State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2095

03/23/2015 Authored by Freiberg, Schultz, Kahn, Laine, Loeffler and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

A bill for an act

relating to health; adopting compassionate care for terminally ill patients; proposing coding for new law in Minnesota Statutes, chapter 145.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[145.871] COMPASSIONATE CARE.**

Subdivision 1. **Citation.** This section may be cited as the "Minnesota Compassionate Care Act of 2015."

Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Adult" means a person who is 18 years of age or older.

(c) "Aid in dying" means the medical practice of a physician prescribing medication to a qualified patient who is terminally ill, which medication a qualified patient may self-administer to bring about the patient's own death.

(d) "Attending physician" means the physician who has primary responsibility for the medical care of the patient and treatment of the patient's terminal illness.

(e) "Competent" means, in the opinion of the patient's attending physician, consulting physician, psychiatrist, psychologist, or a court, that the patient has the capacity to understand and acknowledge the nature and consequences of health care decisions, including the benefits and disadvantages of treatment, to make an informed decision and to communicate the decision to a health care provider, including communicating through a person familiar with the patient's manner of communicating.

(f) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's terminal illness.

(g) "Counseling" means one or more consultations as necessary between a psychiatrist or a psychologist and a patient for the purpose of determining that the patient is competent and not suffering from depression or any other psychiatric or psychological disorder that causes impaired judgment.

(h) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, including but not limited to a physician, psychiatrist, psychologist, or pharmacist.

(i) "Health care facility" means a hospital, residential care home, nursing home, or rest home.

(j) "Informed decision" means a decision by a qualified patient to request and obtain a prescription for medication that the qualified patient may self-administer for aid in dying, that is based on an understanding and acknowledgment of the relevant facts and after being fully informed by the attending physician of:

(1) the patient's medical diagnosis and prognosis;

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

(3) the probable result of taking the medication to be prescribed;

(4) the feasible alternatives and health care treatment options, including but not limited to palliative care.

(k) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(l) "Palliative care" means health care centered on a terminally ill patient and the patient's family that:

(1) optimizes the patient's quality of life by anticipating, preventing, and treating the patient's suffering throughout the continuum of the patient's terminal illness;

(2) addresses the physical, emotional, social, and spiritual needs of the patient;

(3) facilitates patient autonomy, the patient's access to information, and patient choice; and

(4) includes but is not limited to discussions between the patient and a health care provider concerning the patient's goals for treatment options available to the patient, including hospice care and comprehensive pain and symptom management.

(m) "Patient" means a person who is under the care of a physician.

(n) "Pharmacist" means a person licensed under chapter 151.

(o) "Physician" means a person licensed to practice medicine and surgery under chapter 147.

(p) "Psychiatrist" means a psychiatrist licensed under chapter 147.

(q) "Psychologist" means a psychologist licensed under section 148.907.

(r) "Qualified patient" means a competent adult who is a resident of Minnesota, has a terminal illness, and has satisfied the requirements of this section in order to obtain aid in dying.

(s) "Self-administer" means a qualified patient's act of ingesting medication.

(t) "Terminal illness" means the final stage of an incurable and irreversible medical condition that an attending physician anticipates, within reasonable medical judgment, will produce a patient's death within six months.

Subd. 3. **Request for aid in dying.** (a) A person who:

(1) is an adult;

(2) is competent;

(3) is a resident of Minnesota;

(4) has been determined by the person's attending physician to have a terminal illness; and

(5) has voluntarily expressed a wish to receive aid in dying

may request aid in dying by making two written requests pursuant to subdivisions 4 and 5.

(b) A person is not a qualified patient under this section based solely on age, disability, or any specific illness.

(c) No person, including but not limited to an agent under a living will, an attorney-in-fact under a durable power of attorney, a guardian, or a conservator, may act on behalf of a patient for purposes of this section.

