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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2152

03/07/2019 Authored by Freiberg, Loeffler, Edelson, Cantrell, Mann and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to health; establishing an end-of-life option for terminally ill adults;
1.3 imposing criminal penalties; proposing coding for new law in Minnesota Statutes,
1.4 chapter 145.

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

1.6 Section 1. [145.871] END-OF-LIFE OPTION.

1.7 Subdivision 1. Citation. This section may be cited as the "End-of-Life Options Act."

1.8 Subd. 2. Definitions. (a) For purposes of this section, the following terms have the
1.9 meanings given unless the context requires otherwise.

1.10 (b) "Adult" means an individual 18 years of age or older.

1.11 (c) "Attending health care provider" means a health care provider who has primary
1.12 responsibility for the patient's health care and treatment of the terminal illness, and who
1.13 provides medical care to patients with advanced and terminal illnesses in the normal course
1.14 of their medical practice. The attending health care provider's treatment may not be limited
1.15 to or primarily comprised of medical aid-in-dying.

1.16 (d) "Consulting health care provider" means a health care provider who is qualified by
1.17 specialty or experience to make a professional diagnosis and prognosis regarding an
1.18 individual's terminal illness(es).

1.19 (e) "Health care facility" or "facility" means a hospital, residential care home, nursing
1.20 home, rest home, and hospice.

2.1 (f) "Health care provider" or "provider" means a person who is licensed, certified,
2.2 registered or otherwise authorized or permitted by law to administer health care or prescribe
2.3 and dispense medication under the provider's scope of practice including:

2.4 (1) a doctor of medicine or a doctor of osteopathic medicine licensed under chapter 147
2.5 or prior to May 1, 1963, sections 148.11 to 148.16;

2.6 (2) an advanced practice registered nurse licensed under chapter 148 and certified by a
2.7 national nurse certification organization acceptable to the Board of Nursing to practice as
2.8 a clinical nurse specialist or nurse practitioner; and

2.9 (3) a pharmacist licensed under chapter 151.

2.10 (g) "Informed decision" means a decision by a terminally ill adult to request and obtain
2.11 a prescription for medication that the terminally ill adult may self-administer for a peaceful
2.12 death that is based on an understanding and acknowledgment of the relevant medical facts
2.13 and that is made after being fully informed by the attending health care provider of:

2.14 (1) the terminally ill adult's medical diagnosis and prognosis of six months or less;

2.15 (2) any feasible alternative, concurrent or additional treatment opportunities, including
2.16 but not limited to comfort care, palliative care, hospice care and pain control. Nothing in
2.17 this section will be construed to limit the information or counseling a health care provider
2.18 must provide to a patient in order to meet the medical standard of care and to obtain informed
2.19 consent for subsequent medical treatment;

2.20 (3) the potential risks associated with taking the medication to be prescribed for medical
2.21 aid-in-dying;

2.22 (4) the probable result of taking the medication to be prescribed for medical aid-in-dying;
2.23 and

2.24 (5) the choices available to the terminally ill adult that demonstrate the terminally ill
2.25 adult's self determination, including the possibility that the terminally ill adult may choose
2.26 not to fill the prescription for the medication, or may fill the prescription for the medication
2.27 but may decide not to self-administer the medication.

2.28 (h) "Licensed mental health care professional" means a psychiatrist, psychologist, or
2.29 clinical social worker licensed under the respective boards of practice.

2.30 (i) "Medical aid-in-dying" means the practice of evaluating an informed decision to
2.31 request medical aid-in-dying medication by eligible individuals and writing a prescription
2.32 for qualified individuals according to established standards of medical care.

3.1 (j) "Medically confirmed" means the consulting health care provider agrees with the
3.2 medical opinion of the attending health care provider after the consulting health care provider
3.3 evaluates the terminally ill adult and the terminally ill adult's relevant medical records.

3.4 (k) "Mental capacity" or "mentally capable" means in the opinion of the terminally ill
3.5 adult's attending health care provider and consulting health care provider, or licensed mental
3.6 health care professional if an opinion is requested under subdivision 11, the terminally ill
3.7 adult has the ability to make and communicate an informed decision to health care providers.

