

SENATE BILL NO. 202

INTRODUCED BY DICK BARRETT

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TERMINALLY ILL PATIENT TO REQUEST MEDICATION TO END THE PATIENT'S LIFE; ESTABLISHING PROCEDURES; PROVIDING THE RIGHT TO RESCIND THE REQUEST; PROVIDING DEFINITIONS; PROVIDING IMMUNITY FOR PERSONS PARTICIPATING IN GOOD FAITH COMPLIANCE WITH THE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Montana Death With Dignity Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 20], the following definitions apply:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Attending physician" means the physician who has primary responsibility for the care of a patient and treatment of the patient's terminal illness.
- (3) "Competent" means that, in the opinion of a court or in the opinion of a patient's attending physician, consulting physician, psychiatrist, or psychologist, the patient has the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the patient's manner of communicating if that person is available.
- (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient's illness.
- (5) "Counseling" means one or more consultations as necessary between a patient and a psychiatrist or psychologist licensed in this state for the purpose of determining that the patient is competent and is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
- (6) "Department" means the department of public health and human services provided for in 2-15-2201.
- (7) (a) "Health care provider" or "provider" means a person licensed, certified, or otherwise authorized

1 or permitted by law to administer health care or dispense medication in the ordinary course of business or
2 practice of a profession.

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

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

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

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

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

10 (d) the feasible alternatives or additional treatment opportunities, including but not limited to comfort care,
11 hospice care, and pain control.

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

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

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

16 (12) "Qualified patient" means a competent adult who is a resident of Montana and has satisfied the
17 requirements of [sections 1 through 20] in order to obtain a prescription for medication that the qualified patient
18 may self-administer to end the qualified patient's life.

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

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

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

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

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

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

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

29

30 NEW SECTION. **Section 3. Right to request medication to end life.** (1) A patient may make a written

1 request for medication to be self-administered to end the patient's life if the patient:

2 (a) is a competent adult;

3 (b) is a resident of this state;

4 (c) has been determined by the patient's attending physician and, except as provided in [section 7], by
5 a consulting physician to be suffering from a terminal illness; and

6 (d) has voluntarily expressed the wish to receive medication to end the patient's life in a humane and
7 dignified manner.

8 (2) A person does not qualify under the provisions of [sections 1 through 20] solely because of age or
9 disability.

10

11 **NEW SECTION. Section 4. Request process -- witness requirements.** (1) A patient wishing to
12 receive a prescription for medication to end the patient's life shall submit an oral request and a written request
13 to the patient's attending physician.

14 (2) A valid written request for medication under [sections 1 through 20] must be:

15 (a) in substantially the form described in [section 11];

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

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

19 (i) competent;

20 (ii) acting voluntarily; and

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

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

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

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

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

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

29 (5) If the patient is a patient in a long-term care facility, as defined in 50-5-1103, at the time the written
30 request is made, one of the witnesses must be an individual designated by the facility and who meets

1 qualifications established by the department by rule.

2

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

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

6 (2) A prescription for medication under [sections 1 through 20] 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. Attending physician responsibilities.** (1) The attending physician shall:

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

11 (i) is a resident of this state;

12 (ii) has a terminal illness;

13 (iii) is competent; and

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

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

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

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

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

19 (iv) the feasible alternatives or additional treatment opportunities, including but not limited to comfort care,
20 hospice care, and pain control;

21 (c) except as provided in [section 7], refer the patient to a consulting physician to medically confirm the
22 diagnosis and prognosis and for a determination that the patient is competent and acting voluntarily;

23 (d) if appropriate, refer the patient for counseling pursuant to [section 8];

24 (e) ensure that the patient's request does not arise from coercion or undue influence by another person;

25 (f) recommend that the patient notify the patient's next of kin;

26 (g) counsel the patient about the importance of:

27 (i) having another person present when the patient takes the medication prescribed pursuant to [sections
28 1 through 20]; and

29 (ii) not taking the medication in a public place;

30 (h) inform the patient that the patient may rescind the request for medication at any time and in any

1 manner;

