HOUSE BILL REPORT
ESSB 5179

As Reported by House Committee On:
Health Care & Wellness

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

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

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Pedersen, King, Cleveland, Dhingra, Frame, Hunt, Keiser, Kuderer, Liias, Lovelett, Lovick, Mullet, Nobles, Robinson, Saldaña, Stanford, Valdez, Van De Wege, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Health Care & Wellness: 3/6/23, 3/10/23 [DP].

Brief Summary of Engrossed Substitute Bill

- Expands the health care providers authorized to perform the duties of the Death with Dignity Act (Act) to include advanced registered nurse practitioners and physician assistants.
- Reduces the required 15-day waiting period between the first and second oral requests for medications to seven days and eliminates the 48-hour waiting period for the written request.
- Permits medications dispensed under the Act to be delivered or mailed.
- 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 and hospices to submit their policies regarding access to end-of-life care and the Act to the Department of Health.

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.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 10 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Orwall, Simmons, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 7 members: Representatives Schmick, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Barnard, Graham, Harris, Maycumber and Mosbrucker.

Staff: Ingrid Lewis (786-7293).

Background:

Death with Dignity Act.
The Death with Dignity Act (Act) allows a qualified patient with a terminal illness with six months or less to live to request medication that the patient may self-administer to end his or her life. A qualified patient must meet the following requirements:

- be a competent adult and a resident of Washington;
- the attending physician and a consulting physician have determined that the patient suffers from a terminal disease and the patient has voluntarily expressed the wish to die;
- the patient has made a request for medication on a form provided in statute; and
- the form is signed and dated by the patient and at least two witnesses who attest to their belief that the patient is competent, acting voluntarily, and not being coerced to sign the request.

The health care providers authorized to perform the duties of the Act are physicians or osteopathic physicians. The patient's attending physician is responsible for determining that the patient has a terminal condition, is competent, is making an informed decision, and is voluntarily making the request. These determinations must be confirmed by a consulting physician. If either physician determines that the patient may have a psychiatric or psychological disorder or depression that impairs the patient's judgment, the patient must be referred for counseling with a psychiatrist or psychologist.

Under the Act, to receive the medication to end his or her life, the patient must make an oral request and a written request to an attending physician, followed by a subsequent second oral request. A waiting period of 15 days 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 the writing of the prescription. The patient can rescind the request at any time.

The attending physician must deliver the prescription for the medication to a pharmacist either personally or by mail or fax. A pharmacy is prohibited from dispensing medication by mail or courier.

The Act requires the Department of Health (DOH) to collect and report on certain information about participation in the Act.

Health care providers are not required to participate in the provisions of the Act, and health care providers 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. Physicians and other health care providers who participate in good faith may not be subject to criminal or civil liability or professional disciplinary action.

Access to Care Policies.
Hospitals must submit to the DOH their policies related to access to care regarding admissions, nondiscrimination, and reproductive health care, along with a form that provides the public with specific information about which reproductive health care services are and are not performed at each hospital. Submitted policies and the form must be posted on the hospital's website.

Summary of Bill:

The health care providers authorized to perform the duties of the Death with Dignity Act (Act) are expanded to include advanced registered nurse practitioners and physician assistants. Authorized health care providers are defined as "qualified medical providers." Patients may select the attending or consulting health care provider of their choosing, as long as a physician or osteopathic physician serves in one of the roles. The attending and consulting qualified medical providers chosen by the patient may not have a direct supervisory relationship with each other.

A prescription from an attending qualified medical provider may be submitted to a pharmacist electronically and 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 the event either an attending or consulting qualified medical provider refers the patient to counseling, 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 timeframe in which a qualified patient must wait to make a second oral request is reduced from 15 days to seven days. The 48-hour waiting period between the written request and the writing of a prescription is removed. Transfer of care or medical records does not restart a waiting period.

In addition to filing by mail, the prescribing qualified medical provider may file all required documentation with the Department of Health (DOH) by fax or email no later than 30 days after the death of the patient.

