

END OF LIFE PRESCRIPTION PROVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Uniform Probate Code to enact the End of Life Options Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a procedure for an individual with a terminal disease to obtain a prescription to end the individual's life;
- ▶ designates when an individual may make a request for aid-in-dying medication;
- ▶ establishes attending physician responsibilities;
- ▶ requires a consulting physician confirmation;
- ▶ provides for a counseling referral when needed;
- ▶ requires an informed decision;
- ▶ encourages family notification;
- ▶ requires written and oral requests and the ability to rescind the request at any time;
- ▶ requires waiting periods;
- ▶ includes:
 - documentation and reporting requirements; and
 - a requirement that the patient be a resident of the state;
- ▶ establishes the effect of the decision to utilize aid-in-dying medication on an individual's wills, contracts, and insurance or annuity contracts;



- 28 ▶ provides limited immunities and procedures for permissible sanctions;
- 29 ▶ prohibits euthanasia or mercy killing;
- 30 ▶ establishes criminal penalties for certain actions;
- 31 ▶ provides a uniform form for a patient's written request; and
- 32 ▶ includes a severability clause.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill provides a special effective date.

37 **Utah Code Sections Affected:**

38 ENACTS:

- 39 **75-2c-101**, Utah Code Annotated 1953
- 40 **75-2c-102**, Utah Code Annotated 1953
- 41 **75-2c-103**, Utah Code Annotated 1953
- 42 **75-2c-104**, Utah Code Annotated 1953
- 43 **75-2c-105**, Utah Code Annotated 1953
- 44 **75-2c-106**, Utah Code Annotated 1953
- 45 **75-2c-107**, Utah Code Annotated 1953
- 46 **75-2c-108**, Utah Code Annotated 1953
- 47 **75-2c-109**, Utah Code Annotated 1953
- 48 **75-2c-110**, Utah Code Annotated 1953
- 49 **75-2c-111**, Utah Code Annotated 1953
- 50 **75-2c-112**, Utah Code Annotated 1953
- 51 **75-2c-113**, Utah Code Annotated 1953
- 52 **75-2c-114**, Utah Code Annotated 1953
- 53 **75-2c-115**, Utah Code Annotated 1953
- 54 **75-2c-116**, Utah Code Annotated 1953
- 55 **75-2c-117**, Utah Code Annotated 1953
- 56 **75-2c-118**, Utah Code Annotated 1953
- 57 **75-2c-119**, Utah Code Annotated 1953
- 58 **75-2c-120**, Utah Code Annotated 1953

- 59 [75-2c-121](#), Utah Code Annotated 1953
- 60 [75-2c-122](#), Utah Code Annotated 1953
- 61 [75-2c-123](#), Utah Code Annotated 1953
- 62 [75-2c-124](#), Utah Code Annotated 1953
- 63 [75-2c-125](#), Utah Code Annotated 1953

64

65 *Be it enacted by the Legislature of the state of Utah:*

66 Section 1. Section **75-2c-101** is enacted to read:

67 **CHAPTER 2c. END OF LIFE OPTIONS ACT**

68 **75-2c-101. Title.**

69 This chapter is known as the "End of Life Options Act."

70 Section 2. Section **75-2c-102** is enacted to read:

71 **75-2c-102. Definitions.**

72 As used in this chapter:

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

74 (2) "Attending physician" means the physician who has primary responsibility for the
75 care of the patient and treatment of the patient's terminal disease.

76 (3) "Capable" means that in the opinion of the patient's attending physician, consulting
77 physician, and licensed mental health professional, if any, the patient has the ability to make
78 and communicate health care decisions to health care providers, including communication
79 through individuals familiar with the patient's manner of communicating if those individuals
80 are available.

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

83 (5) "Counseling" means one or more consultations as necessary between a licensed
84 mental health professional and a patient for the purpose of determining whether the patient is
85 capable.