3.8 (l) "Prognosis of six months or less" means a prognosis resulting from a terminal illness
3.9 that will, within reasonable medical judgment, result in death within six months.

3.10 (m) "Qualified individual" means a terminally ill adult with a prognosis of six months
3.11 or less, who has the mental capacity to make an informed decision and has made an informed
3.12 decision to request medical aid-in-dying, and has satisfied the requirements of this section
3.13 in order to obtain a prescription for medical aid-in-dying medication to bring about a peaceful
3.14 death.

3.15 (n) "Self-administer" means an individual performing an affirmative, conscious, voluntary
3.16 act to take medication for medical aid-in-dying to bring about the terminally ill adult's own
3.17 peaceful death.

3.18 (o) "Terminal illness" means an incurable and irreversible illness that will, within
3.19 reasonable medical judgment, result in death.

3.20 Subd. 3. **Information to patients.** (a) Nothing in this section shall be construed to lessen
3.21 the requirements in section 144.651.

3.22 (b) A health care provider must provide sufficient information to terminally ill adults
3.23 regarding all available treatment options and alternatives, and the foreseeable risks and
3.24 benefits of each, so that the terminally ill adult may make an independent, informed, and
3.25 voluntary decision regarding end-of-life health care.

3.26 (c) Failure to inform a terminally ill adult who requests additional information about
3.27 available end-of-life treatments including medical aid-in-dying, or failing to refer the
3.28 terminally ill adult to another health care provider who can provide the information, shall
3.29 be considered a failure to obtain informed consent for subsequent medical treatment.

3.30 Subd. 4. **Standard of care.** (a) Health care providers who provide end-of-life services
3.31 covered under this section shall meet or exceed the standard of care of the provider's scope
3.32 of practice.

4.1 (b) If a health care provider is unable or unwilling to provide care related to medical
4.2 aid-in-dying for a qualified individual's request for medical aid-in-dying, nothing in this
4.3 section exempts a health care provider from meeting the medical standard of care under the
4.4 provider's scope of practice, including but not limited to accurately responding to questions,
4.5 obtaining informed consent, and timely transferring care of the qualified individual and any
4.6 related records to a new health care provider if the health care provider is unwilling to
4.7 provide the requested services.

4.8 **Subd. 5. Right to request medical aid-in-dying medication by qualified**
4.9 **individuals.** (a) A qualified individual may make a request to receive a prescription for
4.10 medical aid-in-dying medication if:

4.11 (1) the qualified individual's attending health care provider has determined the qualified
4.12 individual has a terminal illness with a prognosis of six months or less;

4.13 (2) the qualified individual's attending health care provider has determined the individual
4.14 has the mental capacity to make an informed decision; and

4.15 (3) the qualified individual has voluntarily expressed the wish to receive a prescription
4.16 for medical aid-in-dying medication.

4.17 (b) An individual adult shall not be considered a "qualified individual" under this section
4.18 solely because of age or disability.

4.19 (c) Request for medical aid-in-dying prescription must be made by the terminally ill
4.20 adult and may not be made by any other individual including the terminally ill adult's
4.21 qualified power of attorney, durable medical power of attorney, or by advanced health care
4.22 directive.

4.23 **Subd. 6. Request process.** (a) A terminally ill adult wishing to receive a prescription
4.24 for medical aid-in-dying medication under this section must make one oral request and one
4.25 written request to the attending health care provider.

4.26 (b) For terminally ill adults who may have difficulty with oral communication, note
4.27 taking, written materials, technology-assisted communication, or, if viable, lip reading and
4.28 communication through persons familiar with the terminally ill adult's manner of
4.29 communicating are acceptable.

4.30 (c) A written request for medical aid-in-dying medication must be in substantially the
4.31 following format, signed and dated, or attested to by the terminally ill adult seeking the
4.32 medical aid-in-dying medication.

4.33 **Request for Medication to End My Life in a Peaceful Manner**

5.1 I,, am an adult of sound mind. I have been diagnosed with
 5.2, which my attending health care provider has determined is a terminal
 5.3 illness. I have been fully informed of my diagnosis and prognosis of six months or less to
 5.4 live, the nature of the medical aid-in-dying medication to be prescribed, the potential
 5.5 associated risks, the expected result, and the feasible alternatives or additional treatment
 5.6 opportunities available to me, including comfort care, palliative care, hospice care, and pain
 5.7 control.

