

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1536

By: Representative D. Douglas

For An Act To Be Entitled

AN ACT TO CREATE THE COMPASSIONATE CARE END-OF-LIFE OPTION ACT; TO EXEMPT PRESCRIBING OR DISPENSING OF A MEDICATION FOR SELF-ADMINISTRATION BY A PATIENT UNDER THE COMPASSIONATE CARE END-OF-LIFE OPTION ACT FROM THE DEFINITION OF "PHYSICIAN-ASSISTED SUICIDE"; TO MODIFY LIMITATION OF LIABILITY OF LIFE INSURANCE POLICIES; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE COMPASSIONATE CARE END-OF-LIFE OPTION ACT; AND TO EXEMPT THE COMPASSIONATE CARE END-OF-LIFE OPTION ACT FROM THE DEFINITION OF "PHYSICIAN-ASSISTED SUICIDE".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-10-106(a), concerning physician-assisted suicides, is amended to read as follows:

(a)(1) As used in this section, "physician-assisted suicide" means a physician or ~~health-care~~ healthcare provider participating in a medical procedure or knowingly prescribing any drug, compound, or substance for the express purpose of assisting a patient to ~~intentionally~~ purposely end the patient's life.

(2) However, "physician-assisted suicide" does not apply to a person participating in the execution of a person sentenced by a court to death by lethal injection or the Compassionate Care End-of-Life Option Act, §



20-6-401 et seq.

SECTION 2. Arkansas Code Title 20, Chapter 6, Subchapter 4, is amended to add an additional subchapter to read as follows:

Subchapter 4 – Compassionate Care End-of-Life Option Act

20-6-401. Title.

This subchapter shall be known and may be cited as the "Compassionate Care End-of-Life Option Act".

20-6-402. Definitions.

As used in this subchapter:

(1) "Capable" means having the ability to make and communicate healthcare decisions to a physician, including communication through a person familiar with the patient's manner of communicating;

(2) "Healthcare facility" means the same as defined in § 20-6-303;

(3) "Healthcare provider" means a person, partnership, corporation, facility, or institution that is licensed, certified, or otherwise authorized by law to administer healthcare services or dispense medication in the ordinary course of business or the practice of a profession;

(4) "Impaired judgment" means the condition of being unable to sufficiently understand or appreciate the relevant facts necessary to make an informed decision;

(5) "Interested party" means any of the following:

(A) The patient's physician;

(B) A person who is a relative of the patient by blood, civil marriage, civil union, or adoption and is aware of the relationship with the patient;

(C) A person who knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(D) An owner, operator, or employee of a healthcare facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident;

(6) "Palliative care" means the same as defined in § 20-8-701;

(7) "Patient" means a person who is:

(A) Eighteen (18) years of age or older;

(B) A resident of this state;

(C) Under the care of a physician licensed in this state;

and

(D) Diagnosed with a terminal condition;

(8) "Professional relationship" means the same as defined in § 17-80-402; and

(9) "Terminal condition" means an incurable and irreversible disease that will, in the opinion of the patient's physician, result in death within a relatively short time.

20-6-403. Right to information.

(a) A patient shall be informed of all available options related to terminal care and the Right to Try Act, § 20-15-2101 et seq., and receive answers to any specific question about the foreseeable risks and benefits of medication, without a physician withholding any requested information and regardless of the purpose of the inquiry or the nature of the information.

(b) A physician who engages in discussions with a patient related to the risks and benefits in circumstances under this subchapter is not assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication.

(c) A patient's independent decision to self-administer a lethal dose of medication does not establish civil or criminal liability or professional disciplinary liability for the physician.

20-6-404. Immunity – Requirements for prescription and documentation.