2 (i) offer the patient an opportunity to rescind the request for medication before prescribing the medication;

3 (j) verify, immediately prior to writing the prescription for medication, that the patient is making an

4 informed decision;

5 (k) fulfill the medical record documentation requirements of [section 12];

6 (l) ensure that all appropriate steps are carried out in accordance with [sections 1 through 20] before

7 writing a prescription for medication to enable a qualified patient to end the qualified patient's life in a humane

8 and dignified manner; and

9 (m) (i) dispense medications directly, including ancillary medication intended to minimize the qualified
10 patient's discomfort, if the attending physician:

11 (A) is registered as a dispensing physician with the board of medical examiners provided for in
12 2-15-1731;

13 (B) has a current drug enforcement administration certificate; and

14 (C) complies with any applicable administrative rule; or

15 (ii) with the qualified patient's written consent, contact a pharmacist, inform the pharmacist of the
16 prescription, and deliver the written prescription personally or by mail to the pharmacist, who shall dispense the
17 medications to either the qualified patient, the attending physician, or a person expressly designated by the
18 qualified patient.

19 (2) Unless otherwise prohibited by law, the attending physician may sign the qualified patient's death
20 certificate.

21

22 **NEW SECTION. Section 7. Consulting physician confirmation -- waiver.** (1) Before a patient may
23 be considered a qualified patient under [sections 1 through 20], a consulting physician shall:

24 (a) examine the patient and the patient's relevant medical records;

25 (b) confirm in writing the attending physician's diagnosis that the patient is suffering from a terminal
26 illness; and

27 (c) verify that the patient:

28 (i) is competent;

29 (ii) is acting voluntarily; and

30 (iii) has made an informed decision.

1 (2) (a) The requirements of this section do not apply if in the attending physician's opinion the
2 requirements would result in an undue hardship for the patient because:

3 (i) the patient's terminal illness is sufficiently advanced that confirmation of the illness is not necessary;

4 or

5 (ii) an appointment with a consulting physician cannot be made within a reasonable amount of time or
6 with a physician who is within a reasonable distance of the patient's residence.

7 (b) An attending physician who waives the requirement for a confirmation by a consulting physician shall
8 document the reasons for the waiver in the medical documentation required pursuant to [section 12].

9

10 **NEW SECTION. Section 8. Counseling referral.** (1) An attending physician or a consulting physician
11 shall refer a patient who has requested medication under [sections 1 through 20] for counseling if in the opinion
12 of the attending physician or the consulting physician the patient may be suffering from a psychiatric or
13 psychological disorder or depression causing impaired judgment.

14 (2) Medication to end a patient's life in a humane and dignified manner may not be prescribed until the
15 person performing the counseling determines that the patient is not suffering from a psychiatric or psychological
16 disorder or depression causing impaired judgment.

17

18 **NEW SECTION. Section 9. Informed decision required.** A patient may not receive a prescription for
19 medication to end the person's life unless the patient has made an informed decision. Immediately before writing
20 a prescription for medication under [sections 1 through 20], the attending physician shall verify that the patient
21 is making an informed decision.

22

23 **NEW SECTION. Section 10. Family notification recommended -- not required.** The attending
24 physician shall recommend that a patient notify the patient's next of kin of the patient's request for medication
25 pursuant to [sections 1 through 20]. A request for medication under [sections 1 through 20] may not be denied
26 because a patient declines or is unable to notify the next of kin.

27

28 **NEW SECTION. Section 11. Form of request.** A request for medication as authorized by [sections 1
29 through 20] must be in substantially the following form:

30

REQUEST FOR MEDICATION TO END MY LIFE

IN A HUMANE AND DIGNIFIED MANNER

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

I am suffering from, which my attending physician has determined is a terminal illness and which has been medically confirmed by a consulting physician, unless my attending physician has waived the confirmation requirement as provided in [section 7].

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

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

INITIAL ONE:

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

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

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

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

I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within 3 hours, my death may take longer, and my attending physician has counseled me about this possibility.

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

Signed:.....

Dated:.....

