

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TERMINALLY ILL PATIENT TO REQUEST
5 MEDICATION TO END THE PATIENT'S LIFE; ESTABLISHING PROCEDURES; PROVIDING THE RIGHT TO
6 RESCIND THE REQUEST; PROVIDING DEFINITIONS; PROVIDING IMMUNITY; AND PROVIDING
7 RULEMAKING AUTHORITY."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 NEW SECTION. **Section 1. Short title.** [Sections 1 through 22] may be cited as the "Montana Death
12 With Dignity Act".

13

14 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 22], the following definitions
15 apply:

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

17 (2) "Attending physician" means the physician who has primary responsibility for the care of a patient
18 and treatment of the patient's terminal illness.

19 (3) "Competent" means that, in the opinion of a court or in the opinion of a patient's attending physician,
20 consulting physician, psychiatrist, or psychologist, the patient has the ability to make and communicate an
21 informed decision to health care providers, including communication through a person familiar with the patient's
22 manner of communicating if that person is available.

23 (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a
24 professional diagnosis and prognosis regarding a patient's illness.

25 (5) "Counseling" means one or more consultations as necessary between a patient and a psychiatrist
26 or psychologist licensed in this state for the purpose of determining that the patient is competent and is not
27 suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

28 (6) "Department" means the department of public health and human services provided for in 2-15-2201.

29 (7) (a) "Health care provider" or "provider" means a person licensed, certified, or otherwise authorized
30 or permitted by law to administer health care or dispense medication in the ordinary course of business or



1 practice of a profession.

2 (b) The term includes a health care facility as defined in 50-5-101.

3 (8) "Informed decision" means a decision by a patient to request and obtain a prescription for medication
4 that the patient may self-administer to end the patient's life that is based on an appreciation of the relevant facts
5 and that is made after being fully informed by the attending physician of:

6 (a) the patient's medical diagnosis and prognosis;

7 (b) the potential risks associated with taking the medication to be prescribed;

8 (c) the probable result of taking the medication to be prescribed; and

9 (d) the feasible alternatives, including but not limited to comfort care, hospice care, and pain control.

10 (9) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by
11 a consulting physician who has examined the patient and the patient's relevant medical records.

12 (10) "Patient" means a person who is under the care of a physician.

13 (11) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in this state.

14 (12) "Qualified patient" means a competent adult who is a resident of Montana and has satisfied the
15 requirements of [sections 1 through 22] in order to obtain a prescription for medication that the qualified patient
16 may self-administer to end the qualified patient's life.

17 (13) "Resident" means an individual who demonstrates residency in Montana by means that include but
18 are not limited to:

19 (a) possession of a Montana driver's license;

20 (b) proof of registration to vote in Montana;

21 (c) proof that the individual owns or leases real property in Montana; or

22 (d) filing of a Montana tax return for the most recent tax year.

23 (14) "Self-administer" means a qualified patient's act of ingesting medication to end the qualified patient's
24 life in a humane and dignified manner.

25 (15) "Terminal illness" means an incurable and irreversible illness that has been medically confirmed and
26 will, within reasonable medical judgment, result in death within 6 months.

27

28 **NEW SECTION. Section 3. Right to request medication to end life.** (1) A patient may make a written
29 request for medication to be self-administered to end the patient's life if the patient:

30 (a) is a competent adult;

1 (b) is a resident of this state;

2 (c) has been determined by the patient's attending physician and by a consulting physician to be
3 suffering from a terminal illness; and

4 (d) has voluntarily expressed the wish to die.

5 (2) A person may not qualify under the provisions of [sections 1 through 22] solely because of age or
6 disability.

7
8 **NEW SECTION. Section 4. Request process -- witness requirements.** (1) A patient shall take the
9 following steps in order to receive a prescription for medication to end the patient's life:

10 (a) submit an oral request and a written request to the patient's attending physician; and

11 (b) reiterate the oral request after the waiting period required under [section 6] has elapsed.

12 (2) A valid written request for medication under [sections 1 through 22] must be:

13 (a) in substantially the form described in [section 12];

14 (b) signed and dated by the patient; and

15 (c) witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their
16 knowledge and belief the patient is:

17 (i) competent;

18 (ii) acting voluntarily; and

19 (iii) not being coerced to sign the request.

