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4

A Bill

HOUSE BILL 1536

5 By: Representative D. Douglas
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE COMPASSIONATE CARE END-OF-LIFE
9 OPTION ACT; TO EXEMPT PRESCRIBING OR DISPENSING OF A
10 MEDICATION FOR SELF-ADMINISTRATION BY A PATIENT UNDER
11 THE COMPASSIONATE CARE END-OF-LIFE OPTION ACT FROM
12 THE DEFINITION OF "PHYSICIAN-ASSISTED SUICIDE"; TO
13 MODIFY LIMITATION OF LIABILITY OF LIFE INSURANCE
14 POLICIES; AND FOR OTHER PURPOSES.
15

Subtitle

16
17
18 TO CREATE THE COMPASSIONATE CARE END-OF-
19 LIFE OPTION ACT; AND TO EXEMPT THE
20 COMPASSIONATE CARE END-OF-LIFE OPTION ACT
21 FROM THE DEFINITION OF "PHYSICIAN-
22 ASSISTED SUICIDE".
23

24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 5-10-106(a), concerning physician-assisted
28 suicides, is amended to read as follows:

29 (a)(1) As used in this section, "physician-assisted suicide" means a
30 physician or ~~health-care~~ healthcare provider participating in a medical
31 procedure or knowingly prescribing any drug, compound, or substance for the
32 express purpose of assisting a patient to ~~intentionally~~ purposely end the
33 patient's life.

34 (2) However, "physician-assisted suicide" does not apply to a
35 person participating in the execution of a person sentenced by a court to
36 death by lethal injection or the Compassionate Care End-of-Life Option Act, §



1 20-6-401 et seq.

2
 3 SECTION 2. Arkansas Code Title 20, Chapter 6, Subchapter 4, is amended
 4 to add an additional subchapter to read as follows:

5 Subchapter 4 – Compassionate Care End-of-Life Option Act

6
 7 20-6-401. Title.

8 This subchapter shall be known and may be cited as the "Compassionate
 9 Care End-of-Life Option Act".

10
 11 20-6-402. Definitions.

12 As used in this subchapter:

13 (1) "Capable" means having the ability to make and communicate
 14 healthcare decisions to a physician, including communication through a person
 15 familiar with the patient's manner of communicating;

16 (2) "Healthcare facility" means the same as defined in § 20-6-
 17 303;

18 (3) "Healthcare provider" means a person, partnership,
 19 corporation, facility, or institution that is licensed, certified, or
 20 otherwise authorized by law to administer healthcare services or dispense
 21 medication in the ordinary course of business or the practice of a
 22 profession;

23 (4) "Impaired judgment" means the condition of being unable to
 24 sufficiently understand or appreciate the relevant facts necessary to make an
 25 informed decision;

26 (5) "Interested party" means any of the following:

27 (A) The patient's physician;

28 (B) A person who is a relative of the patient by blood,
 29 civil marriage, civil union, or adoption and is aware of the relationship
 30 with the patient;

31 (C) A person who knows that he or she would be entitled
 32 upon the patient's death to any portion of the estate or assets of the
 33 patient under any will or trust, by operation of law, or by contract; or

34 (D) An owner, operator, or employee of a healthcare
 35 facility, nursing home, or residential care facility where the patient is
 36 receiving medical treatment or is a resident;

1 (6) "Palliative care" means the same as defined in § 20-8-701;

2 (7) "Patient" means a person who is:

3 (A) Eighteen (18) years of age or older;

4 (B) A resident of this state;

5 (C) Under the care of a physician licensed in this state;

6 and

7 (D) Diagnosed with a terminal condition;

8 (8) "Professional relationship" means the same as defined in §
 9 17-80-402; and

10 (9) "Terminal condition" means an incurable and irreversible
 11 disease that will, in the opinion of the patient's physician, result in death
 12 within a relatively short time.

13
 14 20-6-403. Right to information.

15 (a) A patient shall be informed of all available options related to
 16 terminal care and the Right to Try Act, § 20-15-2101 et seq., and receive
 17 answers to any specific question about the foreseeable risks and benefits of
 18 medication, without a physician withholding any requested information and
 19 regardless of the purpose of the inquiry or the nature of the information.