Subd. 4. **Signed, written requests required.** (a) A patient wishing to receive aid in dying shall submit two written requests to the patient's attending physician in substantially the form in subdivision 5. A valid written request for aid in dying under this section shall be signed and dated by the patient. Each request shall be witnessed by at least two persons who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is: (1) of sound mind; and (2) acting voluntarily and not being coerced to sign the request. The patient's second written request for aid in dying shall be submitted no earlier than 15 days after the patient submits the first request.

(b) At least one of the witnesses described in paragraph (a) shall be a person who is not: (1) a relative of the patient by blood, marriage, or adoption; (2) at the time the request is signed, entitled to any portion of the estate of the patient upon the patient's death, under

any will or by operation of law; or (3) an owner, operator, or employee of a health care facility where the patient is receiving medical treatment or is a resident.

(c) The patient's attending physician at the time the request is signed shall not be a witness.

(d) If the patient is a resident of a residential care home, nursing home, or skilled nursing facility at the time the written request is made, one of the witnesses shall be a person designated by the home or facility.

Subd. 5. **Request form.** A request for aid in dying as authorized by this section shall be in substantially the following form:

REQUEST FOR MEDICATION TO AID IN DYING

I, ..., am an adult of sound mind.

I am a resident of Minnesota.

I am suffering from ....., which my attending physician has determined is an incurable and irreversible medical condition that will, within reasonable medical judgment, result in death within six months. This diagnosis of a terminal illness has been confirmed by another physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed to aid me in dying, the potential associated risks, the expected result, feasible alternatives, and additional health care treatment options, including palliative care.

I request that my attending physician prescribe medication that I may self-administer for aid in dying. I authorize my attending physician to contact a pharmacist to fill the prescription for the medication, upon my request.

INITIAL ONE:

..... I have informed my family of my decision and taken their opinions into consideration.

..... I have decided not to inform my family of my decision.

..... I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die if and when I take the medication to be 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 decision to request aid in dying.

Signed: .....

Dated: .....

DECLARATION OF WITNESSES

By initialing and signing below on the date the person named above signs, I declare that the person making and signing the above request:

Witness 1 ..... Witness 2 .....

Initials ..... Initials .....

..... 1. Is personally known to me or has provided proof of identity;

..... 2. Signed this request in my presence on the date of the person's signature;

..... 3. Appears to be of sound mind and not under duress, fraud, or undue influence; and

..... 4. Is not a patient for whom I am the attending physician.

Printed Name of Witness 1 .....

Signature of Witness 1 ..... Date .....

Printed Name of Witness 2 .....

Signature of Witness 2 ..... Date .....

Subd. 6. **Opportunity to rescind request.** (a) A qualified patient may rescind the patient's request for aid in dying at any time and in any manner without regard to the patient's mental state.

(b) An attending physician shall offer a qualified patient an opportunity to rescind the patient's request for aid in dying at the time the patient submits a second written request for aid in dying to the attending physician.

(c) No prescription for medication for aid in dying shall be written without the qualified patient's attending physician first offering the qualified patient a second opportunity to rescind the patient's request for aid in dying.

Subd. 7. **Physician responsibilities.** When an attending physician is presented with a patient's first written request for aid in dying under this section, the attending physician shall:

(1) make a determination that the patient:

(i) is an adult;

(ii) has a terminal illness;

(iii) is competent; and

(iv) has voluntarily requested aid in dying;

(2) require the patient to demonstrate residency in this state by presenting:

(i) Minnesota driver's license;

(ii) a valid voter registration record authorizing the patient to vote in this state;

(iii) evidence that the patient owns or leases property in this state; or

(iv) any other government-issued document that the attending physician reasonably believes demonstrates that the patient is a current resident of this state;

(3) ensure that the patient is making an informed decision by informing the patient of:

(i) the patient's medical diagnosis;

(ii) the patient's prognosis;

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

(iv) the probable result of self-administering the medication to be prescribed for aid in dying; and

(v) the feasible alternatives and health care treatment options including, but not limited to, palliative care; and

(4) refer the patient to a consulting physician for medical confirmation of the attending physician's diagnosis of the patient's terminal illness, the patient's prognosis, and for a determination that the patient is competent and acting voluntarily in requesting aid in dying.

