WEST virginia legislature

2018 regular session

Introduced

House Bill Number

By Enter Sponsors Here

[Enter References]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4, §16-52-5, §16-52-6, §16-52-7, §16-52-8, §16-52-9, §16-52-10, §16-52-11, §16-52-12, §16-52-13, §16-52-14, §16-52-15, §16-52-16, §16-52-17, §16-52-18, §16-52-19 and §16-52-20 relating to death with dignity.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4, §16-52-5, §16-52-6, §16-52-7, §16-52-8, §16-52-9, §16-52-10, §16-52-11, §16-52-12, §16-52-13, §16-52-14, §16-52-15, §16-52-16, §16-52-17, §16-52-18, §16-52-19 and §16-52-20 to read as follows:

ARTICLE 52. DEath with dignity.

§16-52-1. Definitions.

The following terms are defined:

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

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

(3) "Capable" means that in the opinion of a court or in the opinion of the patient’s attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

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

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

(7) "Informed decision" means a decision by a qualified patient or a person holding the patient’s medical power of attorney, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(A) His or her medical diagnosis;

(B) His or her prognosis;

(C) The potential risks associated with taking the medication to be prescribed;

(D) The probable result of taking the medication to be prescribed; and

(E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.

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

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

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice under chapter thirty.

(11) "Qualified patient" means a capable adult who has satisfied the requirements of this article in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

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

§16-52-2. Who may initiate a written request for medication.

(a) An adult who is capable, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with this article.

(b) An adult who is capable who holds a valid medical power of attorney may initiate a written request for medication on behalf of the grantor of the valid medical power of attorney if he or she is acting in accord with the wishes of the grantor of the medical power of attorney as expressed in the grantor’s living will.

(c) A person does not qualify under the provisions of this article solely because of age or disability.

§16-52-2. Form of the written request.

(a) A valid request for medication under the article shall be in substantially the form described in section seven, signed and dated by the patient or the person holding his or her valid medical power of attorney and witnessed by at least two individuals who, in the presence of the patient or the person holding the valid medical power of attorney, attest that to the best of their knowledge and belief the patient or the person holding the valid medical power of attorney is capable, acting voluntarily, and is not being coerced to sign the request.

(b) One of the witnesses shall be a person who is not:

(1) A relative of the patient by blood, marriage or adoption;

(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(3) An owner, operator or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(c) The patient’s attending physician at the time of the request is signed shall not be a witness.

(d) If the patient is a patient in a long term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Bureau of Public Health by legislative rule.

§16-52-3. Attending physician responsibilities.

(a) The attending physician shall:

(1) Make the initial determination of whether a patient has a terminal disease or a disease that makes death a more desirable alternative in the patient’s mind as expressed at that time or in a valid living will than continuing to live with the discomforts caused by the disease, that the patient or the person holding that patient’s valid medical power of attorney is capable, and has made the request voluntarily;

 (b) To ensure that the patient is making an informed decision, inform the patient or the person holding the valid medical power of attorney of:

(1) The patient’s medical diagnosis;

(2) The patient’s prognosis;

(3) The potential risks associated with taking the medication to be prescribed;

(4) The probable result of taking the medication to be prescribed; and

(5) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;

(6) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient or the person holding the valid medical power of attorney is capable and acting voluntarily;

(7) Refer the patient or the person holding the valid durable power of attorney for counseling if appropriate pursuant to section twenty-five;

(8) Recommend that the patient or the person holding the valid durable power of attorney notify next of kin;

(9) Counsel the patient or the person holding the valid durable power of attorney about the importance of having another person present when the patient takes or is administered the medication prescribed pursuant to this article and of not taking or administering the medication in a public place;

(10) Inform the patient or the person holding the valid durable power of attorney that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient or the person holding the valid medical power of attorney an opportunity to rescind at the end of the 1 day waiting period pursuant to section eight;

(11) Verify, immediately prior to writing the prescription for medication under this article, that the patient or the person holding the valid medical power of attorney is making an informed decision;

(12) Fulfill the medical record documentation requirements of section fifty-five;

(13) Ensure that all appropriate steps are carried out in accordance with this article prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner as expressed by the patient directly or in his or her valid medical power of attorney; and

(14) (A) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient’s discomfort, provided the attending physician is registered as a dispensing physician with his or her licensure board, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule; or

(B) With the patient’s written consent or the written consent of the person holding the valid durable power of attorney:

(1) Contact a pharmacist and inform the pharmacist of the prescription; and

(2) Deliver the written prescription personally or by mail to the pharmacist, who will dispense the medications to either the patient, the attending physician or an expressly identified agent of the patient or the person holding the valid durable power of attorney.

(c) Notwithstanding any other provision of law, the attending physician may sign the patient’s death certificate. The cause of death listed in the patient’s death certificate shall be that described in §16-52-3: The death certificate shall state only the cause and manner of death relating to the underlying disease or condition causing terminal illness or intolerable suffering as defined under this act.

§16-52-4. Consulting physician confirmation.

