
SENATE BILL 5654

State of Washington

55th Legislature

1997 Regular Session

By Senators Thibaudeau, Kline, Prince and Kohl

Read first time 02/05/97. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to recognizing and regulating the right of mentally
2 competent terminally ill adults voluntarily to request and receive
3 physician aid in dying; amending RCW 70.122.100 and 9A.36.060; adding
4 a new chapter to Title 70 RCW; creating a new section; and prescribing
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and
8 cited as the "terminally ill patient act of 1997."

9 NEW SECTION. **Sec. 2.** LEGISLATIVE FINDINGS. The legislature finds
10 that the liberty interest protected by the Fourteenth Amendment of the
11 United States Constitution and by Article III of the Constitution of
12 the state of Washington includes the freedom to make choices according
13 to one's individual conscience about those matters that are essential
14 to personal autonomy and basic human dignity. There is no more
15 profoundly personal decision, nor one that is closer to the heart of
16 personal liberty, than the choice that a terminally ill person makes to
17 end his or her suffering and to hasten an inevitable death.

1 The legislature further finds that the prolongation of suffering in
2 the process of an inevitable death serves no state interest that
3 outweighs a patient's personal right in seeking his or her physician's
4 aid in dying, nor has the state of Washington an interest in preventing
5 licensed physicians from offering such assistance.

6 The legislature further finds that physician aid in dying must be
7 a completely voluntary and informed act for any person receiving or
8 providing aid in dying. Accordingly, no one is required to take
9 advantage of this legal right or to provide or participate in aid in
10 dying if he or she chooses not to.

11 The legislature further finds that while a patient's right to
12 choose physician aid in dying is constitutionally protected, other
13 alternatives, such as palliative care, hospice care, home care, and
14 counseling, may first be suggested to the patient.

15 The legislature hereby declares that a competent terminally ill
16 adult has the right to make a voluntary, revocable, recorded request
17 for his or her physician to prescribe or provide medication or a
18 medical device that, if self-administered by the patient, will, in a
19 painless, humane, and dignified manner, shorten the process of dying.

20 NEW SECTION. **Sec. 3.** DEFINITIONS. Unless the context clearly
21 requires otherwise, the definitions in this section apply throughout
22 this chapter.

23 (1) "Aid in dying" means assistance by a qualified patient's
24 attending physician in the form of prescription for or provision of
25 medication or a medical device that will, if self-administered by the
26 patient, end the suffering and allow the patient to die peacefully, in
27 a painless, humane, and dignified manner. Aid in dying must be
28 voluntarily requested by the qualified patient.

29 (2) "Attending physician" means a physician who treats dying
30 patients in the ordinary course of practice and is selected by, or
31 assigned to, the qualified patient with primary responsibility for the
32 treatment and care of the qualified patient, and:

33 (a) Is not related to the qualified patient by blood, marriage, or
34 adoption;

35 (b) Is not entitled to any portion of the estate of the qualified
36 patient upon his or her death by operation of then existing law or
37 under any then existing will or codicil of the qualified patient;

1 (c) Has no creditor's claim against the qualified patient, outside
2 of a claim for professional services rendered to the qualified patient,
3 nor anticipates making such a claim against any portion of the estate
4 of the qualified patient upon his or her death.

5 (3) "Consulting specialist" means a physician who is qualified by
6 specialty or experience in making a professional diagnosis and
7 prognosis of the patient's particular condition, and who:

8 (a) Is not related to the qualified patient by blood, marriage, or
9 adoption;

10 (b) Is not entitled to any portion of the estate of the qualified
11 patient upon his or her death by operation of then existing law or
12 under any then existing will or codicil of the qualified patient;

13 (c) Has no creditor's claim against the qualified patient, outside
14 of a claim for professional services rendered to the qualified patient,
15 nor anticipates making such a claim against any portion of the estate
16 of the qualified patient upon his or her death; and

17 (d) Is not a partner or shareholder in the same medical practice as
18 the attending physician, not including a health maintenance
19 organization.

20 (4) "Health care facility" means a facility or agency licensed,
21 certified, or otherwise authorized by the state of Washington to
22 administer health care in the ordinary course of business.

