

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1056

Introduced by Chambers, 11.

Read first time January 20, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to public health and welfare; to adopt the
- 2 Patient Choice at End of Life Act; to provide penalties; and to
- 3 provide severability.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 20 of this act shall be known and may be
2 cited as the Patient Choice at End of Life Act.

3 Sec. 2. For purposes of the Patient Choice at End of Life Act:

4 (1) Adult means an individual eighteen years of age or older;

5 (2) Aid-in-dying medication means a medication determined and
6 prescribed by a physician for a qualified individual, which the qualified
7 individual may choose to self-administer to bring about his or her death;

8 (3) Attending physician means the physician who has primary
9 responsibility for the care of an individual and treatment of his or her
10 terminal illness;

11 (4) Capacity to make medical decisions means the ability to
12 understand the nature and consequences of a health care decision, the
13 ability to understand its significant benefits, risks, and alternatives,
14 and the ability to make and communicate an informed decision to health
15 care providers, including communication through a person familiar with
16 the individual's manner of communicating, if that person is available;

17 (5) Consulting physician means a physician who is independent from
18 the attending physician and who is qualified by specialty or experience
19 to make a professional diagnosis and prognosis regarding an individual's
20 illness;

21 (6) Health care facility means any facility required to be licensed
22 under the Health Care Facility Licensure Act;

23 (7) Health care provider or provider means any person licensed or
24 certified by the State of Nebraska to deliver health care under the
25 Uniform Credentialing Act, including any professional corporation or
26 other professional entity comprised of such health care providers and any
27 health care facility;

28 (8) Informed decision means a decision by an individual with a
29 terminal illness to request and obtain a prescription for medication that
30 he or she may self-administer to end his or her life, that is based on an
31 understanding and acknowledgment of the relevant facts, and that is made

1 after being fully informed by his or her attending physician of:

2 (a) The individual's medical diagnosis and prognosis;

3 (b) The potential risks associated with self-administering the
4 medication to be prescribed;

5 (c) The probable result of self-administering the medication;

6 (d) The possibility that he or she may choose not to obtain the
7 medication, or may obtain the medication but may decide not to self-
8 administer it; and

9 (e) The feasible alternatives or additional treatment opportunities,
10 including, but not limited to, comfort care, hospice care, palliative
11 care, and pain control;

12 (9) Mental health specialist means a psychologist or psychiatrist
13 licensed to practice in this state as provided in the Uniform
14 Credentialing Act;

15 (10) Mental health specialist assessment means one or more
16 consultations between an individual and a mental health specialist for
17 the purpose of determining whether the individual has the capacity to
18 make medical decisions and is not suffering from a psychiatric or
19 psychological disorder or depression causing impaired decisionmaking;

20 (11) Physician means a person licensed to practice medicine or
21 osteopathy in this state as provided in the Uniform Credentialing Act;

22 (12) Qualified individual means an adult who has the capacity to
23 make medical decisions and has satisfied the requirements of the Patient
24 Choice at End of Life Act to obtain a prescription for medication to end
25 his or her life;

26 (13) Self-administer means some affirmative and voluntary act by a
27 qualified individual to ingest medication to bring about his or her own
28 peaceful and humane death; and

29 (14) Terminal illness means an incurable and irreversible illness
30 that will, within reasonable medical judgment, result in death within six
31 months.

1 Sec. 3. (1) An individual who is an adult with the capacity to make
2 medical decisions and has a terminal illness may make a request to
3 receive a prescription for aid-in-dying medication if all of the
4 following conditions are satisfied:

5 (a) The individual's attending physician has determined him or her
6 to be suffering from a terminal illness;

7 (b) The individual has voluntarily expressed the wish to receive a
8 prescription for aid-in-dying medication; and

9 (c) The individual has the physical and mental ability to self-
10 administer the aid-in-dying medication.

11 (2) An individual may not be considered a qualified individual and
12 is not eligible to receive aid-in-dying medication under the Patient
13 Choice at End of Life Act solely because of age or disability.

14 Sec. 4. (1) An individual who is eligible to make a request under
15 section 3 of this act and who seeks to receive a prescription for aid-in-
16 dying medication shall make an oral request to his or her attending
17 physician and submit a written request to his or her attending physician
18 that satisfies the requirements of this section.

19 (2) A written request for aid-in-dying medication must be in
20 substantially the form described in section 11 of this act and signed and
21 dated by the individual seeking the medication in the presence of two
22 witnesses in accordance with subsection (3) of this section.

