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

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

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

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

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

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

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

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

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

(8) Informed decision means a decision by an individual with a terminal illness to request and obtain a prescription for medication that he or she may self-administer to end his or her life, that is based on an understanding and acknowledgment of the relevant facts, and that is made
after being fully informed by his or her attending physician of:

(a) The individual’s medical diagnosis and prognosis;

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

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

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

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

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

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

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

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

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

(14) Terminal illness means an incurable and irreversible illness that will, within reasonable medical judgment, result in death within six months.
Sec. 3. (1) An adult with the capacity to make medical decisions who has a terminal illness may make a request to receive a prescription for aid-in-dying medication if all of the following conditions are satisfied:

(a) The individual’s attending physician has determined that he or she is suffering from a terminal illness;

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

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

(2) An individual may not receive aid-in-dying medication under the Patient Choice at End of Life Act solely because of age or disability.

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

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

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

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

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

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

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

(b) Entitled to any portion of the requestor’s estate upon death of
the requestor under a will or any operation of law; or

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

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

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

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

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

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

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

(3) The attending physician shall make an initial determination of
whether the requesting adult has the capacity to make medical decisions.
If there are indications of a mental disorder or cause to question the
individual's capacity to make medical decisions, the physician shall
refer the individual for a mental health specialist assessment. If such a
referral is made, no aid-in-dying medication shall be prescribed unless
the mental health specialist determines that the individual has the
capacity to make medical decisions and is not suffering from a
psychiatric or psychological disorder or depression causing impaired
decisionmaking.

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

(a) Has a terminal illness;

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

(c) Is a qualified individual.

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

(a) His or her medical diagnosis and prognosis;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Participating in a hospice program; and

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

(9) The attending physician shall (a) inform the individual that he or she may rescind the request for aid-in-dying medication at any time and in any manner and (b) offer the individual an opportunity to rescind the request for such medication before prescribing it.
(10) An individual may not receive a prescription for aid-in-dying medication unless he or she has made an informed decision. The attending physician shall verify, immediately before writing the prescription for aid-in-dying medication, that the individual is making an informed decision.

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

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

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

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

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

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

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

Sec. 8. Upon referral from the attending or consulting physician pursuant to section 6 or 7 of this act, the mental health specialist shall:
(1) Examine the individual and his or her relevant medical records;
(2) Determine whether the individual has the capacity to make medical decisions, act voluntarily, and make an informed decision;
(3) Determine whether the individual is suffering from impaired decisionmaking due to a psychiatric or psychological disorder or depression; and
(4) Comply with the requirements of section 14 of this act.

Sec. 9. (1) If the requirements of sections 6 to 8 of this act have been satisfied, the attending physician may prescribe aid-in-dying medication to the qualified individual. Once the medication is prescribed, it shall be dispensed as provided for in this section.
(2) The attending physician may dispense the aid-in-dying medication directly, including ancillary medication intended to minimize the qualified individual’s discomfort or enhance the efficacy of the aid-in-dying medication, if the attending physician:
   (a) Is qualified to dispense such medication under state law;
   (b) Has a current certificate from the federal Drug Enforcement Administration; and
   (c) Complies with any applicable administrative rule or regulation.
(3) If the attending physician is not eligible under subsection (2) of this section to dispense the aid-in-dying or ancillary medications directly, the attending physician shall, with the qualified individual’s written consent, contact a pharmacist, inform the pharmacist of the prescription, and deliver the written prescription personally or by mail to the pharmacist, who shall dispense the medication to either the qualified individual, the attending physician, or a person expressly designated by the qualified individual.
(4) Delivery of the dispensed medication to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by personal delivery or, with a signature required on delivery, by the United States Postal Service or a
Sec. 10. (1) A health care provider shall provide medical services under the Patient Choice at End of Life Act that meet or exceed the standard of care for end-of-life medical care.

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

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

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

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

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

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

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

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

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

.............................................

(Signature of person making request/date)

DECLARATION OF WITNESSES

We declare:

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

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

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

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

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

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

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

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

Witnessed By:

.............................................

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

.............................................

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

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

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

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

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

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

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

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

(5) The consulting physician’s diagnosis and prognosis;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) On or before July 1, 2018, and each July 1 thereafter, the department shall electronically submit to the Clerk of the Legislature an annual compliance and utilization statistical report based on the information collected pursuant to this section and aggregated by age.
Sec. 21. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.