Before a patient is qualified under this article, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician’s diagnosis that the patient is suffering from a terminal disease or a disease that makes death a more desirable alternative than continuing to live with the discomforts caused by the disease in the patient’s mind as expressed at that time or in a valid living will, and verify that the patient or the person holding the valid medical power of attorney is capable, is acting voluntarily and has made an informed decision.

§16-52-5. Counseling referral.

If in the opinion of the attending physician or the consulting physician the decision maker (either a patient acting on his or her own behalf or the person holding the valid medical power of attorney acting in a patient’s behalf, hereafter referred to as the qualified decision maker) may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, the physician shall refer the qualified decision maker for counseling. No medication to end a patient’s life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the qualified decision maker is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

§16-52-6. Informed decision.

No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision either in a living will or during the period of evaluation after requesting death with dignity. Immediately prior to writing a prescription for medication under this article, the attending physician shall verify that the qualified decision maker is making an informed decision.

§16-52-7. Family Notification.

The attending physician shall recommend that the qualified decision maker notify the next of kin of his or her request for medication pursuant to this article. A qualified decision maker who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

§16-52-8. Written and oral requests.

In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request or a written request in his or her living will, and if speaking for him or her-self and not by means of a valid medical power of attorney reiterate the oral request to his or her attending physician no less than one day after making the initial oral request or the initial request by the person holding the valid medical power of attorney. At the time the qualified decision maker makes his or her second oral request, the attending physician shall offer the qualified decision maker an opportunity to rescind the request.

§16-52-9. Right to rescind request.

The qualified decision maker may rescind his or her request at any time and in any manner without regard to his or her mental state. If the person making the written request is a qualified decision maker holding a valid medical power of attorney and acting in accordance with the directives of the patient’s living will, no attempt may be made to override the decision of the person holding the medical power of attorney based on supposed or imagined communications from the incompetent person who issued the medical power of attorney. No prescription for medication under this article may be written without the attending physician offering the qualified decision maker an opportunity to rescind the request.

§16-52-10. Waiting periods.

No less than one day shall elapse between the patient’s initial oral request and the writing of a prescription under this article. No less than 24 hours shall elapse between the qualified decision maker’s request and the writing of a prescription under this article.

§16-52-11. Medical record documentation requirements.

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

(1) All oral requests by a qualified decision maker for medication to end his or her life (or the life of the patient for whom the qualified decision maker is acting) in a humane and dignified manner;

(2) All written requests by a qualified decision maker for medication to end his or her life (or the life of the patient for whom the qualified decision maker is acting) in a humane and dignified manner;

(3) The attending physician’s diagnosis and prognosis, determination that the qualified decision maker is capable, acting voluntarily, and has made an informed decision;

(4) The consulting physician’s diagnosis and prognosis, and verification that the qualified decision maker is capable, acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician’s offer to the qualified decision maker to rescind his or her request at the time of the qualified decision maker’s second oral request pursuant to section forty; and

(7) A note by the attending physician indicating that all requirements under this article have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

§16-52-12. Reporting requirements.

(a) The Bureau of Public Health shall annually review a sample of records maintained pursuant to this article.

(b) The bureau shall require any health care provider upon dispensing medication pursuant to this article to file a copy of the dispensing record with the bureau.

(c) The bureau shall propose rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to facilitate the collection of information regarding compliance with this article. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

(d) The bureau shall generate and make available to the public an annual statistical report of information collected under subsection (c) of this section.

§16-52-13. Effect on construction of wills, contracts and statutes.

(a) No provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, shall be valid.

(b) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by qualified decision maker, for medication to end his or her life in a humane and dignified manner.

§16-52-14. Insurance or annuity policies.

The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a qualified decision maker, for medication to end his or her life (or the life of the patient for whom the qualified decision maker is acting) in a humane and dignified manner. Neither shall a qualified patient’s act of ingesting or being administered medication to end his or her life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy.

§16-52-15. Construction of Act.

This legislation specifically authorizes the physician to write one or more prescriptions for a medication or medications intendedto allow the patient to end his or her life in a humane and dignified manner by whatever route of administration the physician deems best after taking into consideration the condition of the patient and all the potential routes of administration. It also is intended to authorize the physician to write prescriptions for additional medications to be administered in the unlikely event that the initially administered medications fail to cause the death of the patient in a timely manner. The permitted routes of administration specifically include all medically appropriate routes of administration available under the special circumstances produced by the patient’s medical condition. These potential routes of administration include but are not limited to: oral, intravenous, intra-gastric, rectal, and inhalational routes of administration. Where possible, the patient may be allowed to ingest the medications himself or herself, to turn on a machine that will administer the lethal medication, or to verbally ask one or more individuals to administer the medications. However, after adhering to all of the safeguards included in this legislation, one or more individuals may administer the medication or medications if the patient is unable to do so himself or herself or if the patient is unable to make an oral request to turn on a machine or to ask that the medications be administered by others. This provision especially applies to the unlikely event that the initial dose has not proved lethal in a timely fashion and the patient is at that time unaware and unresponsive due to the actions of the previous dose or doses. Actions taken in accordance with this article shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or homicide, under the law. Pursuant to this act, death certification must be completed by the physician providing the medication to allow the patient to end his or her life. The death certificate shall state only the cause and manner of death relating to the underlying disease or condition causing terminal illness or intolerable suffering as defined under this act.

