

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 450**

Introduced by Chambers, 11.

Read first time January 17, 2017

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 adult with the capacity to make medical decisions  
2 who has a terminal illness may make a request to receive a prescription  
3 for aid-in-dying medication if all of the following conditions are  
4 satisfied:

5        (a) The individual's attending physician has determined that he or  
6 she is 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 receive aid-in-dying medication under the  
12 Patient Choice at End of Life Act solely because of age or disability.

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

18        (2) A written request for aid-in-dying medication shall be in  
19 substantially the form described in section 11 of this act and signed and  
20 dated by the individual seeking the medication in the presence of two  
21 witnesses. Such witnesses shall be adults who, in the presence of the  
22 requestor, attest that to the best of their knowledge and belief:

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

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

26        (c) The witnesses satisfy the requirements of subsections (3) and  
27 (4) of this section.

28        (3) One of the witnesses shall be a person who is not any of the  
29 following:

30        (a) Related by blood, marriage, or adoption to the requestor;

31        (b) Entitled to any portion of the requestor's estate upon death of

1 the requestor under a will or any operation of law; or

2 (c) An owner, operator, or employee of a health care facility where  
3 the requestor is receiving medical treatment or where the requestor  
4 resides.

5 (4) The requestor's attending physician, consulting physician, or  
6 mental health specialist may not serve as a witness to the signing of the  
7 written request.

8 (5) A request for a prescription for aid-in-dying medication  
9 pursuant to this section shall be made solely and directly by the  
10 individual diagnosed with the terminal illness and shall not be made on  
11 behalf of such individual, including, but not limited to, through a power  
12 of attorney, an advance health care directive, a conservator, a health  
13 care agent, a surrogate, or any other legally recognized health care  
14 decisionmaker.

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

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

21 Sec. 6. (1) Before prescribing aid-in-dying medication in response  
22 to a request under the Patient Choice at End of Life Act, the attending  
23 physician shall comply with the requirements of this section.

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

26 (3) The attending physician shall make an initial determination of  
27 whether the requesting adult has the capacity to make medical decisions.  
28 If there are indications of a mental disorder or cause to question the  
29 individual's capacity to make medical decisions, the physician shall  
30 refer the individual for a mental health specialist assessment. If such a  
31 referral is made, no aid-in-dying medication shall be prescribed unless

1 the mental health specialist determines that the individual has the  
2 capacity to make medical decisions and is not suffering from a  
3 psychiatric or psychological disorder or depression causing impaired  
4 decisionmaking.

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

7 (a) Has a terminal illness;

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

10 (c) Is a qualified individual.

11 (5) The attending physician shall confirm that the requesting adult  
12 is making an informed decision by discussing with him or her:

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

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

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

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

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

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

28 (b) If an interpreter is present during the confirmation required by  
29 subdivision (6)(a) of this section, such interpreter shall not be:

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

31 (ii) Entitled to any portion of the individual's estate upon death

1 of the individual under a will or any operation of law.

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

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

16 (8) The attending physician shall counsel the individual about the  
17 importance of:

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

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

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

25 (d) Participating in a hospice program; and

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

28 (9) The attending physician shall (a) inform the individual that he  
29 or she may rescind the request for aid-in-dying medication at any time  
30 and in any manner and (b) offer the individual an opportunity to rescind  
31 the request for such medication before prescribing it.

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

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

9       (12) The attending physician shall comply with the requirements of  
10 section 14 of this act.

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

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

15       (2) If the consulting physician determines that the attending  
16 physician's diagnosis and prognosis is correct, confirm such diagnosis  
17 and prognosis in writing;

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

28       (4) Comply with the requirements of section 14 of this act.

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

- 1       (1) Examine the individual and his or her relevant medical records;
- 2       (2) Determine whether the individual has the capacity to make  
3 medical decisions, act voluntarily, and make an informed decision;
- 4       (3) Determine whether the individual is suffering from impaired  
5 decisionmaking due to a psychiatric or psychological disorder or  
6 depression; and
- 7       (4) Comply with the requirements of section 14 of this act.

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

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

- 16       (a) Is qualified to dispense such medication under state law;
- 17       (b) Has a current certificate from the federal Drug Enforcement  
18 Administration; and
- 19       (c) Complies with any applicable administrative rule or regulation.

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

28       (4) Delivery of the dispensed medication to the qualified  
29 individual, the attending physician, or a person expressly designated by  
30 the qualified individual may be made by personal delivery or, with a  
31 signature required on delivery, by the United States Postal Service or a

1 commercial messenger or mail delivery service.

