

1 AN ACT
2 RELATING TO HEALTH CARE; ENACTING THE ELIZABETH WHITEFIELD
3 END-OF-LIFE OPTIONS ACT; AMENDING A SECTION OF CHAPTER 30,
4 ARTICLE 2 NMSA 1978 TO ESTABLISH RIGHTS, PROCEDURES AND
5 PROTECTIONS RELATING TO MEDICAL AID IN DYING; ESTABLISHING
6 REPORTING REQUIREMENTS; REMOVING CRIMINAL LIABILITY FOR
7 PROVIDING ASSISTANCE PURSUANT TO THE ELIZABETH WHITEFIELD
8 END-OF-LIFE OPTIONS ACT.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. SHORT TITLE.--Sections 1 through 8 of this
12 act may be cited as the "End-of-Life Options Act" or the
13 "Elizabeth Whitefield End-of-Life Options Act".

14 SECTION 2. DEFINITIONS.--As used in the End-of-Life
15 Options Act:

16 A. "adult" means a resident of the state who is
17 eighteen years of age or older;

18 B. "capacity" means an individual's ability to
19 understand and appreciate health care options available to
20 that individual, including significant benefits and risks,
21 and to make and communicate an informed health care decision.

22 A determination of capacity shall be made only according to
23 professional standards of care and the provisions of Section
24 24-7A-11 NMSA 1978;

25 C. "health care entity" means an entity, other

1 than an individual, that is licensed to provide any form of
2 health care in the state, including a hospital, clinic,
3 hospice agency, home health agency, long-term care agency,
4 pharmacy, group medical practice, medical home or any similar
5 entity;

6 D. "health care provider" means any of the
7 following individuals authorized pursuant to the New Mexico
8 Drug, Device and Cosmetic Act to prescribe a medication to be
9 used in medical aid in dying:

10 (1) a physician licensed pursuant to the
11 Medical Practice Act;

12 (2) an osteopathic physician licensed
13 pursuant to the Osteopathic Medicine Act;

14 (3) a nurse licensed in advanced practice
15 pursuant to the Nursing Practice Act; or

16 (4) a physician assistant licensed pursuant
17 to the Physician Assistant Act or the Osteopathic Medicine
18 Act;

19 E. "medical aid in dying" means the medical
20 practice wherein a health care provider prescribes medication
21 to a qualified individual who may self-administer that
22 medication to bring about a peaceful death;

23 F. "mental health professional" means a state-
24 licensed psychiatrist, psychologist, master social worker,
25 psychiatric nurse practitioner or professional clinical

1 mental health counselor;

2 G. "prescribing health care provider" means a
3 health care provider who prescribes medical aid in dying
4 medication;

5 H. "qualified individual" means an individual who
6 has met the requirements of Section 3 of the End-of-Life
7 Options Act;

8 I. "self-administer" means taking an affirmative,
9 conscious, voluntary action to ingest a pharmaceutical
10 substance; and

11 J. "terminal illness" means a disease or condition
12 that is incurable and irreversible and that, in accordance
13 with reasonable medical judgment, will result in death within
14 six months.

15 SECTION 3. MEDICAL AID IN DYING--PRESCRIBING HEALTH
16 CARE PROVIDER DETERMINATION--FORM.--A prescribing health care
17 provider may provide a prescription for medical aid in dying
18 medication to an individual only after the prescribing health
19 care provider has:

20 A. determined that the individual has:

- 21 (1) capacity;
22 (2) a terminal illness;
23 (3) voluntarily made the request for medical
24 aid in dying; and
25 (4) the ability to self-administer the

1 medical aid in dying medication;

2 B. provided medical care to the individual in
3 accordance with accepted medical standards of care;

4 C. determined that the individual is making an
5 informed decision after discussing with the individual the:

6 (1) individual's medical diagnosis and
7 prognosis;

8 (2) potential risks associated with self-
9 administering the medical aid in dying medication that the
10 individual has requested the health care provider to
11 prescribe;

12 (3) probable result of self-administering
13 the medical aid in dying medication to be prescribed;

