

HOUSE BILL 90

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Deborah A. Armstrong

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ELIZABETH WHITEFIELD 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; ESTABLISHING REPORTING REQUIREMENTS; REMOVING CRIMINAL LIABILITY FOR PROVIDING ASSISTANCE PURSUANT TO THE ELIZABETH WHITEFIELD 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

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through 9 of this act may be cited as the "Elizabeth Whitefield End of Life Options Act".

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

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

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

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

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

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

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

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

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

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

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

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

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

I. "self-administer" means taking an affirmative, conscious, voluntary action to give oneself a pharmaceutical substance; HHHC→and←HHHC

HHHC→J. ~~"telemedicine" means the remote consultation, diagnosis or treatment of patients by means of~~

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~~telecommunications technology; and~~ HHHC

HHHC→K←HHHC HHHC→J←HHHC. "terminal illness" means a disease or condition that is incurable and irreversible and that, in accordance with reasonable medical judgment, will result in death within HHHC→the foreseeable future←HHHC HHHC→six months←HHHC.

SECTION 3. [NEW MATERIAL] MEDICAL AID IN DYING--
PRESCRIBING HEALTH CARE PROVIDER DETERMINATION--FORM.--A
prescribing health care provider shall not provide a prescription for medical aid in dying medication to an individual until the prescribing health care provider has:

A. determined that the individual has:

- (1) capacity;
- (2) a terminal illness;
- (3) voluntarily made the request for medical aid in dying; and
- (4) the ability to self-administer the medical aid in dying medication;

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

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

- (1) individual's medical diagnosis and prognosis;
- (2) potential risks associated with self-

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administering the medical aid in dying medication that the individual has requested the health care provider to prescribe;

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

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

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

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

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

F. after the requirements set forth in Subsections A through E of this section have been fulfilled, provided substantially the following form to the individual and enters the form into the individual's health record after the form has been completed with all of the required signatures and initials:

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

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I, _____, am an adult of sound mind.

I am suffering from a terminal illness, which is a disease or condition that is incurable and irreversible and that, according to reasonable medical judgment, will result in death within the foreseeable future. _____ (Patient Initials)

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

I request that my health care provider prescribe medication that will end my life in a peaceful manner if I choose to take it, and I authorize my health care provider to contact a willing pharmacist about this request. _____ (Patient Initials)

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

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

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(Patient Initials)

I make this request voluntarily and without reservation.

Signed: _____

Date: _____ Time: _____

DECLARATION OF WITNESSES:

We declare that the person signing this request:

- A. is personally known to us or has provided proof of identity;
- B. signed this request in our presence;
- C. appears to be of sound mind and not under duress, fraud or undue influence; and
- D. is not a patient for whom either of us is a health care provider.

| | Witness 1: | Witness 2: |
|--------------------------|------------|------------|
| Signature: | _____ | _____ |
| Printed Name: | _____ | _____ |
| Relationship to Patient: | _____ | _____ |
| Date: | _____ | _____ |

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

G. affirmed that the individual is:

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

(2) eligible to receive medical aid in dying after the prescribing health care provider has referred the individual to a consulting health care provider and the consulting health care provider has:

(a) examined the individual HHHC, in person or using telemedicine; HHHC;

(b) reviewed the individual's relevant medical records; and

(c) confirmed, in writing, the prescribing health care provider's prognosis that the individual is suffering from a terminal illness.

SECTION 4. [NEW MATERIAL] DETERMINING CAPACITY.--If an individual has a history of a mental health disorder or an intellectual disability, or if, in the opinion of the prescribing health care provider or consulting health care provider, an individual has a mental health disorder or an intellectual disability causing impaired judgment with regard to end of life medical decision making, the individual shall not be determined to have capacity to make end of life decisions until the:

A. health care provider refers the individual for evaluation by a mental health professional; and

B. mental health professional determines the

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individual to have capacity to make end of life decisions after evaluating the individual during one or more visits with the individual HHC, ~~in person or through telemedicine~~ HHC.