23 (3) A written request for aid-in-dying medication under the Patient
24 Choice at End of Life Act must be witnessed by at least two other adult
25 persons who, in the presence of the requestor, attest that to the best of
26 their knowledge and belief:

27 (a) The requestor has the capacity to make medical decisions;

28 (b) The requestor is acting voluntarily and without coercion to sign
29 the request; and

30 (c) The witnesses satisfy the requirements of subsection (4) of this
31 section.

- 1 (4) One of the witnesses must be a person who is not:
2 (a) Related to the requestor by blood, marriage, or adoption;
3 (b) At the time the request is signed, entitled to any portion of
4 the requestor's estate upon death of the requestor under a will or any
5 operation of law; or
6 (c) An owner, operator, or employee of a health care facility where
7 the requestor is receiving medical treatment or where the requestor
8 resides;
- 9 (5) The requestor's attending physician, consulting physician, or
10 mental health specialist may not serve as a required witness to the
11 signing of the written request.
- 12 (6) A request for a prescription for aid-in-dying medication
13 pursuant to this section shall be made solely and directly by the
14 individual diagnosed with the terminal illness and shall not be made on
15 behalf of such individual, including, but not limited to, through a power
16 of attorney, an advance health care directive, a conservator, health care
17 agent, surrogate, or any other legally recognized health care
18 decisionmaker.

19 Sec. 5. (1) An individual may at any time rescind his or her
20 request for aid-in-dying medication or decide not to self-administer such
21 medication without regard to his or her mental state.

22 (2) A prescription for aid-in-dying medication under the Patient
23 Choice at End of Life Act may not be written without the attending
24 physician offering the individual an opportunity to rescind the request.

25 Sec. 6. (1) Before prescribing aid-in-dying medication, the
26 attending physician shall complete the requirements of this section.

27 (2) The attending physician shall provide care that meets the
28 standard of care under accepted medical guidelines.

29 (3) The attending physician shall make an initial determination of
30 whether the requesting adult has the capacity to make medical decisions.
31 If there are indications of a mental disorder or cause to question the

1 individual's capacity to make medical decisions, the physician shall
2 refer the individual for a mental health specialist assessment. If such a
3 referral is made, no aid-in-dying medication shall be prescribed unless
4 the mental health specialist determines that the individual has the
5 capacity to make medical decisions and is not suffering from a
6 psychiatric or psychological disorder or depression causing impaired
7 decisionmaking.

8 (4) The attending physician shall make an initial determination of
9 whether the requesting adult:

10 (a) Has a terminal illness;

11 (b) Has voluntarily made the request for aid-in-dying medication
12 pursuant to sections 3 and 4 of this act; and

13 (c) Is a qualified individual.

14 (5) The attending physician shall confirm that the person is making
15 an informed decision by discussing with the individual:

16 (a) His or her medical diagnosis and prognosis;

17 (b) The potential risks associated with self-administering the aid-
18 in-dying medication to be prescribed;

19 (c) The probable result of self-administering such medication;

20 (d) The possibility that he or she may choose not to obtain the
21 medication, or may obtain the medication but may decide not to self-
22 administer it; and

23 (e) The feasible alternatives or additional treatment opportunities,
24 including, but not limited to, comfort care, hospice care, palliative
25 care, and pain control.

26 (6)(a) The attending physician shall confirm that the individual's
27 request does not arise from coercion or undue influence by another person
28 by discussing with the individual, outside of the presence of any other
29 person, except for an interpreter, whether or not the qualified
30 individual is feeling coerced or unduly influenced by another person.

31 (b) If an interpreter is present during the confirmation required by

1 subdivision (6)(a) of this section, such interpreter must not be:

2 (i) Related to the individual by blood, marriage, or adoption; or

3 (ii) Entitled to any portion of the individual's estate upon death
4 of the individual under a will or any operation of law.

5 (7)(a) The attending physician shall refer the individual to a
6 consulting physician for medical confirmation of the diagnosis and
7 prognosis, and for an additional determination that the individual has
8 the capacity to make medical decisions and has complied with the
9 requirements of the Patient Choice at End of Life Act.

10 (b) If the consulting physician determines that the individual does
11 not have a terminal illness, lacks the capacity to make medical
12 decisions, is not making an informed decision, is not acting voluntarily
13 and without coercion, or is otherwise ineligible to receive aid-in-dying
14 medication, the attending physician shall not prescribe and the
15 individual shall not obtain aid-in-dying medication, except that such
16 individual's attending physician may again refer the individual to a
17 consulting physician after three months have passed from the date of the
18 previous consulting physician's determination of ineligibility.