20 (b) A physician who engages in discussions with a patient related to
 21 the risks and benefits in circumstances under this subchapter is not
 22 assisting in or contributing to a patient's independent decision to self-
 23 administer a lethal dose of medication.

24 (c) A patient's independent decision to self-administer a lethal dose
 25 of medication does not establish civil or criminal liability or professional
 26 disciplinary liability for the physician.

27
 28 20-6-404. Immunity – Requirements for prescription and documentation.

29 (a) A physician is not subject to civil or criminal liability or
 30 professional disciplinary action if the physician prescribes medication for
 31 self-administration by the patient for the purpose of hastening the patient's
 32 death and the physician affirms by documenting in the patient's medical
 33 record that:

34 (1) The patient made an oral request to the physician in the
 35 physical presence of the physician for medication for self-administration by
 36 the patient for the purpose of hastening the patient's death;

1 (2) No fewer than fifteen (15) days after the first oral
2 request, the patient made a second oral request to the physician in the
3 physical presence of the physician for medication for self-administration by
4 the patient for the purpose of hastening the patient's death;

5 (3) At the time of the second oral request, the physician
6 offered the patient an opportunity to rescind the request;

7 (4) The patient made a written request for medication for self-
8 administration by the patient for the purpose of hastening the patient's
9 death that was signed by the patient in the presence of two (2) or more
10 witnesses who:

11 (A) Were not interested parties;

12 (B) Were at least eighteen (18) years of age; and

13 (C) Signed and affirmed that the patient appeared to
14 understand the nature of the document and to be free from duress or undue
15 influence at the time the request was signed;

16 (5) The physician determined that the patient:

17 (A) Had a terminal condition, based on the physician's
18 physical examination of the patient and review of the patient's relevant
19 medical record;

20 (B) Was capable;

21 (C) Was making an informed decision;

22 (D) Had made a voluntary request for medication for self-
23 administration by the patient for the purpose of hastening his or her death;
24 and

25 (E) Was a resident of Arkansas for at least three (3)
26 years preceding his or her request for medication for self-administration by
27 the patient for the purpose of hastening his or her death;

28 (6) The physician informed the patient in person, both verbally
29 and in writing, of:

30 (A) The patient's medical diagnosis;

31 (B) The patient's prognosis, including an acknowledgement
32 that the physician's estimation of the patient's life expectancy was an
33 estimate based on the physician's best medical judgment and was not a
34 guarantee of the actual time remaining in the patient's life, and that the
35 patient could live longer than the time estimated;

36 (C) The range of treatment options appropriate for the

1 patient and the patient's diagnosis;

2 (D) If the patient was not enrolled in hospice care, all
3 feasible end-of-life services, including palliative care, comfort care,
4 hospice care, and pain control;

5 (E) The range of possible results, including potential
6 risks associated with taking the medication for self-administration by the
7 patient that may be prescribed for the purpose of hastening the patient's
8 death; and

9 (F) The probable result of taking the medication for self-
10 administration by the patient that may be prescribed for the purpose of
11 hastening the patient's death;

12 (7) The physician referred the patient to a second physician for
13 medical confirmation of the physician's diagnosis, prognosis, and
14 determination that the patient was capable, was acting voluntarily, and had
15 made an informed decision;

16 (8) The physician:

17 (A) Verified that the patient did not have impaired
18 judgment; or

19 (B) Referred the patient for an evaluation by a
20 psychiatrist, psychologist, or clinical social worker licensed in this state
21 for confirmation that the patient was capable and did not have impaired
22 judgment;

23 (9) The physician consulted with the patient's primary care
24 physician, if applicable, with the patient's consent;

25 (10) The physician informed the patient that the patient may
26 rescind the second oral request for medication for self-administration by the
27 patient for the purpose of hastening the patient's death at any time and in
28 any manner and offered the patient an opportunity to rescind after the
29 patient's second oral request;

30 (11) Immediately before writing a prescription for medication
31 for self-administration by the patient for the purpose of hastening the
32 patient's death, the physician verified that all requirements are met and
33 that the patient was making an informed decision;