DECLARATION OF WITNESSES

We declare that the person signing this request:

- (1) is personally known to us or has provided proof of identity;
- (2) signed this request in our presence;
- (3) appears to be of sound mind and not under duress, fraud, or undue influence; and
- (4) is not a patient for whom either of us is the attending physician.

.....Witness 1/Date

.....Witness 2/Date



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

5
 6 **NEW SECTION. Section 12. Medical record documentation requirements.** The following items must
 7 be documented or filed in the patient's medical record:

- 8 (1) the determination and the basis for determining that a patient requesting medication to end the
 9 patient's life in a humane and dignified manner is a qualified patient;
 10 (2) all oral requests by a patient for medication made pursuant to [section 4] to end the patient's life in
 11 a humane and dignified manner;
 12 (3) all written requests by a patient for medication made pursuant to [sections 3 and 4] to end the
 13 patient's life in a humane and dignified manner;
 14 (4) the attending physician's diagnosis, prognosis, and determination that the patient is competent, is
 15 acting voluntarily, and has made an informed decision;
 16 (5) unless waived as provided in [section 7], the consulting physician's diagnosis, prognosis, and
 17 verification that the patient is competent, is acting voluntarily, and has made an informed decision;
 18 (6) the reasons for waiver of confirmation by a consulting physician, if a waiver was made;
 19 (7) a report of the outcome and determinations made during counseling, if performed;
 20 (8) the attending physician's offer before prescribing the medication to allow the patient to rescind the
 21 patient's request for the medication; and
 22 (9) a note by the attending physician indicating:
 23 (a) that all requirements under [sections 1 through 20] have been met; and
 24 (b) the steps taken to carry out the request, including a notation of the medication prescribed.

25
 26 **NEW SECTION. Section 13. Effect of contracts, wills, and agreements.** (1) A provision in a contract,
 27 will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may
 28 make or rescind a request for medication to end the person's life in a humane and dignified manner is not valid.
 29 (2) An obligation owing under any currently existing contract may not be conditioned or affected by a
 30 person making or rescinding a request for medication to end the person's life in a humane and dignified manner.

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

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

8
9 **NEW SECTION. Section 15. Immunities -- prohibitions on certain health care providers --**
10 **notification -- permissible sanctions.** (1) (a) A person is not subject to civil or criminal liability or professional
11 disciplinary action for participating in good faith compliance with [sections 1 through 20], including an individual
12 who is present when a qualified patient takes the prescribed medication to end the qualified patient's life in a
13 humane and dignified manner.

14 (b) The civil immunity provisions of this subsection (1) do not apply to a person employed by or an entity
15 operated by the state or a political subdivision of the state.

16 (2) A health care provider or professional organization or association may not subject an individual to
17 censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for
18 participating or refusing to participate in good faith compliance with [sections 1 through 20].

19 (3) A request by a patient for or provision by an attending physician of medication in good faith
20 compliance with the provisions of [sections 1 through 20] does not constitute neglect for any purpose of law or
21 provide the sole basis for the appointment of a guardian or conservator.

22 (4) (a) A health care provider may choose whether to participate in providing to a qualified patient any
23 medication to end the patient's life in a humane and dignified manner and is not under any duty, whether by
24 contract, by statute, or by any other legal requirement, to participate in providing a qualified patient with the
25 medication.

26 (b) If a health care provider is unable or unwilling to carry out a patient's request under [sections 1
27 through 20] and the patient transfers care to a new health care provider, the prior health care provider shall
28 transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

29 (5) (a) Unless otherwise required by law, a health care provider may prohibit another health care provider
30 from participating in activities under [sections 1 through 20] on the premises of the prohibiting provider if the

1 prohibiting provider has notified the health care provider in writing of the prohibiting provider's policy against
2 participating in activities under [sections 1 through 20]. Nothing in this subsection (5) prevents a health care
3 provider from providing a patient with health care services that do not constitute participation in activities under
4 [sections 1 through 20].