20 (3) One of the witnesses must be an individual who is not:

21 (a) related to the patient by blood, marriage, or adoption;

22 (b) at the time the request is signed, entitled to any portion of the patient's estate upon death of the
23 qualified patient under a will or any operation of law; or

24 (c) an owner, operator, or employee of a health care facility where the patient is receiving medical
25 treatment or where the patient resides.

26 (4) The patient's attending physician may not be a witness to the signing of the written request.

27 (5) If the patient is a patient in a long-term care facility, as defined in 50-5-1103, at the time the written
28 request is made, one of the witnesses must be an individual designated by the facility and meeting qualifications
29 established by the department by rule.

30

1 **NEW SECTION. Section 5. Right to rescind request -- requirement to offer opportunity to rescind.**

2 (1) A qualified patient may at any time rescind the qualified patient's request for medication to end the qualified
3 patient's life without regard to the qualified patient's mental state.

4 (2) At the time the patient makes the second oral request for medication to end the patient's life, the
5 attending physician shall offer the patient an opportunity to rescind the request.

6 (3) A prescription for medication under [sections 1 through 22] may not be written without the attending
7 physician offering the patient an opportunity to rescind the request for medication.

8

9 **NEW SECTION. Section 6. Waiting period.** (1) A patient shall make both an oral request and a written
10 request for medication under [sections 1 through 22]. At least 48 hours must elapse between the time of the
11 patient's initial oral or written request, whichever is later, and the time a prescription for the medication is written.

12 (2) The patient shall reiterate the oral request as required in [section 4] before a prescription is written.

13

14 **NEW SECTION. Section 7. Attending physician responsibilities.** (1) The attending physician shall:

15 (a) make the initial determination of whether an adult patient:

16 (i) is a resident of this state;

17 (ii) has a terminal illness;

18 (iii) is competent; and

19 (iv) has voluntarily made the request for medication pursuant to [sections 3 and 4];

20 (b) ensure that the patient is making an informed decision by discussing with the patient:

21 (i) the patient's medical diagnosis and prognosis;

22 (ii) the potential risks associated with taking the medication to be prescribed;

23 (iii) the probable result of taking the medication to be prescribed; and

24 (iv) the feasible alternatives, including but not limited to comfort care, hospice care, and pain control;

25 (c) refer the patient to a consulting physician to medically confirm the diagnosis and prognosis and for
26 a determination that the patient is competent and acting voluntarily;

27 (d) if appropriate, refer the patient for counseling pursuant to [section 9];

28 (e) recommend that the patient notify the patient's next of kin;

29 (f) counsel the patient about the importance of:

30 (i) having another person present when the patient takes the medication prescribed pursuant to [sections

- 1 1 through 22]; and
- 2 (ii) not taking the medication in a public place;
- 3 (g) inform the patient that the patient may rescind the request for medication at any time and in any
- 4 manner;
- 5 (h) offer the patient an opportunity to rescind the request for medication at the end of the waiting period
- 6 established in [section 6];
- 7 (i) verify, immediately prior to writing the prescription for medication, that the patient is making an
- 8 informed decision;
- 9 (j) fulfill the medical record documentation requirements of [section 13];
- 10 (k) ensure that all appropriate steps are carried out in accordance with [sections 1 through 22] before
- 11 writing a prescription for medication to enable a qualified patient to end the qualified patient's life in a humane
- 12 and dignified manner;
- 13 (l) (i) dispense medications directly, including ancillary medication intended to minimize the qualified
- 14 patient's discomfort, if the attending physician:
- 15 (A) is registered as a dispensing physician with the board of medical examiners provided for in
- 16 2-15-1731;
- 17 (B) has a current drug enforcement administration certificate; and
- 18 (C) complies with any applicable administrative rule; or
- 19 (ii) with the qualified patient's written consent, contact a pharmacist, inform the pharmacist of the
- 20 prescription, and deliver the written prescription personally or by mail to the pharmacist, who shall dispense the
- 21 medications to either the qualified patient, the attending physician, or a person expressly
- 22 designated by the qualified patient.
- 23 (2) Unless otherwise prohibited by law, the attending physician may sign the qualified patient's death
- 24 certificate.

