

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 90

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

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 through 11 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

1 eight years of age or older;

2 B. "capacity" means an individual's ability to
3 understand and appreciate health care options available to that
4 individual, including significant benefits and risks, and to
5 make and communicate an informed health care decision. A
6 determination of capacity shall be made only according to
7 professional standards of care and the provisions of Section
8 24-7A-11 NMSA 1978;

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

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

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

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

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

25 (4) a physician assistant licensed pursuant to

1 the Physician Assistant Act or the Osteopathic Medicine Act;

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

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

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

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

16 I. "self-administer" means taking an affirmative,
17 conscious, voluntary action to give oneself a pharmaceutical
18 substance; and

19 J. "terminal illness" means a disease or condition
20 that is incurable and irreversible and that, in accordance with
21 reasonable medical judgment, will result in death within six
22 months.

23 SECTION 3. [NEW MATERIAL] MEDICAL AID IN DYING--
24 PRESCRIBING HEALTH CARE PROVIDER DETERMINATION--FORM.--A
25 prescribing health care provider shall not provide a

.213563.4

1 prescription for medical aid in dying medication to an
2 individual until the prescribing health care provider has:

3 A. determined that the individual has:

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

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

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

- 14 (1) individual's medical diagnosis and
15 prognosis;
16 (2) potential risks associated with self-
17 administering the medical aid in dying medication that the
18 individual has requested the health care provider to prescribe;
19 (3) probable result of self-administering the
20 medical aid in dying medication to be prescribed;
21 (4) individual's option of choosing to obtain
22 the medical aid in dying medication and then deciding not to
23 use it; and
24 (5) feasible alternative, concurrent or
25 additional treatment opportunities, including hospice care and

1 palliative care focused on relieving symptoms and reducing
2 suffering;

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

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

9 F. confirmed in the health record that at least one
10 physician or osteopathic physician licensed pursuant to the
11 Medical Practice Act or the Osteopathic Medicine Act, who has
12 knowledge and experience treating the underlying condition
13 rendering the qualified individual terminally ill, has
14 determined that the individual has capacity, a terminal illness
15 and the ability to self-administer the medical aid in dying
16 medication. That physician may be the prescribing health care
17 provider pursuant to this section, the individual's hospice
18 health care provider or another physician who meets the
19 requirements of this subsection;

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

.213563.4

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

3 I, _____, am an
4 adult of sound mind.

5 I am suffering from a terminal illness, which is a disease
6 or condition that is incurable and irreversible and that,
7 according to reasonable medical judgment, will result in death
8 within six months. My health care provider has determined that
9 the illness is in its terminal phase. _____ (Patient Initials)

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

16 _____ (Patient Initials)

17 I request that my health care provider prescribe
18 medication that will end my life in a peaceful manner if I
19 choose to take it, and I authorize my health care provider to
20 contact a willing pharmacist about this request. _____

21 (Patient Initials)

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

24 I understand the full import of this request, and I expect
25 to die if I take the medical aid in dying medication

1 prescribed. I further understand that although most deaths
2 occur within three hours, my death may take longer. My health
3 care provider has counseled me about this possibility. _____
4 (Patient Initials)

5 I make this request voluntarily and without reservation.

6 Signed: _____

7 Date: _____ Time: _____

8 DECLARATION OF WITNESSES:

9 We declare that the person signing this request:

10 A. is personally known to us or has provided proof
11 of identity;

12 B. signed this request in our presence;

13 C. appears to be of sound mind and not under
14 duress, fraud or undue influence; and

15 D. is not a patient for whom either of us is a
16 health care provider.

17 Witness 1:

Witness 2:

18 Signature: _____

19 Printed Name: _____

20 Relationship _____

21 to Patient: _____

22 Date: _____

_____.

23 NOTE: No more than one witness shall be a relative by blood,
24 marriage or adoption of the person signing this request. No
25 more than one witness shall own, operate or be employed at a

.213563.4

underscored material = new
[bracketed material] = delete

1 health care facility where the person signing that request is a
2 patient or resident."; and

3 H. affirmed that the individual is:

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

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

10 (a) examined the individual;

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

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

16 SECTION 4. [NEW MATERIAL] DETERMINING CAPACITY.--If an
17 individual has a history of a mental health disorder or an
18 intellectual disability that could cause impaired judgment with
19 regard to end of life medical decision making, or if, in the
20 opinion of the prescribing health care provider or consulting
21 health care provider, an individual currently has a mental
22 health disorder or an intellectual disability that may cause
23 impaired judgment with regard to end of life medical decision
24 making, the individual shall not be determined to have capacity
25 to make end of life decisions until the:

.213563.4

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

3 B. mental health professional determines the
4 individual to have capacity to make end of life decisions after
5 evaluating the individual during one or more visits with the
6 individual.

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

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

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

15 **SECTION 6. [NEW MATERIAL] MEDICAL AID IN DYING--**
16 **REQUIREMENT TO SELF-ADMINISTER.--**The qualified individual may
17 choose either to self-administer any medication prescribed
18 pursuant to the Elizabeth Whitefield End of Life Options Act to
19 bring about a peaceful death or to not ingest such medication.
20 If the qualified individual chooses to ingest the medication
21 prescribed pursuant to that act to bring about a peaceful
22 death, the qualified individual must self-administer that
23 medication.

24 **SECTION 7. [NEW MATERIAL] MEDICAL AID IN DYING--RIGHT TO**
25 **KNOW.--**A health care provider shall inform a terminally ill

.213563.4

1 patient of all reasonable options related to the patient's care
2 that are legally available to terminally ill patients that meet
3 or exceed the medical standards of care for end of life care.