23 (5) "Physician" means a person licensed under chapter 18.71 or
24 18.57 RCW.

25 (6) "Qualified patient" means a mentally competent adult eighteen
26 years of age or older who:

27 (a) Has been diagnosed and certified in writing by an attending
28 physician and a consulting specialist to be afflicted with a terminal
29 condition; and

30 (b) Has voluntarily executed a revocable recorded request for aid
31 in dying as defined in this section.

32 (7) "Recorded request" means a voluntary, revocable written or
33 video tape recorded statement meeting the requirements of section 4 of
34 this act, and in substantially the same form as set forth in section 22
35 of this act if the recorded request is in writing.

36 (8) "Terminal condition" means an incurable and irreversible
37 condition caused by injury, disease, or illness, that, within
38 reasonable medical judgment, will cause death within a reasonable
39 period of time in accordance with accepted medical standards, and where

1 the application of life-sustaining treatment serves only to prolong the
2 process of dying.

3 NEW SECTION. **Sec. 4.** WITNESSED RECORDED REQUEST FOR AID IN DYING.

4 (1) A mentally competent adult eighteen years of age or older may
5 voluntarily execute a revocable recorded request for aid in dying.

6 (2) No person other than the qualified patient may request aid in
7 dying for the qualified patient.

8 (3) A request for aid in dying must be repeated without self-
9 contradiction by the patient on two separate occasions at least
10 seventy-two hours apart, the second of which must constitute the
11 recorded request and must comply with all requirements of this section.

12 (4) The recorded request must be in writing or recorded on video
13 tape. A written recorded request shall be signed and dated by the
14 qualified patient, or by a person designated by the qualified patient
15 to sign if the qualified patient is unable to sign.

16 (5) The signing or video tape recording of the request shall be
17 witnessed by two other adults who, at the time of witnessing, meet the
18 following requirements:

19 (a) Are not related to the qualified patient by blood, marriage, or
20 adoption;

21 (b) Are not entitled to any portion of the estate of the qualified
22 patient upon his or her death by operation of law in effect at the time
23 of witnessing or under any will or codicil in effect at the time of
24 witnessing of the qualified patient;

25 (c) Have no creditor's claim against the qualified patient, nor
26 anticipate making such a claim against any portion of the estate of the
27 qualified patient upon his or her death;

28 (d) Are not the attending physician or an employee of the attending
29 physician.

30 (6) A completed and witnessed recorded request shall be delivered
31 to the qualified patient's attending physician, who shall file the
32 recorded request in the qualified patient's medical records. If the
33 qualified patient is an inpatient at a health care facility, a copy of
34 the recorded request shall also be delivered to the health care
35 facility, where it shall become a part of the qualified patient's
36 permanent record.

37 (7) In the event of conflict between the qualified patient's
38 recorded request and the qualified patient's lawful attorney-in-fact

1 for health care or the qualified patient's lawful health care
2 surrogate, the qualified patient's recorded request shall prevail.

3 NEW SECTION. **Sec. 5. EXAMINATION BY TWO PHYSICIANS.** (1) An
4 attending physician who receives a recorded request from a qualified
5 patient shall make a personal examination of the qualified patient,
6 including an evaluation of the patient's mental competence, assuring
7 that the request for aid in dying is not the result of impaired
8 judgment or mental illness, and a review of the qualified patient's
9 medical records, and shall apply independent reasonable medical
10 judgment as to whether the qualified patient has a terminal condition
11 as defined in section 3 of this act.

12 (2) The attending physician shall engage in a consultation with the
13 qualified patient for the purpose of:

14 (a) Explaining the qualified patient's medical diagnosis and
15 prognosis;

16 (b) Helping the qualified patient to understand the prognosis,
17 including any reasonable possibility for improvement;

18 (c) Reviewing the feasible alternatives to aid in dying, including
19 available methods of pain control, hospice care, home care, and
20 counseling and the possible effects of such alternatives on the
21 qualified patient; and

22 (d) Describing the nature, risks, and probable result of aid in
23 dying.

24 (3) After complying with section 5(1) and (2) of this act, the
25 attending physician shall arrange for an examination of the qualified
26 patient by a consulting specialist selected by the attending physician
27 or by the qualified patient.

