.

28 (8) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of
29 Medical Licensure and Discipline for the State of Delaware.

30 (9) "Qualified patient" means a capable adult who is a resident of Delaware, is enrolled in a hospice program,
31 and has satisfied the requirements of this Chapter in order to obtain a prescription for medication to end his or her life
32 in a humane and dignified manner.

33 (10) "Terminal disease" means an incurable and irreversible disease that will, within reasonable medical
34 judgment, produce death within 6 months.

35 § 2502B. Who may initiate a written request for medication.

36 A qualified patient who has voluntarily expressed his or her wish to die may make an oral and then a written
37 request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with this
38 Chapter.

39 § 2503B. Form of the written request.

40 (a) A valid request for medication under this Chapter shall be in substantially the form described herein, signed,
41 and dated by the patient, and witnessed by at least two individuals who, in the presence of the patient, attest that to the best
42 of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

43 (b) Neither of the witnesses shall be a person who is:

44 (1) A relative of the patient by blood, marriage, or adoption;

45 (2) A person who at the time the request is signed would be entitled to any portion of the estate of the
46 qualified patient upon death under any will or by operation of law;

47 (3) An owner, operator, or employee of a hospice program in which the qualified patient is enrolled; or

48 (4) The patient's attending physician at the time the request is signed.

49 § 2504B. Attending physician responsibilities.

50 (a) The attending physician shall:

51 (1) Confirm whether a patient has a terminal disease, is capable, and has made the request voluntarily;

52 (2) Request that the patient demonstrate Delaware residency under this Chapter;

53 (3) Ensure that the patient is making an informed decision, including informing the patient of:
54 a. His or her medical diagnosis;
55 b. His or her prognosis;
56 c. The potential risks associated with taking the medication to be prescribed; and
57 d. The probable result of taking the medication to be prescribed.
58 (4) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner,
59 and offer the patient an opportunity to rescind at the end of the 15-day waiting period pursuant to this Chapter;
60 (5) Verify, immediately prior to writing the prescription for medication under this Chapter, that the patient is
61 making an informed decision;
62 (6) Fulfill the medical record documentation requirements of this Chapter;
63 (7) Ensure that all appropriate steps are carried out in accordance with this Chapter prior to writing a
64 prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and
65 (8)a. Dispense medications directly, including ancillary medications intended to facilitate the desired effect to
66 minimize the patient's discomfort notwithstanding the 72-hour limitation in § 4739A of this title, provided the
67 attending physician is registered as a dispensing physician with the Board of Medical Licensure and Discipline, has a
68 current Drug Enforcement Administration certificate, and complies with any applicable administrative rule or
69 regulation; or
70 b. With the patient's written consent:
71 1. Contact a pharmacist and inform the pharmacist of the prescription; and
72 2. Deliver the written prescription to the pharmacist personally, by mail, or other method acceptable
73 to the pharmacist, who will dispense the medications only to the attending physician or an agent of the
74 hospice program.
75 (b) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate.
76 The qualified patient's death certificate shall list the underlying terminal illness as the cause of death.
77 § 2506B Hospice program responsibilities.
78 The patient's hospice program shall do all of the following:
79 (a) Receive the medication from the pharmacist.
80 (b) Safeguard the medication until the patient makes a verbal request of the date and time that the patient would
81 like the medication delivered to him or her.
82 (c) Deliver, but not administer, the medication to the patient at the requested date and time.

83 (d) Dispense of all unused medication according to regulations promulgated under § 122(3)(m) of this title.

84 § 2506B. Confirmation.

85 Before a patient is qualified under this Chapter, the medical opinion of the attending physician that the patient is
86 capable shall be confirmed by the hospice program's inter-disciplinary group which has examined the patient and the
87 patient's relevant medical records.

88 § 2507B. Informed decision.

89 No person shall receive a prescription for medication to end his or her life in a humane and dignified manner
90 unless he or she has made an informed decision. Immediately prior to writing a prescription for medication under this
91 Chapter, the attending physician shall verify that the patient is making an informed decision.

92 § 2508B. Written and oral requests.

93 In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a
94 qualified patient shall have made an oral request, followed by a written request to his or her attending physician no less than
95 15 days after making the initial oral request and after confirmation under this Chapter. At the time the qualified patient
96 makes his or her written request, the attending physician shall offer the patient an additional opportunity to rescind the
97 request.

98 § 2509B. Right to rescind request.

99 A patient may rescind his or her request at any time and in any manner without regard to his or her mental state.
100 No prescription for medication under this Chapter may be written without the attending physician offering the qualified
101 patient an opportunity to rescind the request.