86 (6) "Health care provider" means a person licensed, certified, or otherwise authorized
87 or permitted by the law of this state to administer health care or dispense medication in the
88 ordinary course of business or practice of a profession.

89 (7) "Informed decision" means a decision that is made by a patient to request and

90 obtain a prescription for aid-in-dying medication to end the patient's life in a humane and
91 dignified manner and that is based on an appreciation of the relevant facts, after being fully
92 informed by the attending physician of:

93 (a) the patient's medical diagnosis;

94 (b) the patient's prognosis;

95 (c) the potential risks associated with taking the medication to be prescribed;

96 (d) the probable result of taking the medication to be prescribed; and

97 (e) the feasible alternatives, including concurrent or additional treatment alternatives,
98 palliative care, comfort care, hospice care, disability resources available in the community, and
99 pain control.

100 (8) "Medically confirmed" means the medical opinion of the attending physician has
101 been confirmed by a consulting physician who has examined the patient and the patient's
102 relevant medical records.

103 (9) "Patient" means an adult who is under the care of a physician.

104 (10) "Physician" means the same as that term is defined in Section [26-65-102](#).

105 (11) "Qualified patient" means a capable adult who has satisfied the requirements of
106 this chapter to obtain a prescription for medication to end the patient's life in a humane and
107 dignified manner.

108 (12) "Self-administer" means a qualified patient's affirmative, conscious act of using
109 the medication to bring about the qualified patient's own death in a humane and dignified
110 manner.

111 (13) "Terminal disease" means an incurable and irreversible disease that has been
112 medically confirmed and will, within reasonable medical judgment, produce death within six
113 months.

114 Section 3. Section **75-2c-103** is enacted to read:

115 **75-2c-103. Written and oral requests -- Opportunity to rescind.**

116 (1) In order to receive a prescription for medication to end a patient's life in a humane
117 and dignified manner, a patient shall:

118 (a) make an oral request for medication;

119 (b) make a written request for medication; and

120 (c) repeat the oral request to the patient's attending physician no less than 15 days after

121 making the initial oral request.

122 (2) At the time the patient makes the second oral request, the attending physician shall
123 offer the patient an opportunity to rescind the request.

124 (3) A patient may rescind the patient's request at any time and in any manner without
125 regard to the patient's mental state. A physician may not write a prescription for medication
126 under this chapter without the attending physician offering the patient an opportunity to rescind
127 the request.

128 Section 4. Section **75-2c-104** is enacted to read:

129 **75-2c-104. Initiation of written request for medication.**

130 (1) A patient may make a written request for medication for the purpose of ending the
131 patient's life in a humane and dignified manner if the patient:

132 (a) is suffering from a terminal disease;

133 (b) is capable;

134 (c) is a resident of Utah; and

135 (d) has voluntarily expressed a wish to receive aid-in-dying medication.

136 (2) An individual may not qualify under the provisions of Subsection (1) solely
137 because of age or disability.

138 (3) A request for a prescription for aid-in-dying medication shall be made by a patient
139 described in Subsection (1), and may not be made by any other means, including the patient's
140 qualified power of attorney, durable medical power of attorney, or advanced health care
141 directive.

142 Section 5. Section **75-2c-105** is enacted to read:

143 **75-2c-105. Form of the written request.**

144 (1) A written request for medication under this chapter shall be in substantially the
145 form described in Section [75-2c-122](#), signed and dated by the patient, and witnessed by at least
146 two adults who, in the presence of the patient, attest that to the best of each adult's knowledge
147 and belief the patient is capable, is acting voluntarily, and is not being coerced to sign the
148 request.

149 (2) At least one of the witnesses shall be an adult who is not:

150 (a) a relative of the patient by blood, marriage, or adoption;

151 (b) an adult who at the time the request is signed would be entitled to any portion of

152 the estate of the patient upon death under any will or by operation of law; or

153 (c) an owner, operator, or employee of a health care facility where the patient is
154 receiving medical treatment or is a resident.