Subd. 8. **Qualified patient.** In order for a patient to be found to be a qualified patient for the purposes of this section, a consulting physician shall:

(1) examine the patient and the patient's relevant medical records;

(2) confirm, in writing, the attending physician's diagnosis that the patient has a terminal illness;

(3) verify that the patient is competent, is acting voluntarily, and has made an informed decision to request aid in dying; and

(4) refer the patient for counseling, if required in accordance with subdivision 9.

Subd. 9. **Medical determination on competency.** (a) If, in the medical opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological condition or depression that is causing impaired judgment, either the attending or consulting physician shall refer the patient for counseling to determine whether the patient is competent to request aid in dying.

(b) An attending physician shall not provide the patient aid in dying until the person providing the counseling determines that the patient is not suffering a psychiatric or psychological condition or depression that is causing impaired judgment.

Subd. 10. **Process.** (a) After an attending physician and a consulting physician determine that a patient is a qualified patient, and after the qualified patient submits a second request for aid in dying according to subdivision 4, the attending physician shall:

(1) recommend to the qualified patient that the patient notify the patient's next of kin of the patient's request for aid in dying and inform the qualified patient that failure to do so shall not be a basis for the denial of the request;

(2) counsel the qualified patient concerning the importance of:

(i) having another person present when the qualified patient self-administers the medication prescribed for aid in dying; and

(ii) not taking the medication in a public place;

(3) inform the qualified patient that the patient may rescind the patient's request for aid in dying at any time and in any manner;

(4) verify, immediately before writing the prescription for medication for aid in dying, that the qualified patient is making an informed decision;

(5) fulfill the medical record documentation requirements in subdivision 11; and

(6)(i) dispense medications, including ancillary medications intended to facilitate the desired effect to minimize the qualified patient's discomfort, if the attending physician is authorized to dispense such medication, to the qualified patient; or

(ii) upon the qualified patient's request and with the qualified patient's written consent;

(A) contact a pharmacist and inform the pharmacist of the prescription; and

(B) deliver the written prescription personally, by mail, by facsimile, or by another electronic method that is permitted by the pharmacy to the pharmacist, who shall dispense the medications directly to the qualified patient, the attending physician, or an expressly identified agent of the qualified patient.

(b) The attending physician may sign the qualified patient's death certificate that shall list the underlying terminal illness as the cause of death.

Subd. 11. **Medical record.** With respect to a request by a qualified patient for aid in dying, the attending physician shall ensure that the following items are documented or filed in the qualified patient's medical record:

(1) the basis for determining that the qualified patient requesting aid in dying is an adult and is a resident of the state;

(2) all oral requests by a qualified patient for medication for aid in dying;

(3) all written requests by a qualified patient for medication for aid in dying;

(4) the attending physician's diagnosis of the qualified patient's terminal illness and prognosis, and a determination that the qualified patient is competent, is acting voluntarily, and has made an informed decision to request aid in dying;

(5) the consulting physician's confirmation of the qualified patient's diagnosis and prognosis, and confirmation that the qualified patient is competent, is acting voluntarily, and has made an informed decision to request aid in dying;

(6) a report of the outcome and determinations made during counseling, if counseling was recommended and provided as required by subdivision 9;

(7) documentation of the attending physician's offer to the qualified patient to rescind the patient's request for aid in dying at the time the attending physician writes the qualified patient a prescription for medication for aid in dying; and

(8) a statement by the attending physician indicating that all requirements under this section have been met and indicating the steps taken to carry out the qualified patient's request for aid in dying, including the medication prescribed.

Subd. 12. **Use of records.** Records or information collected or maintained under this section shall not be subject to subpoena or discovery or introduced into evidence in any judicial or administrative proceeding except to resolve matters concerning compliance with this section, or as otherwise specifically provided by law.