(a) A physician is not subject to civil or criminal liability or professional disciplinary action if the physician prescribes medication for self-administration by the patient for the purpose of hastening the patient's death and the physician affirms by documenting in the patient's medical record that:

(1) The patient made an oral request to the physician in the physical presence of the physician for medication for self-administration by the patient for the purpose of hastening the patient's death;

(2) No fewer than fifteen (15) days after the first oral request, the patient made a second oral request to the physician in the physical presence of the physician for medication for self-administration by the patient for the purpose of hastening the patient's death;

(3) At the time of the second oral request, the physician offered the patient an opportunity to rescind the request;

(4) The patient made a written request for medication for self-administration by the patient for the purpose of hastening the patient's death that was signed by the patient in the presence of two (2) or more witnesses who:

(A) Were not interested parties;

(B) Were at least eighteen (18) years of age; and

(C) Signed and affirmed that the patient appeared to understand the nature of the document and to be free from duress or undue influence at the time the request was signed;

(5) The physician determined that the patient:

(A) Had a terminal condition, based on the physician's physical examination of the patient and review of the patient's relevant medical record;

(B) Was capable;

(C) Was making an informed decision;

(D) Had made a voluntary request for medication for self-administration by the patient for the purpose of hastening his or her death; and

(E) Was a resident of Arkansas for at least three (3) years preceding his or her request for medication for self-administration by the patient for the purpose of hastening his or her death;

(6) The physician informed the patient in person, both verbally and in writing, of:

(A) The patient's medical diagnosis;

(B) The patient's prognosis, including an acknowledgement that the physician's estimation of the patient's life expectancy was an estimate based on the physician's best medical judgment and was not a guarantee of the actual time remaining in the patient's life, and that the patient could live longer than the time estimated;

(C) The range of treatment options appropriate for the

patient and the patient's diagnosis;

(D) If the patient was not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) The range of possible results, including potential risks associated with taking the medication for self-administration by the patient that may be prescribed for the purpose of hastening the patient's death; and

(F) The probable result of taking the medication for self-administration by the patient that may be prescribed for the purpose of hastening the patient's death;

(7) The physician referred the patient to a second physician for medical confirmation of the physician's diagnosis, prognosis, and determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(8) The physician:

(A) Verified that the patient did not have impaired judgment; or

(B) Referred the patient for an evaluation by a psychiatrist, psychologist, or clinical social worker licensed in this state for confirmation that the patient was capable and did not have impaired judgment;

(9) The physician consulted with the patient's primary care physician, if applicable, with the patient's consent;

(10) The physician informed the patient that the patient may rescind the second oral request for medication for self-administration by the patient for the purpose of hastening the patient's death at any time and in any manner and offered the patient an opportunity to rescind after the patient's second oral request;

(11) Immediately before writing a prescription for medication for self-administration by the patient for the purpose of hastening the patient's death, the physician verified that all requirements are met and that the patient was making an informed decision;

(12) The physician wrote the prescription no fewer than forty-eight (48) hours after:

(A) The patient's written request for medication for self-

administration by the patient for the purpose of hastening the patient's death;

(B) The patient's second oral request for medication for self-administration by the patient for the purpose of hastening the patient's death; or

(C) The physician's offering the patient an opportunity to rescind the request for medication for self-administration by the patient for the purpose of hastening the patient's death;

(13) The physician:

(A) Dispensed the medication directly; or

(B) With the patient's consent:

(i) Contacted a pharmacist and informed the pharmacist of the prescription; and

(ii) Delivered the written prescription personally or by mail or fax to the pharmacist who dispensed the medication to the patient, the physician, or an expressly identified agent of the patient; and

(14) After writing the prescription for medication for self-administration by the patient for the purpose of hastening the patient's death, the physician promptly filed a report with the Department of Health documenting completion of all of the requirements under this subchapter.

(b) The documentation required under subsection (a) of this section shall include the following:

(1) The date, time, and wording of all oral requests by the patient for medication for self-administration by the patient for the purpose of hastening the patient's death;

(2) All written requests by the patient for medication for self-administration by the patient for the purpose of hastening the patient's death;

(3) The physician's diagnosis, prognosis, and basis for the determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(4) The second physician's medical confirmation of the physician's diagnosis, prognosis, and determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(5) The physician's attestation that:

(A) The patient was enrolled in hospice care at the time

of the patient's oral and written requests for medication for self-administration by the patient for the purpose of hastening the patient's death; or

(B) The physician informed the patient of all feasible end-of-life services;

(6) The physician's verification that the patient either did not have impaired judgment or that the physician referred the patient for an evaluation and the person conducting the evaluation determined that the patient did not have impaired judgment;

(7) A report of the outcome and determinations made during any evaluation that the patient may have received;

(8) The date, time, and wording of the physician's offer to the patient to rescind the request for medication for self-administration by the patient for the purpose of hastening the patient's death at the time of the patient's second oral request; and

(9) A note by the physician indicating that all requirements under this subchapter were satisfied and describing all of the steps taken to carry out the request, including a notation of the medication for self-administration by the patient prescribed for the purpose of hastening the patient's death.

