

1 AN ACT relating to patient-directed care at the end of life.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 10 of this Act:*

6 *(1) "Adult" means a person who is eighteen (18) years of age or older;*

7 *(2) "Attending physician" means the physician licensed in Kentucky who has*
8 *primary responsibility for the treatment and care of the patient's terminal*
9 *condition;*

10 *(3) "Competent" means that, in the opinion of a court or in the opinion of the*
11 *patient's attending physician, consulting physician, psychiatrist, or psychologist,*
12 *a patient has the ability to make and communicate an informed decision to health*
13 *care providers, including communication through persons familiar with the*
14 *patient's manner of communicating if those persons are available;*

15 *(4) "Consulting physician" means a physician licensed in Kentucky who is qualified*
16 *by specialty or experience to make a professional diagnosis and prognosis*
17 *regarding a patient's terminal condition;*

18 *(5) "Counseling" means one or more consultations between a state-licensed*
19 *psychiatrist, psychologist, clinical social worker, or clinical professional*
20 *counselor and a patient for the purpose of determining that the patient is*
21 *competent and not suffering from a psychiatric or psychological disorder or*
22 *depression causing impaired judgment;*

23 *(6) "Health care provider" means a health care facility or a health care provider*
24 *licensed under KRS Chapters 311, 315, or 319;*

25 *(7) "Health care facility" means a hospital, nursing facility, nursing home, or*
26 *hospice, public or private, whether organized for profit or not, that is licensed*
27 *pursuant to KRS Chapter 216B;*

- 1 (8) "Informed decision" means a decision by a qualified patient to request and
2 obtain a prescription for medication that the qualified patient may self-administer
3 to end the qualified patient's life in a humane and dignified manner that is based
4 on an appreciation of the relevant facts and that is made after being fully
5 informed by the attending physician of:
6 (a) The qualified patient's medical diagnosis;
7 (b) The qualified patient's prognosis;
8 (c) The potential risks associated with taking the medication to be prescribed;
9 (d) The probable result of taking the medication to be prescribed; and
10 (e) The feasible alternatives to taking the medication to be prescribed,
11 including palliative care, comfort care, hospice care, pain control, and
12 terminal condition-directed treatment options;
13 (9) "Medically confirmed" means the medical opinion of an attending physician has
14 been confirmed by a consulting physician who has examined the patient and the
15 patient's relevant medical records;
16 (10) "Notice" means a separate statement in writing advising of a health care
17 provider's policy with respect to prohibiting participation in activities under
18 Sections 1 to 10 of this Act;
19 (11) "Participating, or entering into an agreement to participate, in activities" means
20 doing or entering into an agreement to:
21 (a) Performing the duties of a health care provider under Sections 1 to 10 of
22 this Act;
23 (b) Delivering the prescription for or dispensing or delivering the dispensed
24 medication pursuant to Sections 1 to 10 of this Act; or
25 (c) Being present when the qualified patient takes the medication prescribed
26 pursuant to Sections 1 to 10 of this Act;
27 (12) "Patient" means an adult who is under the care of a physician;

1 (13) "Physician" means a person licensed to practice medicine under KRS Chapter
2 311;

3 (14) "Qualified patient" means a competent adult who is a resident of Kentucky and
4 who has satisfied the requirements of Sections 1 to 10 of this Act in order to
5 obtain a prescription for medication that the qualified patient may self-administer
6 to end the qualified patient's life in a humane and dignified manner;

7 (15) "Self-administer" means, for a qualified patient, to voluntarily ingest medication
8 to end the qualified patient's life in a humane and dignified manner; and

9 (16) "Terminal condition" means a condition caused by injury, disease, or illness
10 which, to a reasonable degree of medical probability, as determined solely by the
11 patient's attending physician and a consulting physician, is incurable and
12 irreversible and will result in death within a relatively short time, and where the
13 application of life-prolonging treatment would serve only to artificially prolong
14 the dying process.