25

26 **NEW SECTION. Section 8. Consulting physician confirmation.** Before a patient may be considered

27 a qualified patient under [sections 1 through 22], a consulting physician shall:

- 28 (1) examine the patient and the patient's relevant medical records:
- 29 (2) confirm in writing the attending physician's diagnosis that the patient is suffering from a terminal
- 30 illness; and

- 1 (3) verify that the patient:
- 2 (a) is competent;
- 3 (b) is acting voluntarily; and
- 4 (c) has made an informed decision.

5

6 **NEW SECTION. Section 9. Counseling referral.** (1) An attending physician or a consulting physician

7 shall refer a patient who has requested medication under [sections 1 through 22] for counseling if in the opinion

8 of the attending physician or the consulting physician the patient may be suffering from a psychiatric or

9 psychological disorder or depression causing impaired judgment.

10 (2) Medication to end a patient's life in a humane and dignified manner may not be prescribed until the

11 person performing the counseling determines that the patient is not suffering from a psychiatric or psychological

12 disorder or depression causing impaired judgment.

13

14 **NEW SECTION. Section 10. Informed decision required.** A patient may not receive a prescription

15 for medication to end the person's life unless the patient has made an informed decision as defined in [section

16 2]. Immediately before writing a prescription for medication under [sections 1 through 22], the attending physician

17 shall verify that the patient is making an informed decision.

18

19 **NEW SECTION. Section 11. Family notification recommended -- not required.** The attending

20 physician shall recommend that a patient notify the patient's next of kin of the patient's request for medication

21 pursuant to [sections 1 through 22]. A request for medication under [sections 1 through 22] may not be denied

22 because a patient declines or is unable to notify the next of kin.

23

24 **NEW SECTION. Section 12. Form of request.** A request for medication as authorized by [sections 1

25 through 22] must be in substantially the following form:

26 REQUEST FOR MEDICATION TO END MY LIFE

27 IN A HUMANE AND DIGNIFIED MANNER

28 I,....., am an adult of sound mind.

29 I am suffering from, which my attending physician has determined is a terminal illness and

30 which has been medically confirmed by a consulting physician.

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

4 I request that my attending physician prescribe medication that will end my life in a humane and dignified
5 manner and authorize my attending physician to contact any pharmacist about my request.

6 INITIAL ONE:

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

8I have decided not to inform my family of my decision.

9I have no family to inform of my decision.

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

11 I understand the full import of this request and I expect to die when I take the medication to be prescribed.

12 I further understand that although most deaths occur within 3 hours, my death may take longer, and my
13 attending physician has counseled me about this possibility.

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

16 Signed:.....

17 Dated:.....

18 DECLARATION OF WITNESSES

19 We declare that the person signing this request:

20 (a) is personally known to us or has provided proof of identity;

21 (b) signed this request in our presence;

22 (c) appears to be of sound mind and not under duress, fraud, or undue influence; and

23 (d) is not a patient for whom either of us is the attending physician.

24Witness 1/Date

25Witness 2/Date

26 NOTE: One witness may not be a relative (by blood, marriage, or adoption) of the person signing this request,
27 may not be entitled to any portion of the person's estate upon death, and may not own, operate, or be employed
28 at a health care facility where the person is a patient or where the person resides. If the patient is an inpatient
29 at a health care facility, one of the witnesses must be an individual designated by the facility.

30

1 **NEW SECTION. Section 13. Medical record documentation requirements.** The following items must
2 be documented or filed in the patient's medical record:

3 (1) the determination and the basis for determining that a patient requesting medication to end the
4 patient's life in a humane and dignified manner is a qualified patient;

5 (2) all oral requests by a patient for medication pursuant to [section 4] to end the patient's life in a
6 humane and dignified manner;

7 (3) all written requests by a patient for medication pursuant to [sections 3 and 4] to end the patient's life
8 in a humane and dignified manner;

9 (4) the attending physician's diagnosis, prognosis, and determination that the patient is competent, is
10 acting voluntarily, and has made an informed decision;

11 (5) the consulting physician's diagnosis, prognosis, and verification that the patient is competent, is
12 acting voluntarily, and has made an informed decision;

13 (6) a report of the outcome and determinations made during counseling, if performed;

14 (7) the attending physician's offer to allow the patient to rescind the patient's request at the time of the
15 patient's second oral request pursuant to [section 5]; and

16 (8) a note by the attending physician indicating:

17 (a) that all requirements under [sections 1 through 22] have been met; and

18 (b) the steps taken to carry out the request, including a notation of the medication prescribed.