102 § 2510B. Waiting periods.

103 No less than 15 days shall elapse between the patient's oral request and the written request under § 2501B this
104 Chapter. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription under this
105 Chapter.

106 § 2511B. Medical record documentation requirements.

107 The following shall be documented or filed in the patient's medical record:

108 (a) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

109 (b) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

110 (c) The attending physician's diagnosis and prognosis, determinations that the patient is capable, is acting
111 voluntarily, and has made an informed decision;

112 (d) The confirmation by the hospice program's inter-disciplinary group that the patient is capable;

113 (e) The attending physician's offer to the patient to rescind his or her request at the time of the patient's oral
114 request; and

115 (f) A note by the attending physician indicating that all requirements of this Chapter have been met and indicating
116 the steps taken to carry out the request, including a notation of the medication prescribed.

117 § 2512B. Residency requirement.

118 Only requests made by Delaware residents under this Chapter shall be granted. Factors demonstrating Delaware
119 residency may include but are not limited to:

120 (a) Possession of a Delaware driver license;

121 (b) Registration to vote in Delaware;

122 (c) Evidence that the person owns or leases property in Delaware; or

123 (d) The filing of a Delaware tax return for the most recent tax year.

124 § 2513B. Reporting requirements and comprehensive guidelines.

125 (a)(1) The Department shall annually review a sample of records maintained pursuant to this Chapter.

126 (2) The Department shall require any health care provider upon dispensing medication pursuant to this
127 Chapter to file a copy of the dispensing record with the Department.

128 (b) The Department shall make rules and regulations to facilitate the collection of information regarding
129 compliance with this Chapter. Except as otherwise required by law, the information collected shall not be a public record
130 and may not be made available for inspection by the public.

131 (c) The Department shall generate and make available to the public an annual statistical report of information
132 collected under of this section.

133 (d) The Department shall also develop comprehensive guidelines designed to be a resource for health care
134 professionals and institutions implementing this Chapter.

135 § 2514B. Effect on construction of wills, contracts, and statutes.

136 (a) No provision in a will, contract, or other agreement, whether written or oral, to the extent the provision would
137 affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified
138 manner, shall be valid.

139 (b) No obligation owing under any currently existing contract shall be conditioned or affected by the making or
140 rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner.

141 § 2515B. Insurance or annuity policies.

142 (a) Any provision in an insurance policy, an annuity, a contract, or any other agreement, issued or made on or after
143 the effective date of this Chapter is not valid to the extent that the provision would attach consequences to or otherwise
144 restrict or influence an individual's decision to make or rescind a request for medication to end his or her life in a humane
145 and dignified manner pursuant to this Chapter.

146 (b) Any obligation under a contract existing on the effective date of this Chapter may not be conditioned on or
147 affected by the making or rescinding of a request for medication to end his or her life in a humane and dignified manner
148 pursuant to this Chapter.

149 (c) The sale, procurement, or issuance of a life, a health, or an accident insurance or annuity policy or the rate
150 charged for a life, a health, or an accident insurance or annuity policy may not be conditioned on or affected by the making
151 or rescinding of a request for aid in dying under this Chapter.

152 (d) A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner
153 pursuant to this Chapter may not have an effect under a life, a health, or an accident insurance or annuity policy that differs
154 from the effect under the policy of the patient's death from natural causes.

155 § 2516B. Construction of Chapter.

156 Nothing in this Chapter shall be construed to authorize a physician or any other person to end a patient's life by
157 lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this Chapter shall not, for any purpose,
158 constitute suicide, assisted suicide, mercy killing, or homicide.

159 § 2517B. Immunities; basis for prohibiting health care provider from participation; notification; permissible
160 sanctions.

161 Except as provided in this Chapter:

162 (a) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in
163 good faith compliance with this Chapter. This includes being present when a qualified patient takes the prescribed
164 medication to end his or her life in a humane and dignified manner.

165 (b) No professional organization or association, or health care provider, may subject a person to censure,
166 discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to
167 participate in good faith compliance with this Chapter.

168 (c) No request by a patient for or provision by an attending physician of medication in good faith compliance with
169 the provisions of this Chapter shall constitute abuse or neglect for any purpose of law or provide the sole basis for the
170 appointment of a guardian or involuntary commitment.