4 SECTION 8. [NEW MATERIAL] DEATH CERTIFICATE--CAUSE OF
5 DEATH.--The cause of death of a qualified individual who is
6 deceased pursuant to self-administration of medical aid in
7 dying medication pursuant to the Elizabeth Whitefield End of
8 Life Options Act shall be the qualified individual's underlying
9 terminal illness.

10 SECTION 9. [NEW MATERIAL] MEDICAL AID IN DYING--EFFECT ON
11 WILLS--CONTRACTS--LIFE INSURANCE--ANNUITIES.--

12 A. A provision in a contract, will or other
13 agreement, whether written or oral, or life insurance contract
14 or annuity, to the extent the provision would affect whether a
15 person may make or rescind a request for medical aid in dying
16 medication, is not valid.

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

20 C. It is unlawful for an insurer to deny or alter
21 health care benefits that would otherwise be available to an
22 individual with a terminal illness based on the availability of
23 medical aid in dying, or to otherwise attempt to influence an
24 individual with a terminal illness to make or not make a
25 request for medical aid-in-dying medication.

.213563.4

1 SECTION 10. ~~[NEW MATERIAL]~~ IMMUNITIES--CONSCIENCE-BASED
2 DECISIONS.--

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

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

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

13 B. A health care entity, professional organization
14 or association or health care provider shall not subject a
15 person to censure, discipline, suspension, loss of license,
16 loss of privileges, loss of membership or other penalty for
17 participating, or refusing to participate, in the provision of
18 medical aid in dying in good faith compliance with the
19 provisions of the Elizabeth Whitefield End of Life Options Act.

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

.213563.4

underscored material = new
~~[bracketed material] = delete~~

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

16 E. A health care entity shall not forbid or
17 otherwise sanction a health care provider who provides medical
18 aid in dying in accordance with the Elizabeth Whitefield End of
19 Life Options Act off the premises of the health care entity or
20 when the health care provider is not acting within the course
21 and scope of the health care provider's employment with the
22 health care entity.

23 F. A health care entity may sanction a health care
24 provider for participating in medical aid in dying on the
25 premises of the prohibiting health care entity only if the

.213563.4

1 health care entity has given written notice to the health care
2 provider of the prohibiting entity's written policy forbidding
3 participation in medical aid in dying and the health care
4 provider participates in medical aid in dying:

5 (1) on the premises of the health care entity;
6 or

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

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

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

16 (2) an individual who seeks medical aid in
17 dying from contracting with the individual's prescribing health
18 care provider or consulting health care provider to act outside
19 the course and scope of the provider's affiliation with the
20 sanctioning health care entity.

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

.213563.4

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

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

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

13 SECTION 11. [NEW MATERIAL] PROHIBITED ACTS.--Nothing in
14 the Elizabeth Whitefield End of Life Options Act shall be
15 construed to authorize a physician or any other person to end
16 an individual's life by lethal injection, mercy killing or
17 euthanasia. Actions taken in accordance with the Elizabeth
18 Whitefield End of Life Options Act shall not be construed, for
19 any purpose, to constitute suicide, assisted suicide,
20 euthanasia, mercy killing, homicide or adult abuse under the
21 law.

22 SECTION 12. A new section of the Public Health Act is
23 enacted to read:

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

25 A. A health care provider who prescribes medical

1 aid in dying to a qualified individual in accordance with the
2 provisions of the Elizabeth Whitefield End of Life Options Act
3 shall provide, in accordance with department rules, a report of
4 that provider's participation. The department shall adopt and
5 promulgate rules that establish the time frames and forms for
6 reporting pursuant to this section and shall limit the
7 reporting of data relating to qualified individuals who
8 received prescriptions for medical aid in dying medication to
9 the following:

- 10 (1) the qualified individual's age at death;
- 11 (2) the qualified individual's race and
12 ethnicity;
- 13 (3) the qualified individual's gender;
- 14 (4) whether the qualified individual was
15 enrolled in hospice at the time of death;
- 16 (5) the qualified individual's underlying
17 medical condition; and
- 18 (6) whether the qualified individual ingested
19 the medical aid in dying medication and, if so, the date that
20 this occurred.

21 B. The department shall promulgate an annual
22 statistical report, containing aggregated data, on the
23 information it collects pursuant to Subsection A of this
24 section on the total number of medical aid in dying medication
25 prescriptions written statewide and on the number of health

.213563.4

1 care providers who have issued prescriptions for medical aid in
2 dying medication during that year. Data reported pursuant to
3 this subsection shall not contain individually identifiable
4 health information and are exempt from disclosure pursuant to
5 the Inspection of Public Records Act.

6 C. As used in this section:

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

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

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

20 SECTION 13. Section 30-2-4 NMSA 1978 (being Laws 1963,
21 Chapter 303, Section 2-5) is amended to read:

22 "30-2-4. ASSISTING SUICIDE.--

23 A. Assisting suicide consists of deliberately
24 aiding another in the taking of ~~[his]~~ the person's own life,
25 ~~[Whoever]~~ unless the person aiding another in the taking of the

1 person's own life is a person acting in accordance with the
2 provisions of the Elizabeth Whitefield End of Life Options Act.

3 B. A person who commits assisting suicide is guilty
4 of a fourth degree felony."

5 SECTION 14. SEVERABILITY.--If any part or application of
6 the Elizabeth Whitefield End of Life Options Act is held
7 invalid, the remainder or its application to other situations
8 or persons shall not be affected.

underscored material = new
[bracketed material] = delete

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25