5.8 I request that my attending health care provider prescribe medical aid-in-dying medication
 5.9 that will end my life in a peaceful manner if I choose to take the medication, and I authorize
 5.10 my attending health care provider to contact a pharmacist to fill my prescription. I understand
 5.11 that I have the right to rescind this request at any time. I understand the seriousness of this
 5.12 request and I expect to die if I take the medical aid-in-dying medication prescribed.

5.13 I make this request voluntarily, without reservation, free from coercion or pressure, and
 5.14 I accept full responsibility for my actions.

5.15 Signed:

5.16 Dated:

5.17 Subd. 7. **Informed decision required.** (a) An individual adult with a terminal illness is
 5.18 not a qualified individual and may not receive a prescription for medical aid-in-dying
 5.19 medication unless the individual adult has made an informed decision as defined in
 5.20 subdivision 2.

5.21 (b) Immediately before writing a prescription for medical aid-in-dying medication, the
 5.22 attending health care provider must verify that the individual adult with a terminal illness
 5.23 is making an informed decision.

5.24 Subd. 8. **Right to rescind request; opportunity to rescind.** (a) At any time, a terminally
 5.25 ill adult may rescind a request for medical aid-in-dying medication without regard to the
 5.26 terminally ill adult's mental state being a factor.

5.27 (b) An attending health care provider must not write a prescription for medical
 5.28 aid-in-dying medication under this section unless the provider has offered the qualified
 5.29 individual an opportunity to rescind the request.

5.30 Subd. 9. **Attending health care provider responsibilities.** The attending health care
 5.31 provider shall:

5.32 (1) provide care that conforms with accepted medical standards and guidelines under
 5.33 the provider's scope of practice;

6.1 (2) make the initial determination of whether an individual adult requesting medical
6.2 aid-in-dying;

6.3 (i) has a terminal illness with a prognosis of six months or less;

6.4 (ii) is mentally capable; and

6.5 (iii) has made the request for medical aid-in-dying medication voluntarily;

6.6 (3) provide full disclosure to confirm that the terminally ill adult is making an informed
6.7 decision by discussing with the terminally ill adult:

6.8 (i) the terminally ill adult's medical diagnosis and prognosis of six months or less;

6.9 (ii) the potential risks associated with taking the medication to be prescribed for medical
6.10 aid-in-dying;

6.11 (iii) the probable result of taking the medication to be prescribed for medical aid-in-dying;

6.12 (iv) the choices available to the terminally ill adult, including the possibility that the
6.13 terminally ill adult may choose not to fill the prescription for the medication, or may fill
6.14 the prescription for the medication but may decide not to self-administer it; and

6.15 (v) any feasible alternatives, concurrent or additional treatment opportunities, including
6.16 but not limited to comfort care, palliative care, hospice care, and pain control;

6.17 (4) provide the terminally ill adult with a referral for any alternative, concurrent, or
6.18 additional treatment option as needed;

6.19 (5) confirm that the terminally ill adult's request does not arise from coercion or undue
6.20 influence by another person by discussing with the terminally ill adult, outside the presence
6.21 of other persons, except for an interpreter if necessary, whether the terminally ill adult is
6.22 feeling coerced or unduly influenced by another person;

6.23 (6) refer the terminally ill adult to a consulting health care provider for:

6.24 (i) medical confirmation of the terminally ill adult's diagnosis and prognosis;

6.25 (ii) determination of whether the terminally ill adult is mentally capable and is making
6.26 an informed decision; and

6.27 (iii) determination of whether the terminally ill adult is acting voluntarily;

6.28 (7) add the consulting health care provider's written determination to the terminally ill
6.29 adult's medical record;

7.1 (8) refer the terminally ill adult to a licensed mental health professional if the attending
7.2 health care provider believes the terminally ill adult may not be mentally capable of making
7.3 an informed decision, and add the mental health professional's written determination to the
7.4 terminally ill adult's medical record;

