

The Washington Death with Dignity Act

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BE IT ENACTED BY THE PEOPLE
OF THE STATE OF WASHINGTON:

**THE WASHINGTON DEATH WITH
DIGNITY ACT**

General Provisions

Sec. 1. Definitions. The definitions in this section apply throughout this act unless the context clearly requires otherwise.

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of

business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state of Washington.

(11) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of this act in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

Written Request for Medication to End Life in a Humane and Dignified Manner

Sec. 2. Who may initiate a written request for medication. (1) An adult who is competent, is a resident of Washington state, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this act.

(2) A person does not qualify under this act solely because of age or disability.

Sec. 3. Form of the written request. (1) A valid request for medication under this act shall be in substantially the form described in section 22 of this act, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage, or adoption;

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the department of health by rule.

Safeguards

Sec. 4. Attending physician responsibilities. (1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;

(b) Request that the patient demonstrate Washington state residency under section 13 of this act;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(i) His or her medical diagnosis;

(ii) His or her prognosis;

(iii) The potential risks associated with taking the medication to be prescribed;

(iv) The probable result of taking the medication to be prescribed; and

(v) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily;

(e) Refer the patient for counseling if appropriate under section 6 of this act;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this act and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period under section 9 of this act;

(i) Verify, immediately before writing the prescription for medication under this act, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of section 12 of this act;

(k) Ensure that all appropriate steps are carried out in accordance with this act before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l)(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under statute and rule to dispense and has a current drug enforcement administration certificate; or

(ii) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription; and

(B) Deliver the written prescription personally, by mail or

facsimile to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this subsection shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death.

Sec. 5. Consulting physician

confirmation. Before a patient is qualified under this act, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is competent, is acting voluntarily, and has made an informed decision.

Sec. 6. Counseling referral. If in the opinion of the attending physician or the consulting physician a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Sec. 7. Informed decision. A person shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a

prescription for medication under this act, the attending physician shall verify that the qualified patient is making an informed decision.

Sec. 8. Family notification. The attending physician shall recommend that the patient notify the next of kin of his or her request for medication under this act. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

Sec. 9. Written and oral requests. To receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

Sec. 10. Right to rescind request. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this act may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

Sec. 11. Waiting periods. (1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this act.

(2) At least forty-eight hours shall elapse between the date the patient signs the written request and the writing of a prescription under this act.

Sec. 12. Medical record documentation requirements. The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision;

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under section 9 of this act; and

(7) A note by the attending physician indicating that all requirements under this act have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

Sec. 13. Residency requirement. Only requests made by Washington state residents under this act may be granted. Factors demonstrating Washington state residency include but are not limited to:

(1) Possession of a Washington state driver's license;

(2) Registration to vote in Washington state; or

(3) Evidence that the person owns or leases property in Washington state.

Sec. 14. Disposal of unused medications. Any medication dispensed under this act that was not self-administered shall be disposed of by lawful means.

Sec. 15. Reporting requirements.

(1)(a) The department of health shall annually review all records maintained under this act.

(b) The department of health shall require any health care provider upon writing a prescription or dispensing medication under this act to file a copy of the dispensing record and such other administratively required documentation with the department. All administratively required documentation shall be mailed or otherwise transmitted as allowed by department of health rule to the department no later than thirty calendar days after the writing of a prescription and dispensing of medication under this act, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty calendar days after the date of death of the patient. In the event that anyone required under this act to report information to the department of health provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) The department of health shall adopt rules to facilitate the collection of information regarding compliance with this act. Except as otherwise required by law, the information collected is not a public

record and may not be made available for inspection by the public.

(3) The department of health shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section.

Sec. 16. Effect on construction of wills, contracts and statutes.

(1) Any provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, is not valid.

(2) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner.

Sec. 17. Insurance or annuity policies.

The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication that the patient may self-administer to end his or her life in a humane and dignified manner. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner shall not have an effect upon a life, health, or accident insurance or annuity policy.

Sec. 18. Construction of Act.

(1) Nothing in this act authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this act do not,

for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this act as “suicide” or “assisted suicide.”

Consistent with sections 1(7), (11), (12), 2(1), 4(1)(k), 6, 7, 9, 12(1)&(2), 16(1)&(2), 17, 19(1)(a)&(d), and 20(2) of this act, state reports shall refer to practice under this act as obtaining and self-administering life-ending medication.

(2) Nothing contained in this act shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this act.