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

A. not be filled until forty-eight hours after the prescription for medical aid in dying medication has been written; and

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

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

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

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

A. A provision in a contract, will or other

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agreement, whether written or oral, or life insurance contract of annuity, to the extent the provision would affect whether a person may make or rescind a request for medical aid in dying medication, is not valid.

B. An obligation owing under any currently existing contract shall not be conditioned or affected by an individual making or rescinding a request for medical aid in dying.

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

A. A person shall not be subject to civil or criminal liability or professional disciplinary action for:

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

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

B. A health care entity, professional organization or association or a health care provider shall not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating, or refusing to participate, in the provision of medical aid in dying in good faith compliance with the

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provisions of the Elizabeth Whitefield End of Life Options Act.

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

D. No health care provider who objects for reasons of conscience to participating in the provision of medical aid in dying shall be required to participate in the provision of medical aid in dying under any circumstance. If a health care provider is unable or unwilling to carry out an individual's request pursuant to the Elizabeth Whitefield End of Life Options Act, that health care provider shall so inform the individual and refer the individual to a health care provider who is able and willing to carry out the individual's request or to another individual or entity to assist the requesting individual in seeking medical aid in dying. If the health care provider transfers the individual's care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the individual's relevant medical records to the new health care provider.

E. A health care entity shall not forbid or otherwise sanction a health care provider who provides medical aid in dying in accordance with the Elizabeth Whitefield End of Life Options Act off the premises of the health care entity or

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when the health care provider is not acting within the course and scope of the health care provider's employment with the health care entity.

F. A health care entity may prohibit a health care provider from participating in medical aid in dying on the premises of the prohibiting health care entity only if the health care entity has given written notice to the health care provider of the prohibiting entity's written policy forbidding participation in medical aid in dying and the health care provider participates in medical aid in dying:

(1) on the premises of the health care entity;

or

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

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

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

(2) an individual who seeks medical aid in dying from contracting with the individual's prescribing health care provider or consulting health care provider to act outside the course and scope of the provider's affiliation with the

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sanctioning health care entity.

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

I. A sanction imposed by a health care entity against a health care provider pursuant to this section shall not be considered the imposition of a sanction based on quality of care.

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

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

SECTION 10. A new section of the Public Health Act is enacted to read:

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

A. A health care provider who prescribes medical aid in dying to a qualified individual in accordance with the provisions of the Elizabeth Whitefield End of Life Options Act shall provide, in accordance with department rules, a report of

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that provider's participation. The department shall adopt and promulgate rules that establish the time frames and forms for reporting pursuant to this section and shall limit the reporting of data relating to qualified individuals who received prescriptions for medical aid in dying medication to the following:

- (1) the qualified individual's age at death;
- (2) the qualified individual's race and ethnicity;
- (3) the qualified individual's sex;
- (4) whether the qualified individual was enrolled in hospice at the time of death;
- (5) the qualified individual's underlying medical condition; and
- (6) whether the qualified individual self-administered the medical aid in dying medication and, if so, the date of self-administration.

B. The department shall promulgate an annual statistical report, containing aggregated data, on the information it collects pursuant to Subsection A of this section on the total number of medical aid in dying medication prescriptions written statewide and on the number of health care providers who have issued prescriptions for medical aid in dying medication during that year. Data reported pursuant to this subsection shall not contain individually identifiable

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health information and are exempt from disclosure pursuant to the Inspection of Public Records Act.

C. As used in this section:

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

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

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

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

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

A. Assisting suicide consists of deliberately aiding another in the taking of ~~[his]~~ the person's own life, ~~[whoever]~~ unless the person aiding another in the taking of the person's own life is a person acting in accordance with the provisions of the Elizabeth Whitefield End of Life Options Act.

B. A person who commits assisting suicide is guilty

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of a fourth degree felony."

SECTION 12. SEVERABILITY.--If any part or application of the Elizabeth Whitefield End of Life Options Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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