19 (8) The attending physician shall counsel the individual about the
20 importance of:

21 (a) Having another person present when he or she self-administers
22 the aid-in-dying medication;

23 (b) Not self-administering such medication in a public place;

24 (c) Notifying the next of kin of his or her request for aid-in-dying
25 medication. A qualified individual who declines or is unable to notify
26 his or her next of kin shall not have his or her request denied for that
27 reason;

28 (d) Participating in a hospice program; and

29 (e) Maintaining the medication in a safe and secure location until
30 the time that the individual decides to self-administer it.

31 (9) The attending physician shall (a) inform the individual that he

1 or she may rescind the request for aid-in-dying medication at any time
2 and in any manner and (b) offer the individual an opportunity to rescind
3 the request for such medication before prescribing it.

4 (10) A person may not receive a prescription for aid-in-dying
5 medication unless he or she has made an informed decision. The attending
6 physician shall verify, immediately before writing the prescription for
7 aid-in-dying medication, that the individual is making an informed
8 decision.

9 (11) The attending physician shall ensure that all appropriate steps
10 are carried out in accordance with the Patient Choice at End of Life Act
11 before writing a prescription for aid-in-dying medication.

12 (12) The attending physician shall fulfill the record documentation
13 required by section 14 of this act.

14 Sec. 7. Before a qualified individual may obtain a prescription for
15 aid-in-dying medication from the attending physician, the consulting
16 physician shall:

17 (1) Examine the individual and his or her relevant medical records;

18 (2) If the consulting physician determines that the attending
19 physician's diagnosis and prognosis is correct, confirm such diagnosis
20 and prognosis in writing;

21 (3) Determine that the individual has the capacity to make medical
22 decisions, is acting voluntarily, and has made an informed decision. If
23 there are indications of a mental disorder or cause to question the
24 individual's capacity to make medical decisions, the consulting physician
25 shall refer the individual for a mental health specialist assessment. If
26 such a referral is made, no aid-in-dying medication shall be prescribed
27 until the mental health specialist determines that the individual has the
28 capacity to make medical decisions and is not suffering from a
29 psychiatric or psychological disorder or depression causing impaired
30 decision making; and

31 (4) Fulfill the record documentation required by section 14 of this

1 act.

2 Sec. 8. Upon referral from the attending or consulting physician
3 pursuant to section 6 or 7 of this act, the mental health specialist
4 shall:

5 (1) Examine the individual and his or her relevant medical records;

6 (2) Determine whether the individual has the capacity to make
7 medical decisions, act voluntarily, and make an informed decision;

8 (3) Determine whether the individual is suffering from impaired
9 decisionmaking due to a psychiatric or psychological disorder or
10 depression; and

11 (4) Fulfill the record documentation required by section 14 of this
12 act.

13 Sec. 9. (1) If the requirements of sections 6 to 8 of this act have
14 been satisfied, the attending physician may prescribe aid-in-dying
15 medication to the qualified individual. Once the medication is
16 prescribed, it shall be dispensed as provided for in this section.

17 (2) The attending physician may dispense the aid-in-dying medication
18 directly, including ancillary medication intended to minimize the
19 qualified individual's discomfort or enhance the efficacy of the aid-in-
20 dying medication, if the attending physician:

21 (a) Is qualified to dispense such medication under state law;

22 (b) Has a current certificate from the federal Drug Enforcement
23 Administration; and

24 (c) Complies with any applicable administrative rule or regulation.

25 (3) If the attending physician is not eligible under subsection (2)
26 of this section to dispense the aid-in-dying or ancillary medications
27 directly, the attending physician shall, with the qualified individual's
28 written consent, contact a pharmacist, inform the pharmacist of the
29 prescription, and deliver the written prescription personally or by mail
30 to the pharmacist, who shall dispense the medication to either the
31 qualified individual, the attending physician, or a person expressly

1 designated by the qualified individual.

2 (4) Delivery of the dispensed medication to the qualified
3 individual, the attending physician, or a person expressly designated by
4 the qualified individual may be made by personal delivery or, with a
5 signature required on delivery, by the United States Postal Service or a
6 commercial messenger or mail delivery service.

7 Sec. 10. (1) A health care provider shall provide medical services
8 under the Patient Choice at End of Life Act that meet or exceed the
9 standard of care for end-of-life medical care.

10 (2) A physician shall inform a terminally ill patient of all
11 available options related to his or her care.

12 Sec. 11. A request for aid-in-dying medication under section 4 of
13 this act must be in substantially the following form:

14 REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED
15 MANNER

16 I,, am an adult of sound mind. I am suffering
17 from (describe terminal illness), which my attending
18 physician has determined is a terminal illness and which has been
19 medically confirmed by a consulting physician.