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
16 READ AS FOLLOWS:

17 (1) A patient has a right to information regarding all treatment options reasonably
18 available for the care of the patient, including but not limited to information in
19 response to specific questions about the foreseeable risks and benefits of
20 medication, without a physician's withholding requested information regardless
21 of the purpose of the questions or the nature of the information.

22 (2) A patient who is competent, is a resident of Kentucky, has been determined by an
23 attending physician and a consulting physician to be suffering from a terminal
24 condition, and has voluntarily expressed the wish to die may make a written
25 request for medication that the patient may self-administer in accordance with
26 Sections 1 to 10 of this Act. A patient shall not qualify under Sections 1 to 10 of
27 this Act solely because of age or disability.

- 1 (3) A valid written request for medication under Sections 1 to 10 of this Act shall be
2 substantially in the form described in Section 9 of this Act, signed and dated by
3 the patient, and witnessed by at least two (2) individuals who, in the presence of
4 the patient, attest that to the best of their knowledge and belief that the patient is
5 competent, is acting voluntarily, and is not being coerced to sign the request.
- 6 (4) The language of a written request for medication under Sections 1 to 10 of this
7 Act shall be the language in which any conversations or consultations or
8 interpreted conversations or consultations between a patient and the patient's
9 attending physician or consulting physician are held.
- 10 (5) Notwithstanding subsection (4) of this section, the language of a written request
11 for medication under Sections 1 to 10 of this Act may be English when the
12 conversations or consultations or interpreted conversations or consultations
13 between a patient and the patient's attending physician or consulting physician
14 were conducted in a language other than English if the form described in Section
15 9 of this Act contains the attachment described in Section 10 of this Act.
- 16 (6) At least one (1) of the witnesses and the interpreter, if one is required, shall be a
17 person who is:
- 18 (a) Not a relative of the patient by blood, marriage, or adoption;
19 (b) Not a person who at the time the request is signed would be entitled to any
20 portion of the estate of the qualified patient upon death, under any will or
21 state law; or
- 22 (c) Not an owner, operator, or employee of a health care facility where the
23 qualified patient is receiving medical treatment or is a resident.
- 24 (7) The patient's attending physician at the time the written request is signed shall
25 not be a witness.
- 26 (8) If the patient is a patient in a long-term care facility at the time the patient makes
27 the written request, one (1) of the witnesses shall be a medical director of the

1 facility.

2 (9) A patient may rescind a request for medication prescribed under Sections 1 to 10
3 of this Act at any time and in any manner without regard to the patient's mental
4 state.

5 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) Notwithstanding any state law to the contrary, an attending physician may
8 provide medication to a qualified patient to end the qualified patient's life upon a
9 request made by the qualified patient under Sections 1 to 10 of this Act.

10 (2) The attending physician shall:

11 (a) Make the initial determination of whether a patient has a terminal
12 condition, is competent, and has made the written request for medication
13 that the patient may self-administer voluntarily;

14 (b) Request that the patient demonstrate state residency as required by Section
15 4 of this Act;

16 (c) Inform the patient of:

17 1. The patient's medical diagnosis;

18 2. The patient's prognosis;

19 3. The potential risks associated with taking the medication to be
20 prescribed;

21 4. The probable result of taking the medication to be prescribed; and

22 5. The feasible alternatives to taking the medication to be prescribed,
23 including palliative care, comfort care, hospice care, pain control and
24 terminal condition-directed treatment options;

25 (d) Refer the patient to a consulting physician for medical confirmation of the
26 diagnosis and for a determination that the patient is competent and acting
27 voluntarily;

