ENROLLED ORIGINAL

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To provide procedures and requirements regarding the request for and dispensation of covered medications to qualified patients seeking to die in a humane and peaceful manner, to define the duties of attending physicians and consulting physicians, to provide for counseling of patients and family notification, to require informed decision-making and waiting periods, to require reporting from the Department of Health, to outline the effect of the act on contracts, wills, insurance, and annuity policies, to provide for immunities, liabilities, and exceptions, to provide an opt-out provision for health care providers, to provide for claims against a qualified patient's estate for costs incurred by the District government when a qualified patient ingests a covered medication in public, and to establish criminal penalties.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Death with Dignity Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Attending physician" shall have the same meaning as provided in section 2(1) of the Natural Death Act of 1981, effective February 25, 1982 (D.C. Law 4-69; D.C. Official Code § 7-621(1)); provided, that the attending physician's practice shall not be primarily or solely composed of patients requesting a covered medication.

(2) "Capable" means that, in the opinion of a court or the patient's attending physician, consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers.

(3) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease and who is willing to participate in the provision of a covered medication to a qualified patient in accordance with this act.

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

(5) “Covered medication” means a medication prescribed pursuant to this act for the purpose of ending a person’s life in a humane and peaceful manner.

(6) “Department” means the Department of Health.

(7) “Health care facility” means a hospital or long-term care facility.

(8) “Health care provider” means a person, partnership, corporation, facility, or institution that is licensed, certified, or authorized under District law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(9) “Hospital” shall have the same meaning as provided in section 2(1) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(1)).

(10) “Informed decision” means a decision by a qualified patient to request and obtain a prescription for a covered medication that is based on an appreciation of the relevant facts and is made 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 covered medication;

(D) The probable results of taking the covered medication; and

(E) Feasible alternatives to taking the covered medication, including comfort care, hospice care, and pain control.

(11) “Long-term care facility” means a nursing home or community residence facility, as defined by section 2(3) and (4), respectively, of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(3) and (4)), or an assisted living residence, as defined by section 201(4) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code § 44-102.01(4)).

(12) “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.

(13) “Patient” means a person who has attained 18 years of age, resides in the District of Columbia, and is under the care of a physician.

(14) “Physician” shall have the same meaning as provided in section 2(4) of the Natural Death Act of 1981, effective February 25, 1982 (D.C. Law 4-69; D.C. Official Code § 7-621(4)).

(15) “Qualified patient” means a patient who:

(A) Has been determined to be capable; and

(B) Satisfies the requirements of this act in order to obtain a prescription for a covered medication.

(16) “Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within 6 months.

Sec. 3. Requests for a covered medication.

(a) To request a covered medication, a patient shall:

(1) Make 2 oral requests, separated by at least 15 days, to an attending physician.

(2) Submit a written request, signed and dated by the patient, to the attending physician before the patient makes his or her 2nd oral request and at least 48 hours before a covered medication may be prescribed or dispensed.

(b)(1) A written request made pursuant to subsection (a)(2) of this section shall be witnessed by at least 2 individuals who, in the presence of the patient, attest to the best of their knowledge and belief that the patient is capable, acting voluntarily, and is not being unduly influenced to sign the request.

(2) If the patient is a patient in a long-term care facility at the time the written request is made under subsection (a)(2) of this section, one of the witnesses shall be an individual designated by the facility who has met the qualifications specified in the Department's regulations.

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

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

(B) At the time the request is signed, 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.

(4) The patient's attending physician at the time of the request shall not be a witness.

(c) A written request made pursuant to subsection (a)(2) of this section shall be in substantially the following form:

"REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND PEACEFUL 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, 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 will end my life in a humane and peaceful manner.

"INITIAL ONE:

[ ] I have informed my family of my decision and taken their opinion 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 as 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 3 hours of taking the medication to be prescribed, 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:
“We declare that the person signing this request:
(a) Is personally known to us or has provided proof of identity;
(b) Signed this request in our presence;
(c) Appears to be of sound mind and not under duress, fraud, or undue influence;
(d) Is not a patient for whom either of us is the attending physician.
“Date:
“Witness 1:
“Address:
“Witness 1 signature:
“Date:
“Witness 2:
“Address:
“Witness 2 signature:
“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 the health care facility where the person is a patient or resident. If the patient is a patient at a long-term care facility, one of the witnesses shall be an individual designated by the facility.”.

