SENATE BILL REPORT
ESHB 1141

As of February 18, 2022

Title: An act relating to increasing access to the provisions of the Washington death with dignity act.

Brief Description: Increasing access to the death with dignity act.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Rude, Macri, Stonier, Tharinger, Ormsby, Frame, Pollet, Goodman, Peterson, Thai, Ramel, Johnson, J., Bateman, Simmons, Fitzgibbon and Valdez).

Brief History: Passed House: 1/12/22, 58-37.
Committee Activity: Health & Long Term Care: 3/17/21, 3/26/21 [DP, DNP]; 2/18/22.

Brief Summary of Bill

- Allows advanced registered nurse practitioners, physician assistants, and osteopathic physician assistants to perform the duties of a physician under the Death with Dignity Act (act).
- Reduces the required 15-day waiting period between the first and second requests for medications under the act to 72 hours.
- Prohibits health care providers from contractually prohibiting an employee from participating in the act while outside of the scope of employment and not on the employing health care provider's premises.
- Requires hospitals to submit their policies regarding access to end-of-life care and the act to the Department of Health.
- Permits the medication dispensed under the act to be delivered or mailed to the patient.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: LeighBeth Merrick (786-7445)

Background: Washington's Death with Dignity Act. In 2008, voters approved initiative 1000 which established The Death with Dignity Act (act). The act allows terminally-ill adult Washington residents with six months or less to live to request medication they may self administer to end their life. The patient's attending physician is responsible for determining if the patient has a terminal condition. This determination must be confirmed by a consulting physician. If either physician determines the patient may have a behavioral health disorder that impairs the patient's judgment, the patient must be referred for counseling.

To receive the medication, the patient must first make an oral request to a physician, followed by a written request, followed by a second oral request. A 15-day waiting period is required between the time of the first oral request and the second request. At least 48 hours must pass between the patient's written request and writing the prescription. The patient has the option to rescind the request at any time. Once the request has been processed and fulfilled, the medication may be self-administered. Health care providers are not required to participate in the provisions of the act and may prohibit others from participating on their premises. Health care providers may sanction other health care providers for participating, unless the participation occurs outside of the course of employment or involves a provider with independent contractor status. A health care provider participating in good faith compliance with the act is not subject to civil or criminal liability, or professional disciplinary action. The act requires the Department of Health (DOH) to collect and report on certain information about participation in the act. According to the most recent report, in 2020, 340 individuals received the medication and 252 of these individuals died as a result.

Access to Care Policies. Hospitals must submit to DOH their policies on admissions, nondiscrimination, reproductive health care, and end-of-life care along with a form created by DOH in consultation with the Washington State Hospital Association and patient advocacy groups. The form must provide the public with specific information about which end-of-life care services are and are not performed at each hospital. Submitted policies and the form must be posted on the hospital's and DOH's website.

Summary of Bill: The health care providers authorized to perform the duties of the act are expanded to include advanced registered nurse practitioners, physician assistants, and osteopathic physician assistants. Patients may select which type of attending or consulting health care provider they prefer, as long as a physician or osteopathic physician serves in one of those roles. A patient's attending health care provider and consulting health care provider may not have a supervisory relationship with each other. The types of providers who may provide counseling to patients under the act are expanded to include independent clinical social workers, advanced social workers, mental health counselors, and psychiatric advanced registered nurse practitioners.

The 15-day waiting period between the first and second oral request for a prescription for medications is reduced to 72 hours. The 72-hour waiting period may be further reduced if the attending health care provider determines the patient is not expected to survive for 72 hours. The 48-hour waiting period between the patient signing the written request and writing the prescription is eliminated.

The prohibition on dispensing medications by mail or courier is eliminated. Medications may be delivered by personal delivery, messenger service, or the United States Postal Service or a similar private parcel delivery entity. The addressee or an authorized person must sign for the medications upon receipt. In addition to filing by mail, the prescribing health care provider may file prescribing information with DOH by fax or email.

An employing health care provider may not contractually prohibit an employee health care provider from participating in the act while outside of the employment relationship and not on the employing health care provider's premises, including property owned, leased, or under the control of the employing health care provider. The authority for a health care provider to participate in the act while outside of the scope of employment of an employing health care provider who prohibits participation in the act also requires the employee to be at a location not on the employer's premises, including property owned, leased, or under the control of the employing health care provider.

In addition to other access to care policies, hospitals must submit to DOH their policies regarding access to end-of-life care and the act. DOH must post the policies on its website. By November 1, 2021, DOH must develop a form for hospitals to use to provide the public with specific information about which end-of-life services are and are not generally available at each hospital.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony (Regular Session 2022): PRO: The bill strengthens basic access for people who are terminally ill and mentally competent while retaining core protections that are informed by a quarter century of national experience. People are struggling to access their right to death with dignity. The current process is slow, torturous and humiliating. The 15 day waiting period starts once the patient finds a provider, not when they receive their diagnosis, so in practice it ends up being much longer than 15 days. Reducing the waiting period would spare people weeks of suffering and provide relief to their families. It is important for all people to have choice in how they would like to deal with a terminal illness. This bill does not weaken the current safeguards since it is a patient

driven process. The patent needs to request it and ingest the medication. Nurse Practitioners provide primary care to patients who are at the end of their life. Patients are frustrated that their trusted providers are not able to participate in the law. They are forced to find a prescriber they don't know and then a second physician to authorize the prescription, which takes tremendous amount of time. Nurse Practitioners can prescribe medication and treat, and should be allowed to participate in this process with their patients. Encouraging people to plan for end of life brings peace and comfort. There has been no record of any kind of abuse where it has been used to hasten the death of a disabled person. Not passing this bill will do nothing to improve the health care for people with disabilities, but the bill does impact people's ability have choice at the end of their life.

CON: This bill radically changes what voters asked for in the initiative that authorized death with dignity. People with terminal diagnoses can outlive their prognosis and still have a quality life. Specialists can be wrong about diagnoses. Often times people request death with dignity out of fear, depression or not wanting to be a burden. These are all psychological issues that can be reversed. People need more than 72 hours to fully consider this choice and to seek second opinions. Allowing providers with lesser qualifications to prescribe the medication is against the patient's best interest. Eligible providers should receive training on how to advise patients about end of life options since most medical professionals don't have this skill. People are not receiving proper pain control, rehabilitation services or palliative care options which is why they suffer. There is already a lack of compliance with existing safeguards. In the last few years, there are many cases where the physician did not complete the necessary reporting. This bill removes safeguards and endangers people with disabilities. People with disabilities were not included in discussions about this bill. This bill goes against advancing disabilities rights.

Persons Testifying: PRO: Representative Skyler Rude, Prime Sponsor; Jessica Kaan, The Vancouver Clinic; Karen Beisner; Jennifer Parrish Taylor; Darrell Owens, UW Medicine Supportive Care; Dick Gibson; Judy Kinney, End of Life WA.

CON: Richard Doerflinger; Sharon Quick; Conrad Reynoldson, Washington Civil & Disability Advocate; Ronita Boult, Caring With Compassion Community; Darya Farivar, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: PRO: Curtis Eschels; Kim Callinan, Compassion & Choices Action Network; Dan Diaz, TheBrittanyFund.org; Penny Smith; Carollynn Zimmers, NA; bob free; Kurt Lutterman; Cindy Nover; Sallie Shawl.

CON: robert wardell, self adovates; David Lucas; Ramona Hattendorf, The Arc of King County; Marsha Cutting; Rachael Johnson; Sean Graham, WA State Medical Assn; Stephanie Packer; Robert Wardell; k. t..