- 1 (e) Confirm that the patient's request does not arise from coercion or undue
2 influence by another individual by discussing with the patient, outside the
3 presence of any other individual, except for an interpreter, whether the
4 patient is feeling coerced or unduly influenced;
- 5 (f) Refer the patient for counseling, if appropriate, as described in subsection
6 (4) of this section;
- 7 (g) Recommend that the patient notify the patient's next of kin;
- 8 (h) Counsel the patient about the importance of having another person present
9 when the patient takes the medication prescribed under Sections 1 to 10 of
10 this Act, and counsel the patient about not taking the medication prescribed
11 in a public place;
- 12 (i) Inform the patient that the patient has an opportunity to rescind the request
13 at any time and in any manner and offer the patient an opportunity to
14 rescind the request pursuant to subsection (6) of this section;
- 15 (j) Verify, immediately before writing the prescription for medication under
16 Sections 1 to 10 of this Act, that the patient is making an informed decision;
- 17 (k) Fulfill the medical record documentation requirements of subsection (7) of
18 this section;
- 19 (l) Ensure that all appropriate steps are carried out in accordance with
20 Sections 1 to 10 of this Act before writing a prescription for medication to
21 enable a qualified patient to end the qualified patient's life in a humane and
22 dignified manner; and
- 23 (m) Dispense medications directly, including ancillary medications intended to
24 minimize the patient's discomfort, if appropriate, or with the patient's
25 written consent:
- 26 1. Contact a pharmacist and inform the pharmacist of the prescription;
27 and

- 1 2. Deliver the written prescription personally, by mail, or electronically to
2 the pharmacist, who may dispense the medications in person to the
3 patient, the attending physician, or an expressly identified agent of the
4 patient.
- 5 (3) Before a patient is determined to be a qualified patient under Sections 1 to 10 of
6 this Act, a consulting physician shall examine the patient and the patient's
7 relevant medical records and confirm, in writing, the attending physician's
8 diagnosis that the patient is suffering from a terminal condition and that the
9 patient is competent, is acting voluntarily, and has made an informed decision.
- 10 (4) If, in the opinion of the attending physician or the consulting physician, a patient
11 may be suffering from a psychiatric or psychological disorder or depression
12 causing impaired judgment, the attending physician shall refer the patient for
13 counseling. Medication for the qualified patient to self-administer shall not be
14 prescribed until the person performing the counseling determines that the patient
15 is not suffering from a psychiatric or psychological disorder or depression
16 causing impaired judgment.
- 17 (5) An attending physician shall not deny medication to self-administer to a qualified
18 patient who declines or is unable to notify the qualifying patient's next of kin.
- 19 (6) An attending physician shall not prescribe medication to a qualified patient to
20 self-administer unless the qualified patient has:
- 21 (a) Made an oral request;
22 (b) Made and signed a written request at least fifteen (15) days after the initial
23 oral request;
24 (c) Reiterated the oral request at least fifteen (15) days after making the initial
25 oral request; and
26 (d) Been offered an opportunity to rescind a request by the attending physician
27 at least forty-eight (48) hours after signing the written request.

1 (7) An attending physician shall document the following in a patient's medical
2 record:

3 (a) All oral requests by the patient for medication;

4 (b) All written requests by the patient for medication;

5 (c) The attending physician's diagnosis and prognosis and the attending
6 physician's determination that the patient is competent, is acting
7 voluntarily, and has made an informed decision;

8 (d) The consulting physician's diagnosis and prognosis of the patient's terminal
9 condition and the consulting physician's verification that the patient is
10 competent, is acting voluntarily, and has made an informed decision;

11 (e) A report of the outcome and determinations made during counseling, if
12 counseling is provided as described in subsection (4) of this section;

13 (f) The attending physician's offer to the patient to rescind the patient's request
14 at the time of the patient's second oral request; and

15 (g) A note by the attending physician indicating that all requirements under
16 Sections 1 to 10 of this Act have been met and indicating the steps taken to
17 carry out the patient's request, including a notation of the medication
18 prescribed for self-administration.

19 (8) A person who has custody of or control over any unused medications prescribed
20 pursuant to Sections 1 to 10 of this Act after the death of the qualified patient
21 shall personally deliver the unused medications to the nearest facility qualified to
22 dispose of controlled substances or, if such delivery is impracticable, personally
23 dispose of the unused medications by any lawful means.