7.5 (9) counsel the terminally ill adult on the potential benefits of:

7.6 (i) notifying family of the terminally ill adult's decision to request and obtain medical
7.7 aid-in-dying medication as one end-of-life care option; and

7.8 (ii) having another person present when the terminally ill adult self-administers the
7.9 medical aid-in-dying medication to be prescribed;

7.10 (10) counsel the terminally ill adult on the importance of:

7.11 (i) safe-keeping and proper disposal of unused medical aid-in-dying medication according
7.12 to federal Food and Drug Administration guidelines, and state law, if applicable; and

7.13 (ii) not taking the medical aid-in-dying medication in a public place;

7.14 (11) inform the terminally ill adult that the request for medical aid-in-dying medication
7.15 may be rescinded at any time and in any manner;

7.16 (12) ensure that all appropriate steps are carried out under this section before writing a
7.17 prescription for medical aid-in-dying medication and either:

7.18 (i) dispense the medical aid-in-dying medication to the qualified individual, including
7.19 ancillary medications intended to minimize the terminally ill adult's discomfort, if the
7.20 attending health care provider has a current drug enforcement administration certificate and
7.21 complies with any applicable administrative rule; or

7.22 (ii) deliver the written prescription personally, by mail, or through an authorized electronic
7.23 transmission to a licensed pharmacist who will dispense the medical aid-in-dying medication
7.24 in person to the qualified individual, the attending health care provider, or to an individual
7.25 expressly designated by the qualified individual or, with a signature required on delivery,
7.26 by mail service or by messenger service; and

7.27 (13) document in the terminally ill adult's medical record the diagnosis and prognosis,
7.28 mental capability, date of the oral request and valid written request, and a notation that all
7.29 the requirements under this section have been completed including the medical aid-in-dying
7.30 medication and any ancillary medications prescribed.

8.1 Subd. 10. Consulting health care provider responsibilities. Before a terminally ill
 8.2 adult may receive a prescription for medical aid-in-dying medication, a consulting health
 8.3 care provider must:

8.4 (1) evaluate the terminally ill adult and all relevant medical records; and

8.5 (2) confirm in writing to the attending health care provider:

8.6 (i) that the terminally ill adult has a terminal illness and prognosis of six months or less;

8.7 (ii) that the terminally ill adult is mentally capable, or provide documentation that the
 8.8 consulting health care provider has referred the terminally ill adult for further evaluation
 8.9 according to subdivision 11;

8.10 (iii) that the terminally ill adult is making an informed decision; and

8.11 (iv) that the terminally ill adult is acting voluntarily.

8.12 Subd. 11. Terminally ill adult mentally capable; referral to mental health

8.13 professional. (a) If either the attending health care provider or the consulting health care
 8.14 provider believes the terminally ill adult may not be mentally capable of making an informed
 8.15 decision, the attending health care provider or consulting health care provider shall refer
 8.16 the terminally ill adult to a licensed mental health professional for determination of whether
 8.17 the terminally ill adult is mentally capable of making an informed decision.

8.18 (b) A licensed mental health professional who evaluates a terminally ill adult under this
 8.19 subdivision shall communicate in writing to the attending or consulting health care provider
 8.20 who requests the evaluation the mental health professional's conclusion about whether the
 8.21 terminally ill adult is mentally capable of making an informed decision.

8.22 (c) If the licensed mental health professional determines that the terminally ill adult is
 8.23 not currently mentally capable of making informed decisions, the terminally ill adult shall
 8.24 not be deemed a qualified individual under this section and the attending health care provider
 8.25 shall not prescribe medical aid-in-dying medication to the terminally ill adult.

8.26 Subd. 12. Use of interpreters. (a) An interpreter whose services are provided to a
 8.27 terminally ill adult requesting information or services under this section shall meet the
 8.28 standards of the National Council on Interpreting in Health Care or other standards deemed
 8.29 acceptable by the commissioner of health.

8.30 (b) An interpreter used according to this section must not be related to the qualified
 8.31 terminally ill adult by blood, marriage, registered domestic partnership, or adoption or be
 8.32 entitled to a portion of the terminally ill adult's estate upon death.