14 (4) individual's option of choosing to
15 obtain the medical aid in dying medication and then deciding
16 not to use it; and

17 (5) feasible alternative, concurrent or
18 additional treatment opportunities, including hospice care
19 and palliative care focused on relieving symptoms and
20 reducing suffering;

21 D. determined in good faith that the individual's
22 request does not arise from coercion or undue influence by
23 another person;

24 E. noted in the individual's health record the
25 prescribing health care provider's determination that the

1 individual qualifies to receive medical aid in dying;

2 F. confirmed in the individual's health record
3 that at least one physician or osteopathic physician licensed
4 pursuant to the Medical Practice Act or the Osteopathic
5 Medicine Act has determined, after conducting an appropriate
6 examination, that the individual has capacity, a terminal
7 illness and the ability to self-administer the medical aid in
8 dying medication. That physician may be the prescribing
9 health care provider pursuant to this section, the
10 individual's hospice health care provider or another
11 physician who meets the requirements of this subsection;

12 G. affirmed that the individual is:

13 (1) enrolled in a medicare-certified hospice
14 program; or

15 (2) eligible to receive medical aid in dying
16 after the prescribing health care provider has referred the
17 individual to a consulting health care provider, who has
18 experience with the underlying condition rendering the
19 qualified individual terminally ill, and the consulting
20 health care provider has:

21 (a) examined the individual;

22 (b) reviewed the individual's relevant
23 medical records; and

24 (c) confirmed, in writing, the
25 prescribing health care provider's prognosis that the

1 individual is suffering from a terminal illness; and

2 H. provided substantially the following form to
3 the individual and enters the form into the individual's
4 health record after the form has been completed with all of
5 the required signatures and initials:

6 "REQUEST FOR MEDICATION TO END MY LIFE IN A PEACEFUL MANNER

7 I, _____, am an
8 adult of sound mind.

9 I am suffering from a terminal illness, which is a
10 disease or condition that is incurable and irreversible and
11 that, according to reasonable medical judgment, will result
12 in my death within six months. My health care provider has
13 determined that the illness is in its terminal phase.

14 _____ (Patient Initials)

15 I have been fully informed of my diagnosis and
16 prognosis, the nature of the medical aid in dying medication
17 to be prescribed and the potential associated risks, the
18 expected result and the feasible alternative, concurrent or
19 additional treatment opportunities, including hospice care
20 and palliative care focused on relieving symptoms and
21 reducing suffering. _____ (Patient Initials)

22 I request that my health care provider prescribe
23 medication that will end my life in a peaceful manner if I
24 choose to self-administer the medication, and I authorize my
25 health care provider to contact a willing pharmacist to

1 fulfill this request. _____ (Patient Initials)

2 I understand that I have the right to rescind this
3 request at any time. _____ (Patient Initials)

4 I understand the full import of this request, and I
5 expect to die if I self-administer the medical aid in dying
6 medication prescribed. I further understand that although
7 most deaths occur within three hours, my death may take
8 longer. My health care provider has counseled me about this
9 possibility. _____ (Patient Initials)

10 I make this request voluntarily and without reservation.

11 Signed: _____

12 Date: _____ Time: _____

13 DECLARATION OF WITNESSES:

14 We declare that the person signing this request:

15 1. is personally known to us or has provided proof
16 of identity;

17 2. signed this request in our presence;

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

20 4. is not a patient for whom either of us is a
21 health care provider.

22 Witness 1:

Witness 2:

23 Signature: _____

24 Printed Name: _____

25 Relationship

1 to Patient: _____

2 Date: _____.

3 NOTE: No more than one witness shall be a relative by blood,
4 marriage or adoption of the person signing this request. No
5 more than one witness shall own, operate or be employed at a
6 health care facility where the person signing this request is
7 a patient or resident.".