155 (3) The patient's attending physician at the time the request is signed may not be a
156 witness.

157 Section 6. Section **75-2c-106** is enacted to read:

158 **75-2c-106. Attending physician responsibilities.**

159 (1) The attending physician shall:

160 (a) make the initial determination of whether a patient:

161 (i) has a terminal disease;

162 (ii) is capable; and

163 (iii) is making the request voluntarily;

164 (b) request that the patient attest to Utah residency pursuant to Section [75-2c-113](#);

165 (c) ensure that the patient is making an informed decision, by informing the patient of:

166 (i) the patient's medical diagnosis;

167 (ii) the patient's prognosis;

168 (iii) the potential risks associated with taking the medication to be prescribed;

169 (iv) the probable result of taking the medication to be prescribed; and

170 (v) the feasible alternatives, including concurrent or additional treatments, palliative

171 care, comfort care, hospice care, disability resources available in the community, and pain

172 control;

173 (d) refer the patient to a consulting physician for medical confirmation of the diagnosis

174 and for a determination that the patient is capable, is acting voluntarily, and is making an

175 informed decision;

176 (e) refer the patient for counseling, if appropriate, as described in Section [75-2c-108](#);

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

178 (g) counsel the patient about the importance of having another individual present when

179 the patient takes the medication prescribed under this chapter and about not taking the

180 medication in a public place;

181 (h) inform the patient that the patient may rescind the request at any time and in any

182 manner;

183 (i) at the end of the 15-day waiting period described in Section 75-2c-111, offer the
184 patient an opportunity to rescind;

185 (j) verify, immediately before writing the prescription for medication under this
186 chapter, that the patient is making an informed decision;

187 (k) fulfill the medical record documentation requirements of Section 75-2c-112;

188 (l) ensure that all appropriate steps are carried out in accordance with this chapter
189 before writing a prescription for medication to enable a qualified patient to end the patient's life
190 in a humane and dignified manner;

191 (m) with the patient's consent:

192 (i) contact a pharmacist and inform the pharmacist of the prescription; and

193 (ii) personally deliver a written prescription or personally send an electronic
194 prescription to the pharmacist, who will dispense the medication to either the patient, the
195 attending physician, or an expressly identified agent of the patient; and

196 (n) inform the Department of Health of the prescription, including the name of any
197 drugs prescribed.

198 (2) Notwithstanding any other provision of law, the attending physician may sign the
199 patient's death certificate.

200 Section 7. Section **75-2c-107** is enacted to read:

201 **75-2c-107. Consulting physician confirmation.**

202 Before a patient is qualified under this chapter, a consulting physician shall examine the
203 patient and the patient's relevant medical records and confirm, in writing, the attending
204 physician's diagnosis that the patient is suffering from a terminal disease and verify that the
205 patient is capable, is acting voluntarily, and is making an informed decision.

206 Section 8. Section **75-2c-108** is enacted to read:

207 **75-2c-108. Counseling referral.**

208 If in the opinion of the attending physician or the consulting physician a patient may be
209 suffering from impaired judgment:

210 (1) the physician who holds that opinion shall refer the patient for counseling; and

211 (2) medication to end a patient's life in a humane and dignified manner may not be
212 prescribed until a counselor determines that the patient is capable, is acting voluntarily, and is
213 making an informed decision.

214 Section 9. Section **75-2c-109** is enacted to read:

215 **75-2c-109. Informed decision.**

216 A patient may not receive a prescription for medication to end the patient's life in a
217 humane and dignified manner unless the patient has made an informed decision as defined in
218 Section [75-2c-102](#). Immediately before prescribing medication under this chapter, the attending
219 physician shall verify that the patient is making an informed decision.