24 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
25 READ AS FOLLOWS:

26 For purposes of Sections 1 to 10 of this Act, only requests made by residents of
27 Kentucky shall be granted. The residence of a person is that place where the person

1 has established a fixed and principal home to which the person, whenever temporarily
 2 absent, intends to return. Proof of at least one (1) of the following shall be provided to
 3 the attending physician to document that a person is a Kentucky resident:

4 (1) Possession of a valid Kentucky driver's license;

5 (2) Registration to vote in Kentucky;

6 (3) Evidence that the person owns or leases property in Kentucky;

7 (4) The location in Kentucky of any dwelling currently occupied by the person;

8 (5) Kentucky motor vehicle registration for a vehicle owned by the person;

9 (6) The Kentucky residential address, not a post office box,

10 (a) Shown on a current income tax return;

11 (b) At which the person's mail is received; or

12 (c) Shown on any current resident hunting or fishing licenses held by the
 13 person; or

14 (7) Any other objective facts that indicate Kentucky residence.

15 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) The Cabinet for Health and Family Services shall:

18 (a) Annually review all records maintained under Section 3 of this Act; and

19 (b) Require an attending physician to submit a copy of the prescription or
 20 dispensing record upon issuing a prescription or dispensing medication
 21 under Section 3 of this Act and other documentation required under Section
 22 3 of this Act associated with issuing the prescription or dispensing the
 23 medication, to the cabinet within:

24 1. Thirty (30) calendar days after the issuing of the prescription or the
 25 dispensing of medication; or

26 2. Thirty (30) calendar days after the date of the death of the qualified
 27 patient.

1 (2) In the event that an attending physician who is required to report information to
 2 the cabinet provides an inadequate or incomplete report, the cabinet shall contact
 3 the attending physician to request an adequate or complete report.

4 (3) Within six (6) months of the effective date of this Act, the cabinet shall
 5 promulgate administrative regulations to facilitate the collection of information
 6 relating to compliance with Sections 1 to 10 this Act. The information collected
 7 on individual persons and health care providers shall be confidential, not a
 8 public record, and shall not be made available for inspection by the public.

9 (4) The cabinet shall submit an annual report summarizing information collected
 10 under this section to the Interim Joint Committee on Health and Welfare by
 11 March 1 of each year. The report shall not refer to actions taken under Sections 1
 12 to 10 of this Act as suicide or assisted suicide. Consistent with the provisions of
 13 Sections 1 to 10 of this Act, the report shall refer to actions taken under Sections
 14 1 to 10 of this Act as obtaining and self-administering life-ending medication.

15 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) Any provision in a contract, will, or other agreement, whether written or oral, to
 18 the extent the provision would affect whether a person may make or rescind a
 19 request for medication to self-administer to end the person's life in a humane and
 20 dignified manner, shall be void as against public policy. Any obligation owing
 21 under any currently existing contract shall not be conditioned upon or affected by
 22 the making or rescinding of a request by a person for medication to end the
 23 person's life in a humane and dignified manner.

24 (2) The sale, procurement, or issuance of any life, health, or accident insurance or
 25 annuity policy or the rate charged for any life, health, or accident insurance or
 26 annuity policy shall not be conditioned upon or affected by the making or
 27 rescinding of a request by a qualified patient for medication that the patient may

1 self-administer to end the patient's life in accordance with Sections 1 to 10 of this
2 Act.

3 (3) A qualified patient whose life is insured under a life insurance policy and the
4 beneficiaries of the policy shall not be denied benefits on the basis of self-
5 administration of medication by the qualified patient in accordance with Sections
6 1 to 10 of this Act.

7 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) Nothing in Sections 1 to 10 of this Act shall require a health care provider to
10 provide medication to a qualified patient to end the qualified patient's life. If a
11 health care provider is unable or unwilling to carry out the qualified patient's
12 request under Sections 1 to 10 of this Act, the health care provider shall transfer
13 any relevant medical records for the patient to a new health care provider upon
14 request by the patient.