§16-52-16. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions.

(a) Except in this article:

(1) No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this article. This includes being present, assisting in the administration of the medication, and actually physically administering the prescribed medication, when a qualified patient takes or is administered the prescribed medication to end his or her life in a humane and dignified manner no matter what route of administration is utilized.

(2) No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with this article.

(3) No request by a patient for or provision by an attending physician of medication in good faith compliance with the provisions of this article shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(4) No health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient’s request under this article and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient’s relevant medical records to the new health care provider.

(b)(1) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in this article on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider’s policy regarding participating in this article. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in this article.

(2) Notwithstanding the provisions of subdivisions (1) to (4) of subsection (a) of this section, a health care provider may subject another health care provider to the sanctions stated in this subdivision if the sanctioning health care provider has notified the sanctioned provider prior to participation in this article that it prohibits participation in this article:

(A) Loss of privileges, loss of membership or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider’s medical staff and participates in this article while on the health care facility premises, of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(B) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in this article while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(C) Termination of contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in this article while acting in the course and scope of the sanctioned provider’s capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subparagraph shall be construed to prevent:

(i) A health care provider from participating in this article while acting outside the course and scope of the provider’s capacity as an employee or independent contractor; or

(ii) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions pursuant to paragraph (b) of this section must follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For purposes of this section:

(1) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider prior to the provider’s participation in this article of the sanctioning health care provider’s policy about participation in activities covered by this article.

(2) "Participate in this article" means to perform the duties of an attending physician pursuant to section fifteen, the consulting physician function pursuant to section tweny or the counseling function pursuant to section twenty-five. "Participate in this article" does not include:

(A) Making an initial determination that a patient has a terminal disease or a disease that makes death a more desirable alternative in the patient’s mind as expressed at that time (or in a valid living will) than continuing to live with the discomforts caused by the disease and informing the patient of the medical prognosis;

(B) Providing information about the West Virginia Death with Dignity Act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(6) Suspension or termination of staff membership or privileges under subsection (b) of this section is not reportable to the applicable regulatory board. Action taken pursuant to this article shall not be the sole basis for a report of unprofessional or dishonorable conduct under a disciplinary action under the appropriate regulatory board.

(7) No provision of this article shall be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community.

§16-52-17. Liabilities.

(a) A decision maker who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient’s death is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten nor more than twenty years.

(2) A person who coerces or exerts undue influence on a decision maker to request medication for the purpose of ending the patient’s life, or to destroy a rescission of such a request, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten nor more than twenty years.

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

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

§16-52-18. Claims by governmental entity for costs incurred.

Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to the provisions of this article in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim.

§16-52-19. Form of the request.

A request for a medication as authorized by this article shall be in substantially the following form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REQUEST FOR MEDICATION

TO END MY LIFE IN A HUMANE

AND DIGNIFIED MANNER

I or the individual holding my valid medical power of attorney, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, am an adult of sound mind.

I (the patient) am suffering from \_\_\_\_\_\_\_\_\_, which my attending physician has determined is a terminal disease or a disease causing unbearable suffering and which has been medically confirmed by a consulting physician.

I or the individual holding my valid medical power of attorney have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care and pain control.

I or the individual holding my medical power of attorney acting in accordance with my valid living will request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE:

\_\_\_\_\_\_ I or the individual holding my valid medical power of attorney have informed my family of my decision and taken their opinions into consideration.

\_\_\_\_\_\_ I or the individual holding my valid medical power of attorney have decided not to inform my family of my decision.

\_\_\_\_\_\_ I or the individual holding my valid medical power of attorney state that I have no family to inform of my decision.

I or the individual holding my valid medical power of attorney understand that I have the right to rescind this request at any time.

I or the individual holding my valid medical power of attorney understand the full import of this request and I (the patient) expect to die when I take or am administered the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility. I understand that my authorization includes authorization to one or more persons to administration of one or more additional doses of medication (intended to hasten my death) by any available route of administration if my death takes longer than expected and my physician has counseled me about this possibility.

I or the individual holding my medical power of attorney acting in accordance with my valid living will make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DECLARATION OF WITNESSES

We declare that the person signing this request:

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

(b) Signed this request in our presence;

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness 1/Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness 2/Date

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

§16-52-20. Penalties.

(a) A person who without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or any other evidence or document reflecting the principal’s desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the principal is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ten nor more than twenty years.

(B) Except as provided in subsection (a) of this section, a person who without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal’s desires and interests with the intent or effect of affecting a health care decision is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less $5,000 nor more than $10,000.

NOTE: The purpose of this bill is to .

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.