28 (4) The consulting specialist shall make a personal examination of
29 the qualified patient, including an evaluation of the patient's mental
30 competence, assuring that the request for aid in dying is not the
31 result of impaired judgment or mental illness, and a review of the
32 qualified patient's medical records, and shall apply independent
33 reasonable medical judgment as to whether the qualified patient has a
34 terminal condition as defined in section 3 of this act.

35 (5) The consulting specialist shall engage in a consultation with
36 the qualified patient for the purpose of:

37 (a) Explaining the qualified patient's medical diagnosis and
38 prognosis;

1 (b) Helping the qualified patient to understand the prognosis,
2 including any reasonable possibility for improvement;

3 (c) Reviewing the feasible alternatives to aid in dying, including
4 available methods of pain control, hospice care, home care, and
5 counseling and the effects of such methods on the qualified patient;
6 and

7 (d) Describing the nature, risks, and probable result of aid in
8 dying.

9 (6) A consulting specialist shall certify in writing his or her
10 findings to the attending physician.

11 (7) If the attending physician and consulting specialist both find
12 that the qualified patient suffers from a terminal condition, the
13 attending physician may provide aid in dying to the qualified patient.

14 (8) All reasonable pain control techniques must have been offered
15 to the qualified patient and the qualified patient must nevertheless
16 have elected aid in dying before any aid in dying is provided.

17 NEW SECTION. **Sec. 6.** COMPLIANCE WITH RECORDED REQUEST--REBUTTABLE
18 PRESUMPTION. (1) Before providing aid in dying to a qualified patient,
19 the attending physician shall:

20 (a) Review thoroughly the qualified patient's recorded request and
21 medical record;

22 (b) Take reasonable steps to ensure that the requirements of this
23 chapter have been met; and

24 (c) Determine that the recorded request is in accord with the
25 consistently expressed desires of the patient, as personally expressed
26 by the patient to the attending physician.

27 (2) Absent knowledge to the contrary, there is a rebuttable
28 presumption that the recorded request complies with this chapter and is
29 valid.

30 NEW SECTION. **Sec. 7.** PROVISION OF AID IN DYING BY PHYSICIAN ONLY.
31 Only a physician may provide aid in dying, which shall not be
32 delegated.

33 NEW SECTION. **Sec. 8.** REVOCATION. (1) A recorded request may be
34 revoked at any time by the qualified patient, without regard to his or
35 her mental state or competency, by any of the following methods:

1 (a) By being canceled, defaced, obliterated, burned, torn, or
2 otherwise destroyed by or at the direction of the qualified patient
3 with the intent to revoke the recorded request.

4 (b) By a written revocation by the qualified patient expressing his
5 or her intent to revoke the recorded request, signed and dated by the
6 qualified patient. If the qualified patient is in a health care
7 facility and under the care and management of a physician, the
8 physician shall record in the patient's medical record the time and
9 date when he or she received notification of the written revocation.

10 (c) By oral expression or assertive conduct by the qualified
11 patient of the patient's intent to revoke the recorded request. The
12 attending physician shall confirm with the patient that the patient
13 wishes to revoke and the physician shall record in the patient's
14 medical record the time, date, and place of the revocation.

15 (2) No one but the qualified patient may revoke the qualified
16 patient's recorded request for aid in dying.

17 (3) There shall be no criminal, civil, or administrative liability
18 on the part of any person, firm, or organization for following a
19 recorded request that has been revoked unless that person, firm, or
20 organization had actual knowledge, or should reasonably have had
21 knowledge, of the revocation.

22 NEW SECTION. **Sec. 9.** TERM OF RECORDED REQUEST. A recorded
23 request is effective unless revoked in the manner prescribed in section
24 8 of this act. This chapter shall not prevent a qualified patient from
25 reexecuting a recorded request at any time in accordance with section
26 4 of this act.

27 NEW SECTION. **Sec. 10.** NO COMPULSION. (1) A physician or health
28 care professional is not required to provide or participate in aid in
29 dying if he or she is opposed.

30 (2) A privately owned health care facility is not required to
31 permit aid in dying in that facility.