15 (2) (a) A health care provider may adopt a policy to prohibit a person or entity
16 from participating, or entering into an agreement to participate, in activities
17 under Sections 1 to 10 of this Act while on premises owned, under
18 management, or under direct control of that health care provider or while
19 acting within the course and scope of any employment by, or contract with,
20 the health care provider.

21 (b) A health care provider that adopts a policy described in paragraph (a) of
22 this subsection, shall give notice of the policy prohibiting participation to
23 such person or entity prior to that person or entity participating in activities
24 under Sections 1 to 10 of this Act. A health care provider that fails to
25 provide notice to a person or entity shall not enforce such a policy against a
26 person or entity.

27 (c) A health care provider shall not report an action taken pursuant to this

1 subsection to a state licensing board.

2 (3) A health care provider shall not prohibit a person or entity from participating, or
 3 entering into an agreement to participate, in activities under Sections 1 to 10 of
 4 this Act while on premises that are not owned or under the management or direct
 5 control of the health care provider or while acting outside the course and scope of
 6 the participant's duties as an employee of, or an independent contractor for, the
 7 health care provider.

8 (4) The fact that a health care provider participates in activities under Sections 1 to
 9 10 of this Act shall not be the sole basis for a complaint or report by another
 10 health care provider to a state licensing board.

11 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
 12 READ AS FOLLOWS:

13 (1) Nothing in Sections 1 to 10 of this Act shall authorize a physician or any other
 14 person to end a patient's life by lethal injection, mercy killing, or active
 15 euthanasia.

16 (2) Actions taken by any person or entity in participating in activities including
 17 acting as a witness or interpreter under Sections 1 to 10 of this Act shall not, for
 18 any purpose, constitute suicide, assisted suicide, mercy killing or homicide under
 19 state law.

20 (3) The cause of death recorded on a certificate of death under KRS 213.076 for the
 21 death of a qualified patient under Sections 1 to 10 of this Act shall be related to
 22 the terminal condition of the qualifying patient and shall not be recorded as
 23 suicide, assisted suicide, mercy killing, or homicide under state law.

24 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
 25 READ AS FOLLOWS:

26 A request for medication as authorized by Sections 1 to 10 of this Act shall be in
 27 substantially the following form:

1 "REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND
2 DIGNIFIED MANNER

3 I,, am an adult of sound mind. I am suffering from,
4 which my attending physician has determined is a terminal condition and which has
5 been medically confirmed by a consulting physician.

6 I have been fully informed of my diagnosis and prognosis, the nature of medication to
7 be prescribed and potential associated risks, the expected result and feasible
8 alternatives, including palliative care and comfort care, hospice care, pain control, and
9 terminal condition-directed treatment options.

10 I request that my attending physician prescribe medication that I may self-administer
11 to end my life in a humane and dignified manner and contact any pharmacist to fill the
12 prescription.

13 INITIAL ONE:

14I have informed my family of my decision and taken their opinions into
15 consideration.

16I have decided not to inform my family of my decision.

17I have no family to inform of my decision.

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

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

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

25 Signed:.....

26 Dated:.....

27 DECLARATION OF WITNESSES

1 By initialing and signing below on or after the date the person named above signs, we
2 declare that the person making and signing the above request:

3 Initials of Witness 1:

41. Is personally known to us or has provided proof of identity;

52. Signed this request in our presence on the date of the person's signature;

63. Appears to be of sound mind and not under duress, fraud or undue influence;

7 and

84. Is not a patient for whom either of us is the attending physician.

9 Printed Name of Witness 1:.....

10 Signature of Witness 1/Date:.....

11 Initials of Witness 2:

121. Is personally known to us or has provided proof of identity;

132. Signed this request in our presence on the date of the person's signature;

143. Appears to be of sound mind and not under duress, fraud or undue influence;

15 and

164. Is not a patient for whom either of us is the attending physician.

17 Printed Name of Witness 2:.....

18 Signature of Witness 2/Date:.....

19 NOTE: One witness must be a person who is not a relative by blood, marriage, or
20 adoption of the person signing this request, is not entitled to any portion of the
21 person's estate upon death, and does not own or operate or is not employed at a health
22 care facility where the person is a patient or resident. The person's attending physician
23 at the time the request is signed may not be a witness. If the person is an inpatient at a
24 long-term care facility, one of the witnesses must be the medical director of the
25 facility."