19
20 **NEW SECTION. Section 14. Reporting requirements -- rulemaking authority.** (1) (a) The department
21 shall annually review a sample of records maintained pursuant to [sections 1 through 22].

22 (b) The department shall require a health care provider that dispenses medication pursuant to [sections
23 1 through 22], to file a copy of the dispensing record with the department.

24 (2) The department shall adopt rules to carry out [sections 1 through 22], including but not limited to rules
25 for:

26 (a) the qualifications of witnesses designated by a long-term care facility pursuant to [section 4]; and

27 (b) the collection of information regarding compliance with [sections 1 through 22].

28 (3) Except as otherwise required by law, the information collected by the department is not a public
29 record and may not be made available for inspection by the public.

30 (4) The department shall generate and make available to the public an annual statistical report of

1 information collected under subsection (2). The report may not contain information that identifies any patient or
2 health care provider.

3
4 **NEW SECTION. Section 15. Effect on construction of wills, contracts, and statutes.** (1) A provision
5 in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether
6 a person may make or rescind a request for medication to end the person's life in a humane and dignified
7 manner, is not valid.

8 (2) An obligation owing under any currently existing contract may not be conditioned or affected by a
9 person making or rescinding a request for medication to end the person's life in a humane and dignified manner.

10
11 **NEW SECTION. Section 16. Insurance or annuity policies.** (1) The sale, procurement, or issuance
12 of a life, health, or accident insurance or annuity policy or the rate charged for a policy may not be conditioned
13 upon or affected by a person making or rescinding a request for medication to end the person's life in a humane
14 and dignified manner.

15 (2) A qualified patient's act of ingesting medication to end the qualified patient's life in a humane and
16 dignified manner may not have an effect upon a life, health, or accident insurance or annuity policy.

17
18 **NEW SECTION. Section 17. Immunities -- prohibitions on certain health care providers --**
19 **notification -- permissible sanctions.** (1) A person is not subject to civil or criminal liability or professional
20 disciplinary action for participating in good faith compliance with [sections 1 through 22], including an individual
21 who is present when a qualified patient takes the prescribed medication to end the qualified patient's life in a
22 humane and dignified manner.

23 (2) A health care provider or professional organization or association may not subject an individual to
24 censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for
25 participating or refusing to participate in good faith compliance with [sections 1 through 22].

26 (3) A request by a patient for or provision by an attending physician of medication in good faith
27 compliance with the provisions of [sections 1 through 22] does not constitute neglect for any purpose of law or
28 provide the sole basis for the appointment of a guardian or conservator.

29 (4) (a) A health care provider may choose whether to participate in providing to a qualified patient any
30 medication to end the patient's life in a humane and dignified manner and is not under any duty, whether by

1 contract, by statute, or by any other legal requirement, to participate in providing a qualified patient with the
2 medication.

3 (b) If a health care provider is unable or unwilling to carry out a patient's request under [sections 1
4 through 22] and the patient transfers care to a new health care provider, the prior health care provider shall
5 transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

6 (5) (a) Unless otherwise required by law, a health care provider may prohibit another health care provider
7 from participating in [sections 1 through 22] on the premises of the prohibiting provider if the prohibiting provider
8 has notified the health care provider in writing of the prohibiting provider's policy against participating in [sections
9 1 through 22]. Nothing in this subsection (5) prevents a health care provider from providing a patient with health
10 care services that do not constitute participation in [sections 1 through 22].

11 (b) Notwithstanding the provisions of subsections (1) through (4), a health care provider may subject
12 another health care provider to the following sanctions if the sanctioning health care provider has notified the
13 sanctioned provider prior to participation in activities under [section 1 through 22] that the sanctioning provider
14 prohibits participation in activities under [sections 1 through 22]:

15 (i) loss of privileges, loss of membership, or any other sanction provided pursuant to the medical staff
16 bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member
17 of the sanctioning provider's medical staff and participates in [sections 1 through 22] while on the health care
18 facility premises of the sanctioning health care provider, but not including the private medical office of a physician
19 or other provider;

20 (ii) termination of lease or other property contract or other nonmonetary remedies provided by lease
21 contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the
22 sanctioned provider participates in activities under [sections 1 through 22] while on the premises of the
23 sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning
24 health care provider; or

25 (iii) termination of contract or other nonmonetary remedies provided by contract if the sanctioned provider
26 participates in activities under [sections 1 through 22] while acting in the course and scope of the sanctioned
27 provider's capacity as an employee or independent contractor of the sanctioning health care provider.