9.1 Subd. 13. **Death certificate.** (a) Unless otherwise prohibited by law, the attending health
9.2 care provider or the hospice medical director shall sign the death certificate of a terminally
9.3 ill adult who obtained and self-administered medical aid-in-dying medication.

9.4 (b) When a death has occurred by use of medical aid-in-dying medication, the manner
9.5 of death shall be listed as the underlying terminal illness and not as a suicide or homicide.

9.6 (c) When a death has occurred by use of medical aid-in-dying medication, this alone
9.7 does not constitute grounds for a post-mortem inquiry.

9.8 Subd. 14. **Safe disposal of unused medical aid-in-dying medications.** A person who
9.9 has custody or control of medical aid-in-dying medication dispensed under this section that
9.10 remains unused after the terminally ill adult's death shall dispose of the unused medical
9.11 aid-in-dying medication by lawful means according to state and federal guidelines including:

9.12 (1) returning the unused medical aid-in-dying medication to a federally approved
9.13 medication take-back program or mail-back program; or

9.14 (2) returning the unused medical aid-in-dying medication to the local or state police
9.15 departments who shall dispose of the medication by lawful means.

9.16 Subd. 15. **Reporting requirements; rulemaking.** (a) The commissioner of health shall:

9.17 (1) adopt rules to facilitate the collection of information regarding compliance with this
9.18 section; and

9.19 (2) review a sample of records maintained according to this section annually and generate
9.20 and make available to the public a statistical report of the information collected.

9.21 (b) Except as otherwise required by law, information collected under this section is not
9.22 for public data under chapter 13.

9.23 Subd. 16. **Effect on construction of wills, contracts, and statutes.** (a) Any provision
9.24 in a contract, will or other agreement, whether written or oral, that would affect whether a
9.25 terminally ill adult may make or rescind a request for medical aid-in-dying medication, is
9.26 not valid.

9.27 (b) Any obligation owing under a currently existing contract may not be conditioned on
9.28 or affected by a terminally ill adult's act of making or rescinding a request for medical
9.29 aid-in-dying medication.

9.30 Subd. 17. **Insurance or annuity policies.** (a) The sale, procurement, or issuance of a
9.31 life, health or accident insurance or annuity policy, or the rate charged for a policy may not

10.1 be conditioned on or affected by a terminally ill adult's act of making or rescinding a request
10.2 for medical aid-in-dying medication.

10.3 (b) A qualified terminally ill adult's act of self-administering medical aid-in-dying
10.4 medication shall not invalidate any part of a life, health, or accident insurance or annuity
10.5 policy.

10.6 (c) It is unlawful for an insurer to deny or alter health care benefits otherwise available
10.7 to a terminally ill adult based on the availability of medical aid-in-dying medication or
10.8 otherwise attempt to coerce a terminally ill adult to make a request for medical aid-in-dying
10.9 medication.

10.10 Subd. 18. Immunities for actions in good faith; prohibition against reprisals. (a) A
10.11 health care provider or health care facility is not subject to civil or criminal liability or
10.12 professional disciplinary action, including censure, suspension, loss of license, loss of
10.13 privileges, loss of membership, or any other penalty for providing medical care in good
10.14 faith compliance with this section, which includes being present when a qualified terminally
10.15 ill adult self-administers the prescribed medical aid-in-dying medication.

10.16 (b) A health care provider, health care facility or professional organization or association
10.17 must not subject a health care provider to censure, discipline, suspension, loss of license,
10.18 loss of privileges, loss of membership, or any other penalty for, in good faith, writing or
10.19 refusing to write a prescription for medication under this section or for providing scientific
10.20 and accurate information about medical aid-in-dying to a terminally ill adult.

10.21 (c) A health care provider is not subject to civil or criminal liability when, in compliance
10.22 with this section, the provider writes or dispenses a prescription for medical aid-in-dying
10.23 medication.

10.24 (d) A person is not subject to civil or criminal liability, when in compliance with this
10.25 section, the person is present when a qualified individual self-administers the prescribed
10.26 medical aid-in-dying medication.