8 SECTION 4. DETERMINING CAPACITY.--If an individual has
9 a recent history of a mental health disorder or an
10 intellectual disability that could cause impaired judgment
11 with regard to end-of-life medical decision making, or if, in
12 the opinion of the prescribing health care provider or
13 consulting health care provider, an individual currently has
14 a mental health disorder or an intellectual disability that
15 may cause impaired judgment with regard to end-of-life
16 medical decision making, the individual shall not be
17 determined to have capacity to make end-of-life decisions
18 until the:

19 A. health care provider refers the individual for
20 evaluation by a mental health professional with the training
21 and expertise to assess a person with such a disorder or
22 disability; and

23 B. mental health professional determines the
24 individual to have capacity to make end-of-life decisions
25 after evaluating the individual during one or more visits

1 with the individual.

2 **SECTION 5. WAITING PERIOD.**--A prescription for medical
3 aid in dying medication shall:

4 A. not be filled until forty-eight hours after the
5 prescription for medical aid in dying medication has been
6 written, unless the qualified individual's prescribing health
7 care provider has medically confirmed that the qualified
8 individual may, within reasonable medical judgment, die
9 before the expiration of the waiting period identified
10 herein, in which case, the prescription may be filled once
11 the prescribing health care provider affirms that all
12 requirements have been fulfilled pursuant to Section 3 of the
13 End-of-Life Options Act; and

14 B. indicate the date and time that the
15 prescription for medical aid in dying medication was written
16 and indicate the first allowable date and time when it may be
17 filled.

18 **SECTION 6. MEDICAL AID IN DYING--RIGHT TO KNOW.**--A
19 health care provider shall inform a terminally ill patient of
20 all reasonable options related to the patient's care that are
21 legally available to terminally ill patients that meet the
22 medical standards of care for end-of-life care.

23 **SECTION 7. IMMUNITIES--CONSCIENCE-BASED DECISIONS.**--

24 A. A person shall not be subject to criminal
25 liability, licensing sanctions or other professional

1 disciplinary action for:

2 (1) participating, or refusing to
3 participate, in medical aid in dying in good faith compliance
4 with the provisions of the End-of-Life Options Act; or

5 (2) being present when a qualified patient
6 self-administers the prescribed medical aid in dying
7 medication to end the qualified individual's life in
8 accordance with the provisions of the End-of-Life Options
9 Act.

10 B. A health care entity, professional organization
11 or association, health insurer, managed care organization or
12 health care provider shall not subject a person to censure,
13 discipline, suspension, loss or denial of license,
14 credential, privileges or membership or other penalty for
15 participating, or refusing to participate, in the provision
16 of medical aid in dying in good faith compliance with the
17 provisions of the End-of-Life Options Act.

18 C. No health care provider who objects for reasons
19 of conscience to participating in the provision of medical
20 aid in dying shall be required to participate in the
21 provision of medical aid in dying under any circumstance. If
22 a health care provider is unable or unwilling to carry out an
23 individual's request pursuant to the End-of-Life Options Act,
24 that health care provider shall so inform the individual and
25 refer the individual to a health care provider who is able

1 and willing to carry out the individual's request or to
2 another individual or entity to assist the requesting
3 individual in seeking medical aid in dying. If the health
4 care provider transfers the individual's care to a new health
5 care provider, the prior health care provider shall transfer,
6 upon request, a copy of the individual's relevant medical
7 records to the new health care provider.

8 D. A health care entity shall not forbid or
9 otherwise sanction a health care provider who provides
10 medical aid in dying in accordance with the End-of-Life
11 Options Act off the premises of the health care entity or
12 when the health care provider is not acting within the normal
13 course and scope of the health care provider's employment
14 with the health care entity.

15 E. A health care entity may sanction a health care
16 provider for participating in medical aid in dying on the
17 premises of the prohibiting health care entity only if the
18 health care entity has given written notice to the health
19 care provider of the prohibiting entity's written policy
20 forbidding participation in medical aid in dying and the
21 health care provider participates in medical aid in dying:

22 (1) on the premises of the health care
23 entity; or

24 (2) within the course and scope of the
25 health care provider's employment for the health care entity.