28 (c) The provisions of subsection (5)(b) may not be construed to prevent:

29 (i) a health care provider from participating in activities under [sections 1 through 22] while acting outside
30 the course and scope of the provider's capacity as an employee or independent contractor; or

1 (ii) a patient from contracting with the patient's attending physician and consulting physician to act outside
2 the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning
3 health care provider.

4 (d) A health care provider that imposes sanctions pursuant to subsection (5)(b) shall follow all due
5 process and other established procedures of the sanctioning health care provider that are related to the
6 imposition of sanctions on any other health care provider.

7 (6) For purposes of this section, "participating in [sections 1 through 22]" means to perform the duties
8 of:

9 (a) an attending physician pursuant to [section 7];

10 (b) a consulting physician pursuant to [section 8]; or

11 (c) the counseling function pursuant to [section 9].

12 (7) Suspension or termination of staff membership or privileges under subsection (5) is not reportable
13 to a licensing board provided for in Title 37. Action taken pursuant to [section 4, 7, 8, or 9] may not be the sole
14 basis for a report of unprofessional conduct under 37-1-308.

15 (8) A provision of [sections 1 through 22] may not be construed to allow a lower standard of care for
16 patients in the community where the patient is treated or in a similar community.

17
18 **NEW SECTION. Section 18. Nonsanctionable activities.** A health care provider may not be
19 sanctioned under [section 17] for:

20 (1) making an initial determination that a patient has a terminal illness and informing the patient of the
21 medical prognosis;

22 (2) providing information about the Montana Death with Dignity Act to a patient upon the request of the
23 patient;

24 (3) providing a patient, upon the request of the patient, with a referral to another physician; or

25 (4) contracting with a patient to act outside the course and scope of the provider's capacity as an
26 employee or independent contractor of a health care provider that prohibits activities under [sections 1 through
27 22].

28
29 **NEW SECTION. Section 19. Liabilities -- definition.** (1) Purposely or knowingly altering or forging a
30 request for medication to end a patient's life without authorization of the patient or concealing or destroying a

1 rescission of a request for medication is punishable as a felony if the act is done with the intent or effect of
2 causing the patient's death.

3 (2) Purposely or knowingly coercing or exerting undue influence on a patient to request medication for
4 the purpose of ending the patient's life or to destroy a rescission of a request is punishable as a felony.

5 (3) Nothing in [sections 1 through 22] limits further liability for civil damages resulting from other negligent
6 conduct or intentional misconduct by any person.

7 (4) The penalties in [sections 1 through 22] do not preclude criminal penalties applicable under other law
8 for conduct inconsistent with the provisions of [sections 1 through 22].

9 (5) For purposes of this section, "purposely" and "knowingly" have the meaning provided in 45-2-101.
10

11 **NEW SECTION. Section 20. Penalties.** (1) It is a felony for a person without authorization of the patient
12 to purposely or knowingly alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an
13 instrument, or any other evidence or document reflecting the patient's desires and interests with the intent and
14 effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition
15 and hydration that hastens the death of the patient.

16 (2) Except as provided in subsection (1), it is a misdemeanor for a person without authorization of the
17 patient to purposely or knowingly alter, forge, conceal, or destroy an instrument, the reinstatement or revocation
18 of an instrument, or any other evidence or document reflecting the patient's desires and interests with the intent
19 or effect of affecting a health care decision.

20 (3) For purposes of this section, "purposely" and "knowingly" have the meaning provided in 45-2-101.
21

22 **NEW SECTION. Section 21. Claims by governmental entity for costs incurred.** A governmental
23 entity that incurs costs resulting from a qualified patient terminating the qualified patient's life in a public place
24 while acting pursuant to [sections 1 through 22] may submit a claim against the estate of the person to recover
25 costs and reasonable attorney fees related to enforcing the claim.
26

27 **NEW SECTION. Section 22. Construction.** Nothing in [sections 1 through 22] may be construed to
28 authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active
29 euthanasia. Actions taken in accordance with [sections 1 through 22] may not, for any purposes, constitute
30 suicide, assisted suicide, mercy killing, or homicide under the law.