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

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

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

9 REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED  
10 MANNER

11 I, ....., am an adult of sound mind. I am suffering  
12 from ..... (describe terminal illness), which my attending  
13 physician has determined is a terminal illness and which has been  
14 medically confirmed by a consulting physician.

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

20 I request that my attending physician prescribe medication that will  
21 end my life in a humane and dignified manner if I choose to take it, and  
22 I authorize my attending physician to contact any pharmacist about my  
23 request.

24 I understand that I have the right to rescind this request at any  
25 time and that I may choose not to self-administer the medication at any  
26 time.

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

31 I make this request voluntarily and without reservation, and I

1 accept full responsibility for my actions.

2 .....

3 (Signature of person making request/date)

4 DECLARATION OF WITNESSES

5 We declare:

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

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

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

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

13 (5) That at least one of us is not any of the following:

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

16 (b) Entitled to any portion of such person's estate upon death of  
17 the requestor under a will or any operation of law; or

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

20 Witnessed By:

21 .....

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

23 .....

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

25 Sec. 12. A qualified individual who obtains aid-in-dying medication  
26 in compliance with the Patient Choice at End of Life Act may choose to  
27 use such medication to end his or her life. If an individual chooses to  
28 do so, he or she must self-administer such medication and no other person  
29 shall administer such medication to the individual.

30 Sec. 13. If a qualified individual dies as a result of self-  
31 administering aid-in-dying medication in compliance with the Patient

1 Choice at End of Life Act, the person responsible for completing and  
2 signing that part of the certificate of death entitled medical  
3 certificate of death pursuant to section 71-605 shall list as the cause  
4 of death the qualified individual's underlying terminal illness.

5 Sec. 14. All of the following shall be documented in the requesting  
6 individual's medical record:

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

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

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

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

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

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

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

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

25 (9) A note by the attending physician indicating that all  
26 requirements of sections 6 to 8 of this act have been satisfied and  
27 indicating the steps taken to carry out the request, including a notation  
28 of the aid-in-dying medication prescribed.

29 Sec. 15. (1) A provision in a contract, will, or other agreement  
30 executed on or after the effective date of this act, whether written or  
31 oral, to the extent the provision would affect whether a person may make

1 or rescind a request for aid-in-dying medication, is void.

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

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

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

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

23 Sec. 17. (1) No person is subject to civil or criminal liability or  
24 professional disciplinary action for participating in good faith  
25 compliance with the Patient Choice at End of Life Act, including a person  
26 who is present when a qualified individual self-administers the  
27 prescribed aid-in-dying medication.

28 (2) Subject to subdivision (5)(c) of this section, a health care  
29 provider may not subject a person to censure, discipline, suspension,  
30 loss of license, loss of privileges, loss of membership, or other penalty  
31 for participating in good faith compliance with the Patient Choice at End

1 of Life Act or for refusing to so participate.

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

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

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

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

17 (c) A health care provider may prohibit a physician from writing a  
18 prescription for aid-in-dying medication for a patient who is a resident  
19 in the provider's facility and intends to use the medication on the  
20 facility's premises, if the provider has previously notified the  
21 physician in writing of its policy with regard to such prescriptions.

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

25 Sec. 18. (1) A person who knowingly and intentionally alters or  
26 forges a written request for aid-in-dying medication for another person  
27 without his or her authorization or knowingly and intentionally conceals  
28 or destroys a rescission of a request for such medication with the intent  
29 of causing such other person's death is guilty of a Class III felony.

30 (2) A person who knowingly and intentionally coerces or exerts undue  
31 influence on another person to request aid-in-dying medication or destroy

1 or conceal a rescission of such a request is guilty of a Class III  
2 felony.

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

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

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

16 Sec. 20. (1) The Department of Health and Human Services shall  
17 annually review a sample of records maintained pursuant to section 14 of  
18 this act and shall adopt and promulgate rules and regulations  
19 establishing additional reporting requirements for physicians, mental  
20 health specialists, and pharmacists pursuant to the Patient Choice at End  
21 of Life Act.

22 (2) The reporting requirements shall be designed to collect  
23 information to determine utilization and compliance with the Patient  
24 Choice at End of Life Act. The information collected shall be  
25 confidential and shall be collected in a manner that protects the privacy  
26 of the patient, the patient's family, and any health care provider or  
27 pharmacist involved with the patient under the provisions of such act.

28 (3) On or before July 1, 2018, and each July 1 thereafter, the  
29 department shall electronically submit to the Clerk of the Legislature an  
30 annual compliance and utilization statistical report based on the  
31 information collected pursuant to this section and aggregated by age,

1 gender, race, ethnicity, primary language spoken at home, and any other  
2 data the department may determine relevant.

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