171 (d) No health care provider shall be under any duty, whether by contract, by statute, or by any other legal
172 requirement, to participate in the provision to a qualified patient of medication to end his or her life in a humane and
173 dignified manner; however, a hospice program shall be required to disclose on its initial application whether it, its
174 employee, and its agents participate in this Chapter. If a health care provider is unable or unwilling to carry out a patient's
175 request under this Chapter, and the patient transfers his or her care to a new health care provider, the prior health care
176 provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

177 (e)(1) Notwithstanding any other provision of law, a health care facility may prohibit a health care provider from
178 participating in this Chapter on the premises of the prohibiting facility if the prohibiting facility has notified the health care
179 provider of the prohibiting facility's policy regarding participating in this Chapter. Nothing in this paragraph prevents a
180 health care provider from providing health care services to a patient that do not constitute participation in this Chapter.

181 (2) Notwithstanding the provisions of subsections (a) through (d) of this section, a health care facility may
182 subject a health care provider to the sanctions if the sanctioning health care facility has notified the sanctioned provider
183 prior to participation in this Chapter that it prohibits such participation.

184 (3) A health care facility that imposes sanctions pursuant to paragraph (2) of this subsection must follow all
185 due process and other procedures the sanctioning health care provider has that are related to the imposition of sanctions
186 on a health care provider.

187 (4) For purposes of this subsection:

188 a. "Notify" means a separate statement in writing to the health care provider specifically informing the
189 health care provider prior to the provider's participation in this Chapter of the sanctioning health care provider's
190 policy about participation in activities covered by this Chapter.

191 b. "Participate in this Chapter" means to perform the duties of an attending physician in this Chapter, the
192 confirmation function in this Chapter, or the counseling function in this Chapter. "Participate in this Chapter" does
193 not include:

194 1. Making an initial determination that a patient has a terminal disease and informing the patient of
195 the medical prognosis;

196 2. Providing information about the Delaware Medical Aid in Dying Act to a patient upon the request
197 of the patient;

198 3. Providing a patient, upon the request of the patient, with a referral to another physician; or

199 4. A patient contracting with his or her attending physician outside of the course and scope of the
200 provider's capacity as an employee or independent contractor of the sanctioning health care provider.

201 (f) Suspension or termination of staff membership or privileges under this section is not reportable under this
202 Chapter. Action taken in compliance with this Chapter shall not be the sole basis for a report of unprofessional or
203 dishonorable conduct.

204 (g) No provision of this Chapter shall be construed to allow a lower standard of care for patients in the community
205 where the patient is treated or a similar community.

206 § 2518A. Form of the request.

207 A request for a medication as authorized by this Chapter shall be in substantially the following form:

208 _____

209 REQUEST FOR MEDICATION

210 TO END MY LIFE IN A HUMANE

211 AND DIGNIFIED MANNER

212 I, _____, am an adult of sound mind, which has been confirmed by a hospice program's inter-
213 disciplinary group.

214 I am suffering from _____, which my attending physician has determined is a terminal disease.

215 I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential
216 associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care and pain control.

217 I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

218 INITIAL ONE:

219 _____ I have informed my family of my decision and taken their opinions into consideration.

220 _____ I have decided to not inform my family of my decision.

221 _____ I have no family to inform of my decision.

222 I understand that I have the right to rescind this request at any time.

223 I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further
224 understand that although most deaths occur within three hours, my death may take longer and my physician has counseled
225 me about this possibility.

226 I make this request voluntarily and without reservation, and I accept full responsibility for my actions.

227 Signed: _____

228 Dated: _____

229 DECLARATION OF WITNESSES

230 We declare that the person signing this request:

- 231 (a) Is personally known to us or has provided proof of identity;
232 (b) Signed this request in our presence;
233 (c) Appears to be of sound mind and not under duress, fraud or undue influence;
234 (d) Is not a patient for whom either of us is attending physician.

235 _____ Witness 1/Date

236 _____ Witness 2/Date

237 NOTE: Neither witness shall be a relative (by blood, marriage or adoption) of the person signing this request, shall
238 be entitled to any portion of the person's estate upon death, or shall own, operate, or be employed by the person's hospice
239 program.

240 Section 2. Any section of this Act being held invalid as to any person or circumstance shall not affect the
241 application of any other section of this Act which can be given full effect without the invalid section or application.

242 Section 3. This Act shall take effect 6 months after its enactment into law.

243 Section 4. This Act shall be known as the Delaware Medical Aid in Dying Act.

SYNOPSIS

This act will allow a competent terminally ill patient who is enrolled in hospice the ability to request medication to end the patient's life. The bill identifies the procedures necessary for making the request, such as but not limited to: a physician's evaluation, an inter-disciplinary group's confirmation of the patient's mental capacity, the passage of a waiting period, and the completion of a formally witnessed request for such medication. The bill further provides the right to rescind any request for such medication, as well as immunity for persons participating in good faith compliance with the procedures.