26 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO
27 READ AS FOLLOWS:

1 The form of an attachment for purposes of an interpreter providing services as
 2 described in Section 2 of this Act shall be in substantially the following form:
 3 "I,, am fluent in English and (language of patient).
 4 On (date) at approximately (time) I read the "REQUEST FOR MEDICATION TO
 5 END MY LIFE IN A HUMANE AND DIGNIFIED MANNER" to (name of patient)
 6 in (language of patient).
 7 Mr./Ms. (name of patient) affirmed to me that he/she understands the content of this
 8 form, that he/she desires to sign this form under his/her own power and volition and
 9 that he/she requested to sign the form after consultations with an attending physician
 10 and a consulting physician.
 11 Under penalty of perjury, I declare that I am fluent in English and (language of
 12 patient) and that the contents of this form, to the best of my knowledge, are true and
 13 correct.
 14 Executed at (name of city, county and state) on (date).
 15 Interpreter's signature:
 16 Interpreter's printed name:
 17 Interpreter's address:".

18 ➔SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304
 19 IS CREATED TO READ AS FOLLOWS:

- 20 No insurer shall:
 21 (1) Issue or renew an insurance policy, contract, or annuity that violates the
 22 provisions of Section 6 of this Act; or
 23 (2) Deny benefits on the basis of terms in an existing policy, contract, or annuity that
 24 are in violation of the provisions of Section 6 of this Act.

- 25 ➔Section 12. KRS 507.020 is amended to read as follows:
 26 (1) A person is guilty of murder when:
 27 (a) With intent to cause the death of another person, he causes the death of such

1 person or of a third person; except that in any prosecution a person shall not
 2 be guilty under this subsection if he acted under the influence of extreme
 3 emotional disturbance for which there was a reasonable explanation or excuse,
 4 the reasonableness of which is to be determined from the viewpoint of a
 5 person in the defendant's situation under the circumstances as the defendant
 6 believed them to be. However, nothing contained in this section shall
 7 constitute a defense to a prosecution for or preclude a conviction of
 8 manslaughter in the first degree or any other crime; or

9 (b) Including, but not limited to, the operation of a motor vehicle under
 10 circumstances manifesting extreme indifference to human life, he wantonly
 11 engages in conduct which creates a grave risk of death to another person and
 12 thereby causes the death of another person.

13 (2) Murder is a capital offense.

14 **(3) It shall be an affirmative defense to a charge of murder that the person's conduct**
 15 **was expressly authorized by Sections 1 to 10 of this Act.**

16 ➔Section 13. KRS 507.030 is amended to read as follows:

17 (1) A person is guilty of manslaughter in the first degree when:

18 (a) With intent to cause serious physical injury to another person, he causes the
 19 death of such person or of a third person;

20 (b) With intent to cause the death of another person, he causes the death of such
 21 person or of a third person under circumstances which do not constitute
 22 murder because he acts under the influence of extreme emotional disturbance,
 23 as defined in subsection (1)(a) of KRS 507.020; or

24 (c) Through circumstances not otherwise constituting the offense of murder, he or
 25 she intentionally abuses another person or knowingly permits another person
 26 of whom he or she has actual custody to be abused and thereby causes death to
 27 a person twelve (12) years of age or less, or who is physically helpless or

1 mentally helpless.

2 (2) Manslaughter in the first degree is a Class B felony.

3 **(3) It shall be an affirmative defense to a charge of murder that the person's conduct**
4 **was expressly authorized by Sections 1 to 10 of this Act.**

5 ➔Section 14. Sections 1 to 10 of this Act may be cited as the Kentucky Death
6 with Dignity Act.