Immunities and Liabilities

Sec. 19. Immunities; basis for prohibiting health care provider from participation; notification; permissible sanctions. (1) Except as provided in section 20 of this act and subsection (2) of this section:

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this act. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

(b) A professional organization or association, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this act;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance

with this act does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(d) Only willing health care providers shall participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this act, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2)(a) A health care provider may prohibit another health care provider from participating under this act on the premises of the prohibiting provider if the prohibiting provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting provider's policy regarding participating under this act. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation under this act.

(b) A health care provider may subject another health care provider to the sanctions stated in this subsection if the sanctioning health care provider has notified the sanctioned provider before participation in this act that it prohibits participation in this act:

(i) Loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in this act while on the health care

facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in this act while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(iii) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in this act while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subsection (2)(b)(iii) prevents:

(A) A health care provider from participating in this act while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(B) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation in this act of the sanctioning health care provider's policy about participation in activities covered by this act.

(ii) "Participate in this act" means to perform the duties of an attending physician under section 4 of this act, the consulting physician function under section 5 of this act, or the counseling function under section 6 of this act. "Participate in this act" does not include:

(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(B) Providing information about the Washington death with dignity act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not reportable under RCW 18.130.070. Action taken under section 3, 4, 5, or 6 of this act may not be the sole basis for a report of unprofessional conduct under RCW 18.130.180.

(4) References to "good faith" in subsections 1(a), (b), and (c) do not allow a lower standard of care for health

care providers in the state of Washington.

Sec. 20. Liabilities. (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony.

(3) This act does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in this act do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this act.

Sec. 21. Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person terminating his or her life under this act in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim.

Additional Provisions

Sec. 22. Form of the request. A request for a medication as authorized by this act shall be in substantially the following form:

REQUEST FOR MEDICATION TO
END MY LIFE IN A HUMANE AND
DIGNIFIED MANNER

I, _____,
am an adult of sound mind.

I am suffering from _____,
which my attending physician has
determined is a terminal disease and
which has been medically confirmed by
a consulting physician.

I have been fully informed of my
diagnosis, prognosis, the nature of
medication to be prescribed and
potential associated risks, the expected
result, and the feasible alternatives,
including comfort care, hospice care,
and pain control.

I request that my attending
physician prescribe medication that I
may self-administer to end my life in a
humane and dignified manner and to
contact any pharmacist to fill the
prescription.

INITIAL ONE:

_____ I have informed my
family of my decision and taken their
opinions into consideration.

_____ I have decided not to
inform my family of my decision.

_____ I have no family to
inform of my decision.

I understand that I have the right
to rescind this request at any time.

I understand the full import of
this request and I expect to die when I
take the medication to be prescribed. I
further understand that although most
deaths occur within three hours, my
death may take longer and my physician
has counseled me about this possibility.

I make this request voluntarily
and without reservation, and I accept full
moral responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Witness 1 Witness 2
Initials Initials

_____ 1. Is personally known to us or has provided proof of identity;

_____ 2. Signed this request in our presence on the date of the person's signature;

_____ 3. Appears to be of sound mind and not under duress, fraud, or undue influence;

_____ 4. Is not a patient for whom either of us is the attending physician.

Printed Name of Witness 1: _____

Signature of Witness 1/Date: _____

Printed Name of Witness 2: _____

Signature of Witness 2/Date: _____

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Sec. 23. Short title. This act may be known and cited as the Washington death with dignity act.

Sec. 24. Severability. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Sec. 25. Effective date. This act shall take effect 120 days after the election at which it is approved.

Sec. 26. New chapter in Title 70. Sections 1 through 24 of this act constitute a new chapter in Title 70 RCW.

Sec. 27. Amendments. RCW 42.56.360, 2005 c 274 s 416, 2006 c 8 s 112, 2006 c 209 s 9, 2007 c 259 s 49, 2007 c 261 s 4 amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in section 2 of this act, for reporting of health care-associated infections under section 2 of this act, and notifications or reports of adverse events or incidents made under RCW 70.56.020 or 70.56.040, regardless of which agency is

in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997,

to the extent provided in RCW 18.130.095(1);

(h) Information obtained by the department of health under chapter 70.225 RCW; and

(i) Information collected by the department of health under chapter 70.-- RCW (sections 1 through 24 of this act) except as provided in section 15 of this act.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Sec. 28. Amendments. RCW

70.122.100 (Mercy killing or physician-assisted suicide not authorized) and 1992 c 98 s 10 & 1979 c 112 s 11 are each amended to read as follows:

Mercy killing, lethal injection, or active euthanasia not authorized.

Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, lethal injection, or active euthanasia.

-- END --