220 Section 10. Section **75-2c-110** is enacted to read:

221 **75-2c-110. Family notification.**

222 The attending physician shall recommend that the patient notify the next of kin of the
223 patient's request for medication under this chapter. The attending physician may not deny a
224 patient's request for medication under this chapter on the basis of a patient declining or being
225 unable to notify the patient's next of kin.

226 Section 11. Section **75-2c-111** is enacted to read:

227 **75-2c-111. Waiting periods.**

228 A physician may not prescribe aid-in-dying medication to end a patient's life in a human
229 and dignified manner until:

230 (1) no less than 15 days have elapsed since the day on which the patient made the first
231 oral request for a prescription for aid-in-dying medication to end the patient's life in a humane
232 and dignified manner;

233 (2) the patient made the second oral request described in Subsection [75-2c-103](#)(1)(c);
234 and

235 (3) at least 48 hours have elapsed since the time when the patient submitted to the
236 physician the patient's written request for a prescription for aid-in-dying medication to end the
237 patient's life in a humane and dignified manner.

238 Section 12. Section **75-2c-112** is enacted to read:

239 **75-2c-112. Medical record documentation requirements.**

240 The following shall be documented or filed in the patient's medical record:

241 (1) all oral requests by the patient for a prescription for aid-in-dying medication to end
242 the patient's life in a humane and dignified manner;

243 (2) all written requests by the patient for a prescription for aid-in-dying medication to
244 end the patient's life in a humane and dignified manner;

- 245 (3) the attending physician's diagnosis, prognosis, and determination whether the
246 patient is capable, is acting voluntarily, and has made an informed decision;
247 (4) the consulting physician's diagnosis, prognosis, and determination whether the
248 patient is capable, is acting voluntarily, and has made an informed decision;
249 (5) a report of the outcome and determinations made during counseling, if performed;
250 (6) the attending physician's offer to the patient to rescind the patient's request at the
251 time of the patient's second oral request; and
252 (7) a note by the attending physician indicating that all requirements under this chapter
253 have been met and indicating the steps taken to carry out the request, including a notation of
254 the medication prescribed.

255 Section 13. Section **75-2c-113** is enacted to read:

256 **75-2c-113. Residency requirement.**

- 257 (1) An attending physician may rely on a patient's attestation of meeting the
258 requirements for being a resident of Utah if the attestation complies with Subsections (2) and
259 (3).
260 (2) A patient shall attest to the attending physician that the patient is a resident of the
261 state, and that the patient:
262 (a) possesses a Utah driver license or Utah identification card;
263 (b) is registered to vote in Utah;
264 (c) owns or leases property in Utah;
265 (d) filed a Utah tax return for the most recent tax year, and did not file a Non and
266 Part-year Resident Schedule; or
267 (e) has some other indication of Utah residency that is recognized by state law.
268 (3) A patient who relies on Subsection (2)(e) to attest to residency in Utah shall
269 specifically describe the factors that the patient is relying upon in the attestation to the
270 attending physician.

271 Section 14. Section **75-2c-114** is enacted to read:

272 **75-2c-114. Reporting requirements.**

- 273 (1) A health care provider who dispenses medication under this chapter shall file a
274 copy of the dispensing record with the Department of Health in the manner described in
275 Subsection (3).

276 (2) (a) The Department of Health may review a sample of the medical records of
277 patients who receive medication under this chapter.

278 (b) Except as otherwise required by law, the information collected under Subsections
279 (1) and (2)(a) are private records under Section 63G-2-302.

280 (3) The Department of Health shall:

281 (a) generate and make available to the public an annual statistical report of
282 de-identified information collected under this section;

283 (b) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
284 facilitate the collection of information regarding compliance with this chapter; and

285 (c) provide an annual report to the Legislature's Health and Human Services Interim
286 Committee regarding the statistical report described in Subsection (3)(a).

287 Section 15. Section **75-2c-115** is enacted to read:

288 **75-2c-115. Effect on construction of wills, contracts, and statutes.**

289 (1) No provision in a contract, will, or other agreement, whether written or oral, to the
290 extent the provision would affect whether an individual may make or rescind a request for
291 aid-in-dying medication or self-administer aid-in-dying medication, is valid.