(c) This section does not limit civil or criminal liability for gross negligence, recklessness, or intentional misconduct.

20-6-405. No duty to aid.

A person is not subject to civil or criminal liability solely for being present when a patient self-administers a lethal dose of a prescribed medication for self-administration by the patient or for not acting to prevent the patient from self-administering a lethal dose of prescribed medication for self-administration.

20-6-406. Limitations on actions.

(a) A physician, nurse, pharmacist, or other person is not under any duty, by law or contract, to participate in the provision of a lethal dose of medication to a patient.

(b) A healthcare facility or healthcare provider shall not discipline, suspend, revoke a license or privilege of, or otherwise penalize a physician,

nurse, pharmacist, or other person for any action taken in good faith reliance on this subchapter or any refusal to act under this subchapter.

(c) Except as otherwise provided in this subchapter, this subchapter does not limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

20-6-407. Healthcare facility exception.

(a) A healthcare facility may prohibit a physician from writing a prescription for a dose of medication intended to be lethal for a patient who is a resident in the healthcare facility and who intends to self-administer the medication on the premises of the healthcare facility if the healthcare facility notifies the physician in writing of its policy regarding prescriptions.

(b) A physician who violates a healthcare facility policy as described in subsection (a) of this section may be subject to sanctions otherwise allowable under law or contract.

20-6-408. Insurance policies.

(a) A life insurance company shall not deny benefits to a person or his or her beneficiaries for actions taken in accordance with this subchapter.

(b) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing to participate in the provisions of this subchapter.

20-6-409. Palliative sedation.

This subchapter does not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with accepted medical standards.

20-6-410. Protection of end-of-life option – Immunity.

(a) A physician with a professional relationship with a patient is not engaging in unprofessional conduct if:

(1) The physician determines the patient is capable and does not have impaired judgment;

(2) The physician informs the patient of all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(3) The physician prescribes a dose of medication that may be lethal to the patient;

(4) The physician advises the patient of all foreseeable risks related to the prescription; and

(5) The patient makes an independent decision to self-administer a lethal dose of medication.

(b) A physician is immune from any civil or criminal liability or professional disciplinary action for actions performed in good faith compliance with the provisions of this subchapter.

20-6-411. Rules regarding safe disposal of unused medications.

The Department of Health shall adopt rules regarding the safe disposal of unused medications prescribed under this subchapter.

20-6-412. Construction.

(a) This subchapter does not authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia.

(b) Any action taken in accordance with this subchapter does not constitute suicide, assisted suicide, mercy killing, or homicide under the law.

(c) This subchapter does not conflict with section 1553 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

SECTION 3. Arkansas Code § 23-81-115(a), concerning limitations of liability of life insurance policies, is amended to read as follows:

(a) ~~No~~ A policy of life insurance shall not be delivered or issued for delivery in this state if ~~it~~ the policy contains any of the following provisions:

(1) A provision for a period shorter than that provided by statute within which an action at law or in equity may be commenced on such a policy;

(2) A provision ~~which~~ that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one (1) or more of the following circumstances:

(A) Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of the war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of the military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in the military action;

(B) Death as a result of aviation or any air travel or flight;

(C) Death as a result of a specified hazardous occupation or occupations;

(D) Death while the insured is a resident outside the continental United States and Canada; or

(E) (i)(a) Death within two (2) years from the date of issue of the policy or within two (2) years of the effective date of any increase in the face amount of the policy as a result of suicide, while sane or insane.

(b) However, the parts of ~~this subdivision~~ ~~(a)(2)(E)~~ subdivision (a)(2)(E)(i) of this section applicable to increases in the face amount of the policy shall apply only to the additional amount.

(ii) Subdivision (a)(2)(E) does not apply to deaths under the Compassionate Care End-of-Life Option Act, § 20-6-401 et seq.