32 NEW SECTION. **Sec. 11.** TRANSFER OF PATIENT. (1) If a physician
33 declines to provide or a health care facility declines to participate
34 in aid in dying to a qualified patient, the physician or health care
35 facility shall assist the patient in transferring his or her care, as
36 soon as reasonably possible, to another physician or health care

1 facility to enable the patient to receive aid in dying. A copy of the
2 patient's relevant medical records shall be transferred to the new
3 physician or health care facility.

4 (2) A physician or health care facility that does not comply with
5 a valid recorded request is not subject to civil or criminal liability
6 unless the physician or health care facility unreasonably delays or
7 willfully obstructs the transfer of a patient upon the patient's
8 request for such a transfer.

9 NEW SECTION. **Sec. 12.** FEES. Fees set by physicians or health
10 care facilities for providing aid in dying must be fair and reasonable.

11 NEW SECTION. **Sec. 13.** FAMILY NOTIFICATION. A patient requesting
12 aid in dying is encouraged to notify next of kin of the request. A
13 patient who declines or cannot supply family details may not, for that
14 reason, be denied rights under this chapter.

15 NEW SECTION. **Sec. 14.** PROTECTION OF HEALTH CARE PROFESSIONALS.

16 (1)(a) A physician, health care professional, health care facility,
17 employee of a health care facility, or licensed pharmacist, who, acting
18 in good-faith compliance with the requirements of this chapter,
19 participates in, or is present at, aid in dying at the voluntary
20 recorded request of a qualified patient is not subject to civil,
21 criminal, or administrative liability for participating in or being
22 present at aid in dying.

23 (b) A health care facility is not barred under this section from
24 disciplining an employee who acted contrary to the written policy of
25 the health care facility and in furtherance of a patient's voluntary
26 request.

27 (2) No physician, or licensed health care professional acting under
28 the direction of a physician, who acts in good-faith compliance with
29 the requirements of this chapter, shall be liable for professional
30 misconduct or disciplinary action solely because of his or her
31 participation in aid in dying.

32 NEW SECTION. **Sec. 15.** INSURANCE. (1) No insurer doing business
33 in the state of Washington shall refuse to insure, cancel, refuse to
34 renew, reassess the risk of an insured, or raise premiums on the basis
35 of whether or not the insured has considered or completed a recorded

1 request. No insurer may require or request the insured to disclose
2 whether he or she has executed a recorded request.

3 (2) The making of a recorded request pursuant to section 4 of this
4 act does not restrict, inhibit, or impair in any manner the sale,
5 procurement, issuance or rates of any policy of life, health, or
6 disability insurance, nor shall it affect in any way the terms of an
7 existing policy of life, health, or disability insurance. No policy of
8 life, health, or disability insurance may be legally impaired or
9 invalidated in any manner by the provision of aid in dying to an
10 insured qualified patient.

11 (3) A physician, health care facility, insurer, self-insured
12 employee benefit plan, or nonprofit hospital service plan may not
13 require any person to execute or prohibit any person from executing a
14 recorded request as a condition for receiving insurance coverage or
15 health care services. Violation of this subsection is a misdemeanor.

16 (4) No life insurer doing business in the state of Washington may
17 refuse to pay sums due upon the death of an insured because the insured
18 received aid in dying in accordance with this chapter.

19 (5) No insurer doing business in the state of Washington may
20 exclude from coverage any fair and reasonable fees charged for aid in
21 dying.

22 (6) Nothing in this section may be construed to change existing law
23 regarding the availability of insurance coverage to a person deemed to
24 have a preexisting condition.

25 NEW SECTION. **Sec. 16. UNLAWFUL ACTS.** (1) Any person who unduly
26 influences another to execute a recorded request, including through
27 persuasion that the patient is a financial, emotional or other burden
28 to his or her family, other persons, or the state, is guilty of a
29 misdemeanor; or, if death occurs as a result of such undue influence,
30 is guilty of a felony punishable according to the laws of this state.

31 (2) Any person who fraudulently induces another to execute a
32 recorded request is guilty of a misdemeanor; or, if death occurs as a
33 result of such fraud, is guilty of a felony punishable according to the
34 laws of this state.