10.27 (e) A request by a terminally ill adult for medical aid-in-dying medication or an attending
10.28 health care provider providing medical aid-in-dying medication under this section does not
10.29 solely constitute neglect or elder abuse for any purpose of law or provide the sole basis for
10.30 the appointment of a guardian or conservator.

10.31 (f) This section does not limit civil or criminal liability for negligence, recklessness, or
10.32 intentional misconduct.

11.1 Subd. 19. **No duty to provide medical aid-in-dying.** (a) A health care provider may
11.2 choose whether to provide medical aid-in-dying to a terminally ill adult according to this
11.3 section.

11.4 (b) If a health care provider is unable or unwilling to carry out a terminally ill adult's
11.5 request for medical aid-in-dying, the provider must make reasonable efforts to accommodate
11.6 the terminally ill adult's request including transferring care of the terminally ill adult to a
11.7 new health care provider.

11.8 Subd. 20. **Health care facility permissible prohibitions.** (a) A health care facility may
11.9 not prohibit a health care provider employed or under contract to the facility from providing
11.10 medical aid-in-dying for a qualified individual unless the qualified individual intends to
11.11 self-administer the medical aid-in-dying medication on the facility's premises.

11.12 (b) The health care facility must notify qualified individuals and health care providers
11.13 in writing if the facility intends to prohibit health care providers from prescribing medical
11.14 aid-in-dying medication for qualified individuals who intend to self-administer on the
11.15 facility's premises, and refer the qualified adult to a new health care facility without a
11.16 prohibition.

11.17 (c) If the qualified individual wishes to transfer care to a new health care facility, the
11.18 health care providers shall coordinate a timely transfer, including transfer of the qualified
11.19 individual's medical records.

11.20 (d) A health care facility that fails to provide advance notice in writing to qualified
11.21 individuals and health care providers must not enforce any policy against a health care
11.22 provider.

11.23 (e) A health care facility or health care provider must not prohibit a health care provider
11.24 from providing service consistent with the applicable standard of medical care under the
11.25 provider's scope of practice including:

11.26 (1) informing and providing information to qualified individuals about medical
11.27 aid-in-dying;

11.28 (2) being present when a qualified individual self-administers medical aid-in-dying
11.29 medication if requested by the qualified individual or the qualified individual's representative;
11.30 and

11.31 (3) providing a referral to another health care provider.

11.32 Subd. 21. **Liabilities and penalties.** (a) Purposely or knowingly altering or forging a
11.33 request for medical aid-in-dying medication to end an individual's life without the individual's

12.1 authorization or concealing or destroying a recission by a qualified individual of a request
12.2 for medical aid-in-dying medication is punishable as a felony if the act is done with the
12.3 intent or effect of causing the individual adult's death.

12.4 (b) Purposely or knowingly coercing or exerting undue influence on a terminally ill adult
12.5 to request medical aid-in-dying medication for the purpose of ending the terminally ill adult's
12.6 life or to destroy a recission of a request for medical aid-in-dying medication is punishable
12.7 as a felony. This includes individual adults who:

12.8 (1) are elderly;

12.9 (2) have a disability;

12.10 (3) have a psychiatric illness;

12.11 (4) have a chronic illness;

12.12 (5) are of gender, racial, or ethnic minorities;

12.13 (6) have a lower economic or educational level; or

12.14 (7) are uninsured.

12.15 (c) Nothing in this section limits further liability for civil damages resulting from
12.16 negligent conduct or intentional misconduct by any person.

12.17 (d) The penalties specified in this section do not preclude criminal penalties applicable
12.18 under other law for conduct inconsistent with this section.

12.19 Subd. 22. **Construction.** (a) Nothing in this section authorizes a health care provider or
12.20 any other person to end an individual's life by lethal injection, mercy killing, or euthanasia.

12.21 (b) Actions taken under this section do not, for any purpose, constitute suicide, assisted
12.22 suicide, euthanasia, mercy killing, homicide, or elder abuse under the law.

12.23 Subd. 23. **Severability.** If a part of this section is determined invalid, all valid parts that
12.24 are severable from the invalid part remain in effect. If a part of this section is determined
12.25 invalid in one of more of its applications, the remaining parts remain in effect in all valid
12.26 applications and are severable from the invalid applications.

12.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.