

HB 1790 -- DEATH WITH DIGNITY ACT

SPONSOR: Ellington

This bill establishes the "Missouri Death With Dignity Act" which allows a qualified person to request and obtain a prescription for medication to end his or her life.

The bill specifies that a valid request for medication under these provisions must be in a specified form, signed and dated by the patient, and witnessed by at least two individuals. One of the witnesses must be a person who is not a relative of the patient by blood, marriage, or adoption; 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 an owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

The patient's attending physician at the time the request is signed is prohibited from being a witness. If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses must be an individual designated by the facility and having the qualifications specified by the Department of Health and Senior Services by rule.

The attending physician must make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily; request that the patient demonstrate Missouri state residency; ensure that the patient is making an informed decision by informing the patient of his or her medical diagnosis and prognosis, the potential risks associated with taking the medication to be prescribed, the probable result of taking the medication to be prescribed; and the feasible alternatives including, but not limited to, comfort care, hospice care, and pain control. The attending physician must refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is capable and acting voluntarily; refer the patient for counseling if appropriate; recommend that the patient notify next-of-kin; counsel the patient about the importance of having another person present when the patient takes the medication prescribed and of not taking the medication in a public place; inform the patient that he or she has an opportunity to rescind the request at any time and in any manner and offer the patient an opportunity to rescind at the end of the 15-day waiting period; verify, immediately before writing the prescription for medication that the patient is making an informed decision; fulfill the specified medical record documentation requirements; ensure that all appropriate steps are carried out

prior to writing a prescription; and dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided that the attending physician is authorized under state law and rule to dispense, has a current drug enforcement administration certificate, and complies with any applicable administrative rule or with the patient's written consent, contact a pharmacist and inform the pharmacist of the prescription and deliver the written prescription personally, by mail or facsimile to the pharmacist who must dispense the medications to the patient, the attending physician, or an expressly identified agent of the patient. The attending physician may sign the patient's death certificate.

Before a patient is qualified to receive a prescription, a consulting physician must 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 and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician must refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner can be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. Immediately prior to writing a prescription for medication under these provisions, the attending physician must verify the qualified patient is making an informed decision.

The attending physician must recommend the patient notify the next-of-kin of his or her request for medication under these provisions and a patient who declines or is unable to notify next-of-kin must not have his or her request denied for that reason.

In order to receive a prescription, a qualified patient must have made an oral and a written request and reiterate the oral request to his or her attending physician at least 15 days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician must offer the qualified patient an opportunity to rescind the request. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state, and no prescription for medication under these provisions can be written without the attending physician offering the qualified patient an opportunity to rescind the request.

The writing of a prescription under these provisions must not occur prior to 15 days after the patient's initial oral request or prior to 48 hours after the patient's written request. The bill specifies the information that must be documented in a patient's medical record. Only requests made by Missouri residents under these provisions will be granted.

The department is required to annually review all records maintained under these provisions and must require any health care provider upon dispensing medication to file a copy of the dispensing record with the department. The department must adopt rules to facilitate the collection of information regarding compliance with these provisions, and the information collected is not a public record and must not be made available for inspection by the public. The department must generate and make available to the public an annual statistical report of the information collected.

Any 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, must be invalid. Any obligation owing under any currently existing contract must not be conditioned or affected by the making or rescinding of a request by a person for medication to end his or her life in a humane and dignified manner.

The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy must not be conditioned upon or affected by the making or rescinding of a request by a person for medication to end his or her life. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner must not have an effect upon a life, health, or accident insurance or annuity policy.

The bill does not authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with these provisions must not for any purpose constitute suicide, assisted suicide, mercy killing, or homicide under the law.

A person cannot be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance under these provisions, including being present when a qualified patient takes the prescribed medication; and any professional organization or association, or health care provider cannot 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 these provisions.

A request by a patient for or provision by an attending physician of medication in good faith compliance with these provisions cannot constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

A health care provider cannot be under any duty, whether by contract or 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. If a health care provider is unable or unwilling to carry out a patient's request and the patient transfers his or her care to a new health care provider, the prior health care provider must, upon request, transfer a copy of the patient's relevant medical records to the new health care provider.

A health care provider may prohibit another health care provider from participating under the provisions of the bill on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participation in these provisions.

A health care provider may subject another health care provider to specified sanctions if the sanctioning health care provider has notified the sanctioning provider prior to participation that it prohibits participation in these provisions. A health care provider that imposes sanctions 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.

Suspension or termination of staff membership or privileges is not reportable to the department or the State Board of Registration for the Healing Arts and action taken under these provisions must not be the sole basis for a report of unprofessional conduct.

A person 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 class A felony. A person who coerces or exerts undue influence on a patient to request medication to end the patient's life or to destroy a rescission of a request is guilty of a class A felony. Further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person is not limited by these provisions, and the penalties do not preclude criminal penalties applicable under other law for conduct that is inconsistent with these provisions.

Any governmental entity that incurs costs resulting from a person

terminating his or her life in a public place has a claim against the estate of the person to recover the costs and reasonable attorney fees related to enforcing the claim. The bill specifies the form in which a request for medication must be made.

Any person who, without authorization of the principal, willfully alters, forges, conceals, or destroys 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 class A felony. Any person who, without authorization of the principal, willfully alters, forges, conceals, or destroys 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 affecting a health care decision is guilty of a class A misdemeanor.

This bill is the same as HB 524 (2017) and HB 1919 (2016).