35 (3) Any person who willfully thwarts, conceals, cancels, defaces,
36 obliterates, or damages the recorded request of another without that
37 qualified patient's express consent is guilty of a misdemeanor.

1 (4) Any person who falsifies or forges the recorded request of
2 another, or willfully conceals or withholds personal knowledge of a
3 revocation as provided in section 8 of this act, with the intent to
4 hasten death contrary to the wishes of the qualified patient, and
5 thereby directly causes hastening of death, is guilty of the crime of
6 murder and shall be punished according to the laws of this state.

7 (5) Nothing in this chapter may be construed to condone, authorize,
8 or approve the deliberate ending of a life without a qualified
9 patient's documented and witnessed request.

10 NEW SECTION. **Sec. 17.** OTHER RIGHTS. (1) Nothing in this chapter
11 may impair or supersede any right that any person may have to seek
12 judicial redress for any violations of this chapter.

13 (2) Nothing in this chapter may impair or supersede any right or
14 legal responsibility that any person may have regarding the withholding
15 or withdrawal of life-sustaining procedures in any lawful manner.

16 (3) Nothing in this chapter may impair or supersede any right or
17 legal responsibility that any person may have as a result of a validly
18 executed durable power of attorney.

19 NEW SECTION. **Sec. 18.** REPORTING AND REGULATION. (1) The state
20 department of health shall adopt rules to govern the provision of aid
21 in dying in accordance with this chapter, including rules specifying
22 detailed recordkeeping and reporting requirements for physicians,
23 health care professionals, and health care facilities that participate
24 in aid in dying.

25 (2) The state department of health shall compile and publish an
26 annual report of aid in dying statistics for the state of Washington.
27 In all cases, the identity of qualified patients and any participating
28 physicians, health care professionals, or facilities may not be
29 publicly reported and are exempt from the public disclosure
30 requirements of chapter 42.17 RCW.

31 (3) Advertising of aid in dying services is subject to regulation
32 by the state of Washington.

33 NEW SECTION. **Sec. 19.** AID IN DYING CLINICS. Medical facilities
34 for the sole purpose of aid in dying are not permitted in this state.

1 NEW SECTION. **Sec. 20.** RECOGNITION OF REQUEST EXECUTED IN ANOTHER
2 STATE. A recorded request that has been executed in another state in
3 compliance with the law of that state and that substantially complies
4 with section 4 of this act is deemed valid for the purpose of this
5 chapter.

6 NEW SECTION. **Sec. 21.** FORM OF RECORDED REQUEST. A written
7 recorded request under this chapter must be in substantially the
8 following form:

9 Voluntary Request For A Prescription For Or Delivery Of
10 Medication Or A Medical Device That When Self-Administered Will
11 Enable Me To End My Suffering And To Die Peacefully, In A
12 Painless, Humane, And Dignified Manner.

13 This recorded request is made on 19. . . I,
14 , being a mentally competent adult eighteen
15 years of age or older, do voluntarily make known my desire that my
16 suffering be ended so that I can die peacefully, in a painless, humane,
17 and dignified manner with the aid of prescribed medication or a medical
18 device that I will self-administer. I understand that I have a
19 condition that qualifies me for assistance under the Terminal Patient
20 Act, as certified by two physicians, and I ask my attending physician
21 to prescribe or deliver medication or a medical device appropriate for
22 this purpose. I trust and hope that he or she will comply. If he or
23 she declines, which is his or her right, then I urge that he or she
24 assist in locating a colleague who will comply.

25 Determining the time and place of my death shall be at my sole
26 discretion. The manner of my death shall be determined jointly by my
27 attending physician and myself.

28 This recorded request shall remain valid until revoked by me and
29 only me. I may revoke this recorded request at any time.

30 I recognize that a physician's judgment is not always certain, and
31 that medical science continues to make progress in extending life, but
32 in spite of these facts, I nevertheless wish aid in dying rather than
33 letting my condition take its natural course.

34 It is solely my option, and not my physician's, to inform my family
35 of my intentions.

1 I have given full consideration to and understand the full import
2 of this recorded request. I accept the moral and legal responsibility
3 for receiving aid in dying.