20 I have been fully informed of my diagnosis and prognosis, the nature
21 of the aid-in-dying medication to be prescribed and potential associated
22 risks, the expected result, and the feasible alternative or additional
23 treatment opportunities, including comfort care, hospice care, palliative
24 care, and pain control.

25 I request that my attending physician prescribe medication that will
26 end my life in a humane and dignified manner if I choose to take it, and
27 I authorize my attending physician to contact any pharmacist about my
28 request.

29 I understand that I have the right to rescind this request at any
30 time and that I may choose not to self-administer the medication at any
31 time.

1 I understand the full import of this request, and I expect to die if
2 I take the aid-in-dying medication prescribed. I further understand that
3 although most deaths occur within three hours, my death may take longer,
4 and my attending physician has counseled me about this possibility.

5 I make this request voluntarily and without reservation, and I
6 accept full responsibility for my actions.

7

8 (Signature of person making request/date)

9 DECLARATION OF WITNESSES

10 We declare:

11 (1) That the person signing this request is personally known to us
12 or has provided proof of identity;

13 (2) That such person signed this request in our presence;

14 (3) That such person appears to be of sound mind and not under
15 duress, fraud, or undue influence;

16 (4) That neither of us is such person's attending physician,
17 consulting physician, or mental health specialist; and

18 (5) That at least one of us is not:

19 (a) Related to the person signing this request by blood, marriage,
20 or adoption;

21 (b) At the time the request was signed, entitled to any portion of
22 such person's estate upon death of the requestor under a will or any
23 operation of law; or

24 (c) An owner, operator, or employee of a health care facility where
25 such person is receiving medical treatment or where such person resides.

26 Witnessed By:

27

28 (Signature of Witness/date) (Printed Name of Witness)

29

30 (Signature of Witness/date) (Printed Name of Witness)

31 Sec. 12. A qualified individual who obtains aid-in-dying medication

1 in compliance with the Patient Choice at End of Life Act may choose to
2 use such medication to end his or her life. If an individual chooses to
3 do so, he or she must self-administer such medication, and no other
4 person shall administer such medication to the individual.

5 Sec. 13. If a qualified individual dies as a result of self-
6 administering aid-in-dying medication in compliance with the Patient
7 Choice at End of Life Act, the person responsible for completing and
8 signing that part of the certificate of death entitled medical
9 certificate of death pursuant to section 71-605 shall list as the cause
10 of death the qualified individual's underlying terminal illness.

11 Sec. 14. All of the following shall be documented in the
12 individual's medical record:

13 (1) All oral requests for aid-in-dying medication;

14 (2) All written requests for aid-in-dying medication;

15 (3) The attending physician's diagnosis and prognosis of the
16 individual's terminal illness;

17 (4) The attending physician's determination: (a) That a qualified
18 individual has the capacity to make medical decisions, is acting
19 voluntarily, and has made an informed decision or (b) that the individual
20 is not a qualified individual;

21 (5) The consulting physician's diagnosis and prognosis;

22 (6) The consulting physician's determination: (a) That a qualified
23 individual has the capacity to make medical decisions, is acting
24 voluntarily, and has made an informed decision or (b) that the individual
25 is not a qualified individual;

26 (7) A report of the outcome and determinations made during any
27 mental health specialist assessment;

28 (8) That the attending physician offered the qualified individual an
29 opportunity, prior to prescribing any aid-in-dying medication, to rescind
30 his or her request; and

31 (9) A note by the attending physician indicating that all

1 requirements of sections 6 to 8 of this act have been satisfied and
2 indicating the steps taken to carry out the request, including a notation
3 of the aid-in-dying medication prescribed.

4 Sec. 15. (1) A provision in a contract, will, or other agreement
5 executed on or after the effective date of this act, whether written or
6 oral, to the extent the provision would affect whether a person may make
7 or rescind a request for aid-in-dying medication, is void.

8 (2) An obligation owing under any contract executed on or after the
9 effective date of this act may not be conditioned upon or affected by an
10 individual making or rescinding a request for aid-in-dying medication.

11 Sec. 16. (1) The sale, procurement, or issuance of a life, health,
12 or accident insurance or annuity policy, health care service plan
13 contract or health benefit plan, or the rate charged for such policy or
14 plan may not be conditioned upon or affected by a person making or
15 rescinding a request for aid-in-dying medication.

16 (2) A qualified individual's act of self-administering aid-in-dying
17 medication in compliance with the Patient Choice at End of Life Act shall
18 not have any effect upon a life, health, or accident insurance or annuity
19 policy, or health care service plan contract or health benefit plan other
20 than that of a natural death from the underlying illness.