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 or on property that is owned by, leased by, or under the direct control of the employing health care provider. A health care provider who does participate in the Act outside the course and scope of an employment relationship with a health care provider who prohibits participation is required to be at a location not on the employer's premises or on property that is owned by, leased by, or under the direct control of the employing health care provider.

Hospitals must submit policies related to end-of-life care and the Act to the DOH. By November 1, 2023, the DOH is required to develop an additional form for hospitals to submit which must provide the public with information about which end-of-life services are and are not available at each hospital. Hospitals must submit completed forms to the DOH within 60 days of the form being provided.

Agencies and facilities providing hospice services must submit their policies related to end-of-life care to the DOH and must include information for the public about which end-of-life services are and are not available at each agency or facility. A copy of the policies must be posted to the website of each agency or facility providing hospice services. An agency or facility providing hospice services must submit changes to any of the policies to the DOH within 30 days of the approval of the change.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There should be modification to the law to ensure qualified, competent, compassionate advanced registered nurse practitioners are able to participate as the primary or second opinion for this law. Nurse practitioners and physician assistants (PAs) are desperate to provide end-of-life care to their patients. The most proactive and supported patients run out of time, and the barriers disproportionately affect those living in underserved areas of the state where clinicians are few and far between.

Modernizing the prescription delivery process will benefit the 27 disproportionately affected counties that do not have a compounding pharmacy willing to participate and prepare the medication.

The changes in this bill will not expand who is eligible for this law; all of the core safeguards are maintained. This bill pertains to people who are terminally ill, who wish to have some control for the end of their life. A majority of these individuals have cancer or an urgent degenerative disease. An individual must have decisional capacity; only they can decide to take the medication. Many fill the medication but do not take it. Advanced age, disability, or chronic health conditions are not qualifying factors for medical aid in dying. The Death with Dignity Act is not assisted suicide, and the people who use the law aren't choosing to die as they are already dying. The best palliative care cannot alleviate all suffering.

(Opposed) Recent surveys have found that medical professionals routinely underestimate and discount the quality of life of people with disabilities.

Allowing a patient to undergo the entire process by only seeing a single provider of any specialization could potentially be disastrous. This would open the door to more patients potentially being pressured and coerced into pursuing assisted suicide with little chance for a second opinion or further consideration. The 2020 Department of Health report states that many participants feared a loss of autonomy and being a burden on family, friends, and caregivers. Seven days is too little time for treatment trials and the terminally ill or vulnerable can make rash decisions that change with good and bad days. These individuals often have compromised capacity due to declining cognition, grief, pain, depression, coercion, deficits, and capacity.

Those who are not physicians should not be prognosticating on the length of life expectancy. They do not have the expertise. Mental health issues should be determined by a psychiatrist not by a social worker. Depression is common, but often goes unrecognized by doctors. Allowing providers with less expertise will make this worse. Physician assistants should not act as decision makers because they are not trained to do this. Educational standards or classroom instruction do not teach decision making capacity. The majority of students have no exposure to end-of-life decision making beyond a single classroom lecture. The bill does not require a PA to consult with his or her supervising physician. In addition, a PA may be economically compelled to approve decisions outside of professional standards and practice agreements.

Persons Testifying: (In support) Deborah North; Cassa Sutherland, End of Life Washington; Darrell Owens; George Hendrickson; and Heather Jespersen.

(Opposed) Conrad Reynoldson; Sharon Quick, Physicians for Compassionate Care Education Foundation; Jonathan Clemens, ErgoCare Clinic; Anita Cameron, Not Dead Yet; Richard Doerflinger; and Robin Bernhoft.

Persons Signed In To Testify But Not Testifying: Jody Disney; Jess Kaan; Dick Gibson; Mary Long; Laurie Layne; Pamela Bennetsen; Theresa Schrempp; Richard Grunewald; and Gabriel Wofford.