34 (12) The physician wrote the prescription no fewer than forty-
35 eight (48) hours after:

36 (A) The patient's written request for medication for self-

1 administration by the patient for the purpose of hastening the patient's
 2 death;

3 (B) The patient's second oral request for medication for
 4 self-administration by the patient for the purpose of hastening the patient's
 5 death; or

6 (C) The physician's offering the patient an opportunity to
 7 rescind the request for medication for self-administration by the patient for
 8 the purpose of hastening the patient's death;

9 (13) The physician:

10 (A) Dispensed the medication directly; or

11 (B) With the patient's consent:

12 (i) Contacted a pharmacist and informed the
 13 pharmacist of the prescription; and

14 (ii) Delivered the written prescription personally
 15 or by mail or fax to the pharmacist who dispensed the medication to the
 16 patient, the physician, or an expressly identified agent of the patient; and

17 (14) After writing the prescription for medication for self-
 18 administration by the patient for the purpose of hastening the patient's
 19 death, the physician promptly filed a report with the Department of Health
 20 documenting completion of all of the requirements under this subchapter.

21 (b) The documentation required under subsection (a) of this section
 22 shall include the following:

23 (1) The date, time, and wording of all oral requests by the
 24 patient for medication for self-administration by the patient for the purpose
 25 of hastening the patient's death;

26 (2) All written requests by the patient for medication for self-
 27 administration by the patient for the purpose of hastening the patient's
 28 death;

29 (3) The physician's diagnosis, prognosis, and basis for the
 30 determination that the patient was capable, was acting voluntarily, and had
 31 made an informed decision;

32 (4) The second physician's medical confirmation of the
 33 physician's diagnosis, prognosis, and determination that the patient was
 34 capable, was acting voluntarily, and had made an informed decision;

35 (5) The physician's attestation that:

36 (A) The patient was enrolled in hospice care at the time

1 of the patient's oral and written requests for medication for self-
2 administration by the patient for the purpose of hastening the patient's
3 death; or

4 (B) The physician informed the patient of all feasible
5 end-of-life services;

6 (6) The physician's verification that the patient either did not
7 have impaired judgment or that the physician referred the patient for an
8 evaluation and the person conducting the evaluation determined that the
9 patient did not have impaired judgment;

10 (7) A report of the outcome and determinations made during any
11 evaluation that the patient may have received;

12 (8) The date, time, and wording of the physician's offer to the
13 patient to rescind the request for medication for self-administration by the
14 patient for the purpose of hastening the patient's death at the time of the
15 patient's second oral request; and

16 (9) A note by the physician indicating that all requirements
17 under this subchapter were satisfied and describing all of the steps taken to
18 carry out the request, including a notation of the medication for self-
19 administration by the patient prescribed for the purpose of hastening the
20 patient's death.

21 (c) This section does not limit civil or criminal liability for gross
22 negligence, recklessness, or intentional misconduct.

23
24 20-6-405. No duty to aid.

25 A person is not subject to civil or criminal liability solely for being
26 present when a patient self-administers a lethal dose of a prescribed
27 medication for self-administration by the patient or for not acting to
28 prevent the patient from self-administering a lethal dose of prescribed
29 medication for self-administration.

30
31 20-6-406. Limitations on actions.

32 (a) A physician, nurse, pharmacist, or other person is not under any
33 duty, by law or contract, to participate in the provision of a lethal dose of
34 medication to a patient.

35 (b) A healthcare facility or healthcare provider shall not discipline,
36 suspend, revoke a license or privilege of, or otherwise penalize a physician,

1 nurse, pharmacist, or other person for any action taken in good faith
2 reliance on this subchapter or any refusal to act under this subchapter.

3 (c) Except as otherwise provided in this subchapter, this subchapter
4 does not limit liability for civil damages resulting from negligent conduct
5 or intentional misconduct by any person.

6
7 20-6-407. Healthcare facility exception.

8 (a) A healthcare facility may prohibit a physician from writing a
9 prescription for a dose of medication intended to be lethal for a patient who
10 is a resident in the healthcare facility and who intends to self-administer
11 the medication on the premises of the healthcare facility if the healthcare
12 facility notifies the physician in writing of its policy regarding
13 prescriptions.