21 (3) A health carrier shall not provide any information in
22 communications made to an individual about the availability of an aid-in-
23 dying medication absent a request by the individual or his or her
24 attending physician at the behest of the individual. Any communication
25 shall not include both a denial of other treatment and information as to
26 the availability of aid-in-dying medication coverage. For the purposes of
27 this subdivision, health carrier has the same meaning as in section
28 44-1303.

29 Sec. 17. (1) No person is subject to civil or criminal liability or
30 professional disciplinary action for participating in good faith
31 compliance with the Patient Choice at End of Life Act, including a person

1 who is present when a qualified individual self-administers the
2 prescribed aid-in-dying medication.

3 (2) Subject to subdivision (5)(c) of this section, a health care
4 provider may not subject a person to censure, discipline, suspension,
5 loss of license, loss of privileges, loss of membership, or other penalty
6 for participating in good faith compliance with the Patient Choice at End
7 of Life Act or for refusing to so participate.

8 (3) A request by a qualified individual to an attending physician to
9 provide aid-in-dying medication in good faith compliance with the
10 provisions of the Patient Choice at End of Life Act shall not provide the
11 sole basis for the appointment of a guardian or conservator.

12 (4) No actions taken in compliance with the Patient Choice at End of
13 Life Act shall constitute or provide the basis for any claim of neglect
14 or elder abuse for any purpose.

15 (5)(a) A health care provider may choose whether to participate in
16 providing aid-in-dying medication to a qualified individual pursuant to
17 the Patient Choice at End of Life Act;

18 (b) If a health care provider is unable or unwilling to carry out an
19 individual's request under the Patient Choice at End of Life Act and the
20 individual transfers care to a new health care provider, the previous
21 provider shall transfer, upon request, a copy of the individual's
22 relevant medical records to the new provider;

23 (c) A health care provider may prohibit a physician from writing a
24 prescription for aid-in-dying medication for a patient who is a resident
25 in the provider's facility and intends to use the medication on the
26 facility's premises, if the provider has previously notified the
27 physician in writing of its policy with regard to such prescriptions;

28 (6) Nothing in this section shall prevent a health care provider
29 from providing an individual with health care services that do not
30 constitute participation in the Patient Choice at End of Life Act.

31 Sec. 18. (1) A person who knowingly and intentionally alters or

1 forges a written request for aid-in-dying medication for another person
2 without his or her authorization or knowingly and intentionally conceals
3 or destroys a rescission of a request for such medication with the intent
4 of causing such other person's death is guilty of a Class III felony.

5 (2) A person who knowingly and intentionally coerces or exerts undue
6 influence on another person to request aid-in-dying medication or destroy
7 or conceal a rescission of such a request is guilty of a class III
8 felony.

9 (3) Nothing in the Patient Choice at End of Life Act limits further
10 liability for civil damages resulting from other negligent conduct or
11 intentional misconduct by any person in violation of such act.

12 (4) This section does not preclude criminal penalties applicable
13 under other provisions of law for conduct in violation of the provisions
14 of the Patient Choice at End of Life Act.

15 Sec. 19. Nothing in the Patient Choice at End of Life Act shall be
16 construed to authorize a physician or any other person to end an
17 individual's life by lethal injection, mercy killing, or active
18 euthanasia. Actions taken in accordance with the Patient Choice at End of
19 Life Act shall not, for any purpose, constitute suicide, assisted
20 suicide, mercy killing, homicide, or elder abuse nor constitute the
21 aiding or abetting of such acts.

22 Sec. 20. (1) The Department of Health and Human Services shall
23 annually review a sample of records maintained pursuant to section 14 of
24 this act and shall adopt and promulgate rules and regulations
25 establishing additional reporting requirements for physicians and
26 pharmacists pursuant to the Patient Choice at End of Life Act.

27 (2) The reporting requirements shall be designed to collect
28 information to determine utilization and compliance with the Patient
29 Choice at End of Life Act. The information collected shall be
30 confidential and shall be collected in a manner that protects the privacy
31 of the patient, the patient's family, and any health care provider or

1 pharmacist involved with the patient under the provisions of such act.

2 (3) On or before July 1, 2017, and each July 1 thereafter, the
3 department shall electronically submit to the Clerk of the Legislature an
4 annual compliance and utilization statistical report based on the
5 information collected pursuant to this section and aggregated by age,
6 gender, race, ethnicity, primary language spoken at home, and any other
7 data the department may determine relevant.

8 Sec. 21. If any section in this act or any part of any section is
9 declared invalid or unconstitutional, the declaration shall not affect
10 the validity or constitutionality of the remaining portions.