292 (2) No obligation owing under any currently existing contract shall be conditioned or
293 affected by the making or rescinding of a request for medication under this chapter.

294 Section 16. Section **75-2c-116** is enacted to read:

295 **75-2c-116. Insurance or annuity policies.**

296 (1) A qualified patient's act of ingesting medication to end the patient's life in a humane
297 and dignified manner, in accordance with this chapter, does not affect a life, health, or accident
298 insurance or annuity policy.

299 (2) An insurer may not:

300 (a) deny or alter health care benefits otherwise available to an individual with a
301 terminal illness based on the availability of aid-in-dying medication; or

302 (b) coerce or attempt to coerce an individual to make a request for aid-in-dying
303 medication.

304 Section 17. Section **75-2c-117** is enacted to read:

305 **75-2c-117. Construction of chapter.**

306 Nothing in this chapter shall be construed to authorize a physician or any other person

307 to end a patient's life by lethal injection, mercy killing, or euthanasia. Actions taken in
308 accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy
309 killing, or homicide, under the law.

310 Section 18. Section **75-2c-118** is enacted to read:

311 **75-2c-118. Immunity for action in good faith -- Prohibition against reprisal --**
312 **Acceptable prohibitions.**

313 (1) A person is not subject to civil or criminal liability or professional disciplinary
314 action for actions resulting from good faith compliance with this chapter, including being
315 present when a qualified patient takes the prescribed medication to end the qualified patient's
316 life in a humane and dignified manner.

317 (2) A professional organization or association, or health care provider, may not subject
318 a person to censure, discipline, suspension, loss of license, loss of privileges, loss of
319 membership, or other penalty for participating or refusing to participate in good faith
320 compliance with this chapter.

321 (3) A request by a patient for, or provision by an attending physician of, medication in
322 good faith compliance with the provisions of this chapter does not constitute neglect for any
323 purpose of law and may not form nor contribute to the basis for the appointment of a guardian
324 or conservator.

325 (4) A health care facility may not prohibit a health care provider from providing
326 medical aid-in-dying care, except that the health care facility may prohibit the patient from
327 self-administration of the aid-in-dying medication on the premises of the facility.

328 (5) A health care facility may not prohibit the lawful self-administration of aid-in-dying
329 medication on the premises of the facility unless the health care facility provides written
330 notification of the prohibition to the attending physician and any qualified patient.

331 (6) If a health care facility prohibits the self-administration of aid-in-dying medication,
332 the facility shall refer a qualified patient to a health care facility that does not have a
333 prohibition against the self-administration of aid-in-dying medication on the premises.

334 Section 19. Section **75-2c-119** is enacted to read:

335 **75-2c-119. Liabilities.**

336 (1) A person who, without authorization of the patient, willfully alters or forges a
337 request for aid-in-dying medication or conceals or destroys a rescission of that request with the

338 intent or effect of causing the patient's death is guilty of a first degree felony.

339 (2) A person who coerces or exerts undue influence on a patient to request aid-in-dying
340 medication for the purpose of ending the patient's life, or to destroy a rescission of such a
341 request, is guilty of a first degree felony.

342 (3) Nothing in this chapter limits further liability for civil damages resulting from other
343 negligent conduct or intentional misconduct by any person.

344 (4) The penalties in this chapter do not preclude criminal penalties applicable under
345 other law for conduct that is inconsistent with the provisions of this chapter.

346 Section 20. Section **75-2c-120** is enacted to read:

347 **75-2c-120. Claims by governmental entity for costs incurred.**

348 A governmental entity that incurs costs resulting from an individual terminating the
349 individual's life pursuant to the provisions of this chapter in a public place shall have a claim
350 against the estate of the individual to recover the costs and reasonable attorney fees related to
351 enforcing the claim.