14 (b) A physician who violates a healthcare facility policy as described
15 in subsection (a) of this section may be subject to sanctions otherwise
16 allowable under law or contract.

17
18 20-6-408. Insurance policies.

19 (a) A life insurance company shall not deny benefits to a person or
20 his or her beneficiaries for actions taken in accordance with this
21 subchapter.

22 (b) The sale, procurement, or issue of any medical malpractice
23 insurance policy or the rate charged for the policy shall not be conditioned
24 upon or affected by whether the physician is willing to participate in the
25 provisions of this subchapter.

26
27 20-6-409. Palliative sedation.

28 This subchapter does not limit or otherwise affect the provision,
29 administration, or receipt of palliative sedation consistent with accepted
30 medical standards.

31
32 20-6-410. Protection of end-of-life option – Immunity.

33 (a) A physician with a professional relationship with a patient is not
34 engaging in unprofessional conduct if:

35 (1) The physician determines the patient is capable and does not
36 have impaired judgment;

1 (2) The physician informs the patient of all feasible end-of-
 2 life services, including palliative care, comfort care, hospice care, and
 3 pain control;

4 (3) The physician prescribes a dose of medication that may be
 5 lethal to the patient;

6 (4) The physician advises the patient of all foreseeable risks
 7 related to the prescription; and

8 (5) The patient makes an independent decision to self-administer
 9 a lethal dose of medication.

10 (b) A physician is immune from any civil or criminal liability or
 11 professional disciplinary action for actions performed in good faith
 12 compliance with the provisions of this subchapter.

13
 14 20-6-411. Rules regarding safe disposal of unused medications.

15 The Department of Health shall adopt rules regarding the safe disposal
 16 of unused medications prescribed under this subchapter.

17
 18 20-6-412. Construction.

19 (a) This subchapter does not authorize a physician or any other person
 20 to end a patient's life by lethal injection, mercy killing, or active
 21 euthanasia.

22 (b) Any action taken in accordance with this subchapter does not
 23 constitute suicide, assisted suicide, mercy killing, or homicide under the
 24 law.

25 (c) This subchapter does not conflict with section 1553 of the Patient
 26 Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the
 27 Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

28
 29 SECTION 3. Arkansas Code § 23-81-115(a), concerning limitations of
 30 liability of life insurance policies, is amended to read as follows:

31 (a) ~~No~~ A policy of life insurance shall not be delivered or issued for
 32 delivery in this state if ~~it~~ the policy contains any of the following
 33 provisions:

34 (1) A provision for a period shorter than that provided by
 35 statute within which an action at law or in equity may be commenced on such a
 36 policy;

1 (2) A provision ~~which~~ that excludes or restricts liability for
 2 death caused in a certain specified manner or occurring while the insured has
 3 a specified status, except that a policy may contain provisions excluding or
 4 restricting coverage as specified therein in the event of death under any one
 5 (1) or more of the following circumstances:

6 (A) Death as a result, directly or indirectly, of war,
 7 declared or undeclared, or of action by military forces, or of any act or
 8 hazard of the war or action, or of service in the military, naval, or air
 9 forces or in civilian forces auxiliary thereto, or from any cause while a
 10 member of the military, naval, or air forces of any country at war, declared
 11 or undeclared, or of any country engaged in the military action;

12 (B) Death as a result of aviation or any air travel or
 13 flight;

14 (C) Death as a result of a specified hazardous occupation
 15 or occupations;

16 (D) Death while the insured is a resident outside the
 17 continental United States and Canada; or

18 (E) (i)(a) Death within two (2) years from the date of
 19 issue of the policy or within two (2) years of the effective date of any
 20 increase in the face amount of the policy as a result of suicide, while sane
 21 or insane.

22 **(b)** However, the parts of ~~this subdivision~~
 23 ~~(a)(2)(E)~~ subdivision (a)(2)(E)(i) of this section applicable to increases in
 24 the face amount of the policy shall apply only to the additional amount.

25 (ii) Subdivision (a)(2)(E) does not apply to deaths
 26 under the Compassionate Care End-of-Life Option Act, § 20-6-401 et seq.

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