1 F. Nothing in this section shall be construed to
2 prevent:

3 (1) a health care provider from
4 participating in medical aid in dying while the health care
5 provider is acting outside the health care entity's premises
6 or outside the course and scope of the health care provider's
7 capacity as an employee; or

8 (2) an individual who seeks medical aid in
9 dying from contracting with the individual's prescribing
10 health care provider or consulting health care provider to
11 act outside the course and scope of the provider's
12 affiliation with the sanctioning health care entity.

13 G. A health care entity that imposes sanctions on
14 a health care provider pursuant to the End-of-Life Options
15 Act shall act reasonably, both substantively and
16 procedurally, and shall be neither arbitrary nor capricious
17 in its imposition of sanctions.

18 H. Participating in medical aid in dying shall not
19 be the basis for a report of unprofessional conduct.

20 I. A health care entity that prohibits medical aid
21 in dying shall accurately and clearly articulate this in an
22 appropriate location on any website maintained by the entity
23 and in any appropriate materials given to patients to whom
24 the health care entity provides health care in words to be
25 determined by the health care entity.

1 SECTION 8. PROHIBITED ACTS.--Nothing in the End-of-Life
2 Options Act shall be construed to authorize a physician or
3 any other person to end an individual's life by lethal
4 injection, mercy killing or euthanasia. Actions taken in
5 accordance with the End-of-Life Options Act shall not be
6 construed, for any purpose, to constitute suicide, assisted
7 suicide, euthanasia, mercy killing, homicide or adult abuse
8 under the law.

9 SECTION 9. A new section of the Public Health Act is
10 enacted to read:

11 "REPORTING--MEDICAL AID IN DYING.--

12 A. A health care provider who prescribes medical
13 aid in dying to a qualified individual in accordance with the
14 provisions of the End-of-Life Options Act shall provide, in
15 accordance with department rules, a report of that provider's
16 participation. The department shall adopt and promulgate
17 rules that establish the time frames and forms for reporting
18 pursuant to this section and shall limit the reporting of
19 data relating to qualified individuals who received
20 prescriptions for medical aid in dying medication to the
21 following:

- 22 (1) the qualified individual's age at death;
23 (2) the qualified individual's race and
24 ethnicity;
25 (3) the qualified individual's gender;

1 (4) whether the qualified individual was
2 enrolled in hospice at the time of death;

3 (5) the qualified individual's underlying
4 medical condition; and

5 (6) whether the qualified individual self-
6 administered the medical aid in dying medication and, if so,
7 the date that this occurred.

8 B. The department shall promulgate an annual
9 statistical report, containing aggregated data, on the
10 information collected pursuant to Subsection A of this
11 section on the total number of medical aid in dying
12 medication prescriptions written statewide and on the number
13 of health care providers who have issued prescriptions for
14 medical aid in dying medication during that year. Data
15 reported pursuant to this subsection shall not contain
16 individually identifiable health information and are exempt
17 from disclosure pursuant to the Inspection of Public Records
18 Act.

19 C. As used in this section:

20 (1) "health care provider" means an
21 individual authorized pursuant to the End-of-Life Options Act
22 to prescribe medical aid in dying;

23 (2) "medical aid in dying" means the medical
24 practice wherein a health care provider prescribes medication
25 to a qualified individual who may self-administer that

1 medication to end that individual's life in accordance with
2 the provisions of the End-of-Life Options Act; and

3 (3) "qualified individual" means an
4 individual who has met the requirements to receive medical
5 aid in dying pursuant to the provisions of the End-of-Life
6 Options Act."

7 SECTION 10. Section 30-2-4 NMSA 1978 (being Laws 1963,
8 Chapter 303, Section 2-5) is amended to read:

9 "30-2-4. ASSISTING SUICIDE.--

10 A. Assisting suicide consists of deliberately
11 aiding another in the taking of the person's own life, unless
12 the person aiding another in the taking of the person's own
13 life is a person acting in accordance with the provisions of
14 the End-of-Life Options Act.

15 B. A person who commits assisting suicide is
16 guilty of a fourth degree felony."

17 SECTION 11. SEVERABILITY.--If any part or application
18 of the End-of-Life Options Act is held invalid, the remainder
19 or its application to other situations or persons shall not be
20 affected.