4 Signed: (Name)
5 City and State of Residence

6 NOTICE - This recorded request is not valid unless it is signed by two
7 qualified witnesses who are present when you sign or acknowledge your
8 signature. The witnesses must not be related to you by blood,
9 marriage, or adoption; they must not be entitled to any part of your
10 estate, or, at the time of execution of the recorded request, have any
11 claim against any portion of your estate; and they must not include:
12 Your attending physician or an employee of your attending physician.

13 If you have attached any additional pages to this form, you must
14 sign and date each of the additional pages at the same time you date
15 and sign this recorded request.

16 STATEMENT OF WITNESSES
17 TO VOLUNTARY RECORDED REQUEST TO PHYSICIANS

18 I declare under penalty of perjury under the laws of the state of
19 Washington that the person who signed or acknowledged this document is
20 personally known to me (or proved to me on the basis of satisfactory
21 evidence to be the qualified patient of this recorded request); that he
22 or she signed or acknowledged this recorded request in my presence;
23 that he or she appears to be of sound mind and under no duress, fraud,
24 or undue influence; that I am not the attending physician or an
25 employee of the attending physician.

26 I further declare under penalty of perjury under the laws of the
27 state of Washington that I am not related to the qualified patient by
28 blood, marriage, or adoption, and, to the best of my knowledge, I am
29 not entitled to any part of the estate of the qualified patient upon
30 the death of the qualified patient under a will now existing or by
31 operation of law, and have no claim nor anticipate making a claim
32 against any portion of the estate of the qualified patient upon his or
33 her death.

34 Dated:
35 Witness's Signature:
36 Print Name:
37 Residence Address:

1 Dated:
2 Witness's Signature:
3 Print Name:
4 Residence Address:

5 NEW SECTION. **Sec. 22.** ASSISTANCE TO SUICIDE OUTSIDE OF PROVISIONS
6 OF THIS ACT. (1) A person who has knowledge that another person
7 intends to commit or attempt to commit suicide and who intentionally
8 does either of the following without acting in good-faith compliance
9 with the provisions of this chapter is guilty of promoting a suicide
10 attempt, a class C felony under RCW 9A.36.060:

11 (a) Provides the physical means by which the other person attempts
12 or commits suicide;

13 (b) Participates in a physical act by which the other person
14 attempts or commits suicide.

15 (2) This section does not apply to withholding or withdrawing
16 medical treatment.

17 (3) This section does not apply to prescribing, dispensing, or
18 administering medications or procedures if the intent is to relieve
19 pain or discomfort and not to cause death, even if the medication or
20 procedure may hasten or increase the risk of death.

21 **Sec. 23.** RCW 70.122.100 and 1992 c 98 s 10 are each amended to
22 read as follows:

23 MERCY KILLING OR ASSISTED SUICIDE NOT AUTHORIZED. Nothing in this
24 chapter shall be construed to condone, authorize, or approve mercy
25 killing or (~~(physician)~~) assisted suicide as defined in RCW 9A.36.060,
26 or to permit any affirmative or deliberate act or omission to end life
27 other than to permit the natural process of dying, or to permit
28 physician aid in dying other than under the conditions specified in
29 sections 1 through 22 of this act.

30 **Sec. 24.** RCW 9A.36.060 and 1975 1st ex.s. c 260 s 9A.36.060 are
31 each amended to read as follows:

32 PROMOTING A SUICIDE ATTEMPT. (1) A person is guilty of promoting
33 a suicide attempt when he or she knowingly causes or aids another
34 person to attempt suicide, except that a licensed physician providing
35 aid in dying at the voluntary, revocable, recorded request of an adult
36 patient with a terminal condition and in compliance with sections 1

1 through 22 of this act is not liable under this section for promoting
2 suicide.

3 (2) Promoting a suicide attempt is a class C felony.

4 NEW SECTION. Sec. 25. CODIFICATION. Sections 1 through 22 of
5 this act constitute a new chapter in Title 70 RCW.

6 NEW SECTION. Sec. 26. CAPTIONS NOT LAW. Captions as used in this
7 act constitute no part of the law.

8 NEW SECTION. Sec. 27. SEVERABILITY. If any provision of this act
9 or its application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

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