352 Section 21. Section **75-2c-121** is enacted to read:

353 **75-2c-121. No duty to provide medical aid-in-dying care.**

354 (1) A health care provider may choose whether to provide medical aid-in-dying care in
355 accordance with this chapter.

356 (2) If a health care provider is unwilling to provide medical aid-in-dying care to a
357 requesting, capable patient, the health care provider shall make reasonable efforts to transfer
358 the care of the patient to a health care provider who willingly provides medical aid-in-dying
359 care.

360 (3) When a health care provider transfers the care of a patient under Subsection (2), the
361 health care provider shall coordinate the transfer of the patient's medical records to the new
362 health care provider.

363 Section 22. Section **75-2c-122** is enacted to read:

364 **75-2c-122. Death certificate.**

365 (1) Unless otherwise prohibited, the attending physician or the hospice medical director
366 shall sign the death certificate of a qualified patient who obtained and self-administered
367 aid-in-dying medication.

368 (2) When a death has occurred in accordance with this chapter:

369 (a) the cause of death shall be listed on the death certificate as the underlying terminal
370 illness for which the individual qualified to obtain the aid-in-dying medication; and

371 (b) the manner of death may not be listed as suicide or homicide.

372 (3) Notwithstanding Section 26-4-7, a death that results in accordance with this chapter
373 may not form the sole basis for a postmortem investigation.

374 Section 23. Section **75-2c-123** is enacted to read:

375 **75-2c-123. Safe disposal of unused aid-in-dying medication.**

376 A person who has custody or control of aid-in-dying medication that is dispensed under
377 this chapter and that is unused after the qualified patient who obtained the aid-in-dying
378 medication has died shall dispose of the aid-in-dying medication by any lawful means,
379 including taking the unused aid-in-dying medication to:

380 (1) the attending physician who wrote the prescription for the aid-in-dying medication,
381 who shall dispose of the medication by lawful means;

382 (2) a federally approved medication take-back program; or

383 (3) a local take-back program supported by a law enforcement agency, pharmacy, or
384 health care provider.

385 Section 24. Section **75-2c-124** is enacted to read:

386 **75-2c-124. Form of the request.**

387 A request for aid-in-dying medication as authorized by this chapter shall be in
388 substantially the following form:

389 REQUEST FOR MEDICATION
390 TO END MY LIFE IN A HUMANE
391 AND DIGNIFIED MANNER

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

393 I am suffering from _____, which my attending physician has determined is a
394 terminal disease and which has been medically confirmed by a consulting physician.

395 I have been fully informed of my diagnosis, prognosis, the nature of medication to be
396 prescribed, and potential associated risks, the expected result, and the feasible alternatives,
397 including palliative care, comfort care, hospice care, disability resources available in the
398 community, and pain control.

399 I request that my attending physician prescribe medication that will end my life in a

400 humane and dignified manner.

401 INITIAL ONE:

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

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

405 I have no family to inform of my decision.

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

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

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

412 Signed: _____

413 Dated: _____

414 DECLARATION OF WITNESSES

415 We declare that the individual signing this request:

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

417 (b) signed this request in our presence;

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

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

420 _____ Witness 1/Date

421 _____ Witness 2/Date

422 NOTE: At least one witness shall be an adult who is not a relative (by blood, marriage,
423 or adoption) of the individual signing this request, is not entitled to any portion of the
424 requestor's estate upon death, and does not own, operate, and is not employed at a health care
425 facility where the requestor is a patient or resident.

426 Section 25. Section **75-2c-125** is enacted to read:

427 **75-2c-125. Severability.**

428 If any provision of this chapter or the application of any provision to any person or
429 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
430 remainder of this chapter shall be given effect without the invalid provision or application. The

431 provisions of this chapter are severable.

432 Section 26. **Effective date.**

433 This bill takes effect on July 1, 2019.