Subd. 13. **Disposing of medication.** Any person in possession of medication prescribed for aid in dying that has not been self-administered must dispose of the medication.

Subd. 14. **Contract, will, or other instrument.** (a) Any provision in a contract, will, insurance policy, annuity, or other agreement, whether written or oral, that is entered into on or after October 1, 2015, that would affect whether a person may make or rescind a request for aid in dying is not valid.

(b) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request for aid in dying.

(c) On and after the effective date of this section, the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any such policy shall not be conditioned upon or affected by the making or rescinding of a request for aid in dying.

(d) A qualified patient's act of requesting aid in dying or self-administering medication prescribed for aid in dying shall not:

(1) affect a life, health, or accident insurance or annuity policy, or benefits payable under the policy;

(2) be grounds for eviction from a person's place of residence or a basis for discrimination in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities because of the patient's request for aid in dying;

(3) provide the sole basis for the appointment of a conservator or guardian; or

(4) constitute suicide for any purpose.

Subd. 15. **Participate in provision of medication.** (a) As used in this section, "participate in the provision of medication" means to perform the duties of an attending

physician or consulting physician, a psychiatrist, a psychologist, or a pharmacist according to subdivisions 2 to 10, and does not include:

(1) making an initial diagnosis of a patient's terminal illness;

(2) informing a patient of the patient's medical diagnosis or prognosis;

(3) informing a patient concerning the provisions of this section, upon the patient's request; or

(4) referring a patient to another health care provider for aid in dying.

(b) Participation in any act described in this section by a patient, health care provider, or any other person shall be voluntary. Each health care provider shall individually and affirmatively determine whether to participate in the provision of medication to a qualified patient for aid in dying. A health care facility shall not require a health care provider to participate in the provision of medication to a qualified patient for aid in dying, but may prohibit such participation according to paragraph (d).

(c) If a health care provider or health care facility is unwilling to participate in the provision of medication to a qualified patient for aid in dying, the health care provider or health care facility shall transfer all relevant medical records to a health care provider or health care facility as requested by a qualified patient.

(d) A health care facility may adopt written policies prohibiting a health care provider associated with the health care facility from participating in the provision of medication to a patient for aid in dying, provided the facility provides written notice of the policy and any sanctions for violation of the policy to the health care provider. Notwithstanding the provisions of this paragraph or any policies adopted according to this paragraph, a qualified health care provider may:

(1) diagnose a patient with a terminal illness;

(2) inform a patient of the patient's medical prognosis;

(3) provide a patient with information concerning the provisions of this section, upon a patient's request;

(4) refer a patient to another health care facility or health care provider;

(5) transfer a patient's medical records to a health care provider or health care facility as requested by a patient; or

(6) participate in the provision of medication for aid in dying when the health care provider is acting outside the scope of the provider's employment or contract with a health care facility that prohibits participation in the provision of the medication.

Subd. 16. **Criminal act.** (a) Any person who without authorization of a patient wilfully alters or forges a request for aid in dying, as described in subdivisions 4 and 5, or

conceals or destroys a rescission of a request for aid in dying with the intent or effect of causing the patient's death, is guilty of attempted murder or murder.

(b) Any person who coerces or exerts undue influence on a patient to complete a request for aid in dying, as described in subdivisions 4 and 5, or coerces or exerts undue influence on a patient to destroy a rescission of the request with the intent or effect of causing the patient's death, is guilty of attempted murder or murder.

Subd. 17. **Aid in dying.** (a) Nothing in this section authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, assisting a suicide, or any other active euthanasia.

(b) Any action taken according to this section does not constitute causing or assisting another person to commit suicide.

(c) No report of a public agency may refer to the practice of obtaining and self-administering life-ending medication to end a qualified patient's life as "suicide" or "assisted suicide," and shall refer to the practice as "aid in dying."

Subd. 18. **Civil damages.** This section does not limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

Subd. 19. **Criminal prosecution.** Nothing in this section precludes criminal prosecution under any provision of law for conduct that is inconsistent with this section.