5 (b) Notwithstanding the provisions of subsections (1) through (4), a health care provider may subject
6 another health care provider to the following sanctions if the sanctioning health care provider has notified the
7 sanctioned provider prior to participation in activities under [sections 1 through 20] that the sanctioning provider
8 prohibits participation in activities under [sections 1 through 20]:

9 (i) loss of privileges, loss of membership, or any other sanction provided pursuant to the medical staff
10 bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member
11 of the sanctioning provider's medical staff and is participating in activities under [sections 1 through 20] while on
12 the health care facility premises of the sanctioning health care provider, but not including the private medical
13 office of a physician or other provider;

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

19 (iii) termination of a contract or other nonmonetary remedies provided by a contract if the sanctioned
20 provider participates in activities under [sections 1 through 20] while acting in the course and scope of the
21 sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider.

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

23 (i) a health care provider from participating in activities under [sections 1 through 20] while acting outside
24 the course and scope of the provider's capacity as an employee or independent contractor; or

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

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

1 (6) For purposes of this section, "participating in activities under [sections 1 through 20]" means to
2 perform:

3 (a) the duties of an attending physician pursuant to [section 6];

4 (b) the duties of a consulting physician pursuant to [section 7]; or

5 (c) the counseling function pursuant to [section 8].

6 (7) Suspension or termination of staff membership or privileges under subsection (5) is not reportable
7 to a licensing board provided for in Title 37. Action taken pursuant to [section 4, 6, 7, or 8] may not be the sole
8 basis for a report of unprofessional conduct under 37-1-308.

9 (8) A provision of [sections 1 through 20] may not be construed to allow a lower standard of care for
10 patients in the community where the patient is treated or in a similar community.

11
12 **NEW SECTION. Section 16. Nonsanctionable activities.** A health care provider may not be
13 sanctioned under [section 15] for:

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

16 (2) providing information about the Montana Death With Dignity Act to a patient upon the request of the
17 patient;

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

19 (4) contracting with a patient to act outside the course and scope of the provider's capacity as an
20 employee or independent contractor of a health care provider that prohibits activities under [sections 1 through
21 20].

22
23 **NEW SECTION. Section 17. Liabilities.** (1) Purposely or knowingly altering or forging a request for
24 medication to end a patient's life without the authorization of the patient or concealing or destroying a rescission
25 of a request for medication is punishable as a felony if the act is done with the intent or effect of causing the
26 patient's death.

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

29 (3) Nothing in [sections 1 through 20] limits further liability for civil damages resulting from other negligent
30 conduct or intentional misconduct by any person.

1 (4) The penalties in [sections 1 through 20] do not preclude criminal penalties applicable under other law
2 for conduct inconsistent with the provisions of [sections 1 through 20].

3 (5) For purposes of this section, "purposely" and "knowingly" have the meaning provided in 45-2-101.
4

5 **NEW SECTION. Section 18. Penalties.** (1) It is a felony for a person without the authorization of the
6 patient to purposely or knowingly alter, forge, conceal, or destroy an instrument, the reinstatement or revocation
7 of an instrument, or any other evidence or document reflecting the patient's desires and interests with the intent
8 and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered
9 nutrition and hydration that hastens the death of the patient.

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

14 (3) For purposes of this section, "purposely" and "knowingly" have the meaning provided in 45-2-101.
15

16 **NEW SECTION. Section 19. Claims by governmental entity for costs incurred.** A governmental
17 entity that incurs costs resulting from a qualified patient terminating the qualified patient's life in a public place
18 while acting pursuant to [sections 1 through 20] may submit a claim against the estate of the person to recover
19 costs and reasonable attorney fees related to enforcing the claim.
20

21 **NEW SECTION. Section 20. Construction.** Nothing in [sections 1 through 20] may be construed to
22 authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active
23 euthanasia. Actions taken in accordance with [sections 1 through 20] may not for any purposes constitute suicide,
24 assisted suicide, mercy killing, or homicide under the law.
25

26 **NEW SECTION. Section 21. Codification instruction.** [Sections 1 through 20] are intended to be
27 codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 20].
28

29 **NEW SECTION. Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

2

3 NEW SECTION. **Section 23. Effective date.** [This act] is effective on passage and approval.

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- END -