Sec. 4. Responsibilities of the attending physician.

(a) Upon receiving a written request for a covered medication pursuant to section 3(a)(2), the attending physician shall:

(1) Determine that the patient:

(A) Has a terminal disease;

(B) Is capable;

(C) Has made the request voluntarily; and

(D) Is a resident of the District of Columbia;

(2) Inform the patient of:

(A) His or her medical diagnosis;

(B) His or her prognosis;

(C) The potential risks associated with taking a covered medication;

(D) The probable result of taking a covered medication; and

(E) The feasible alternatives to taking a covered medication, including comfort care, hospice care, and pain control;

(3) Refer the patient to a consulting physician;

(4) Refer the patient to counseling if appropriate, pursuant to section 5;

(5) Inform the patient of the availability of supportive counseling to address the range of possible psychological and emotional stress involved with the end stages of life;

(6) Recommend that the patient notify next of kin, friends, and spiritual advisor, if applicable, of his or her decision to request a covered medication;

(7) Counsel the patient about the importance of having another person present when the patient takes a covered medication and of not taking a covered medication in a public place;

(8) Inform the patient that he or she has an opportunity to rescind a request for a covered medication at any time and in any manner;

(9) Verify, immediately before writing the prescription for a covered medication, that the patient is making an informed decision; and

(10) Fulfill the medical record documentation requirements of section 7.

(b) If a consulting physician receives a referral for a patient from an attending physician pursuant to subsection (a)(3) of this section, the consulting physician shall:

(1) Examine the patient and his or her relevant medical records to confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease;

(2) Verify, in writing, to the attending physician that the patient:

(A) Is capable;

(B) Is acting voluntarily; and

(C) Has made an informed decision; and

(3) Refer the patient to counseling if appropriate, pursuant to section 5.

Sec. 5. Counseling referral.

(a) 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 to counseling.

(b) No covered medication shall be prescribed until the patient receives counseling and the psychiatrist or psychologist performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Sec. 6. Dispensing a covered medication and reporting requirements.

(a) An attending physician may not prescribe or dispense a covered medication, unless:

(1) The patient has satisfied the requirements of sections 3 and 5, if applicable;

(2) The attending physician has satisfied the requirements of sections 4 and 5, if applicable; and

(3) The attending physician has offered the patient an opportunity to rescind his or her request for a covered medication immediately before prescribing or dispensing the covered medication.

(b) After the attending physician ensures that the requirements provided in subsection (a) of this section have been met, the attending physician may:

(1) Dispense a covered medication, including ancillary medications intended to minimize the patient's discomfort, directly to the qualified patient; provided, that the attending physician is authorized to do so in the District of Columbia pursuant to the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-903.02), and has a current Drug Enforcement Administration certificate issued pursuant to 21 C.F.R. § 1301.35; or

(2) After a qualified patient completes the form under section 3(c):

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

(B) Deliver the written prescription for a covered medication personally, or by telephone, facsimile, or electronically to the pharmacist.

(c) Upon receiving a written prescription for a covered medication by an attending physician under subsection (b)(2) of this section, the pharmacist may dispense the covered medication to the following:

(A) The patient;

(B) The attending physician; or

(C) An expressly identified agent designated by the qualified patient, with the designation communicated to the pharmacist by the patient verbally or in writing.

(d) A pharmacist, upon dispensing a covered medication under subsection (c) of this section, shall immediately notify the attending physician that the covered medication was dispensed.

(e) Within 30 days after a health care provider dispenses a covered medication, the attending physician shall file with the Department a copy of the information required by section 7 on a form created by the Department.

(f) Within 30 days after a patient ingests a covered medication, or as soon as practicable after the a health care provider is made aware of a patient's death resulting from ingesting the covered medication, the health care provider shall notify the Department of a patient's death.

(g) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate.

(h) The cause of death listed on a death certificate shall identify the qualified patient's underlying medical condition consistent with the International Classification of Diseases without reference to the fact that the qualified patient ingested a covered medication.

(i)(1) The Office of the Chief Medical Examiner shall review each death involving a qualified patient who ingests a covered medication and, if warranted by the review, may conduct an investigation.

(2) The review required by paragraph (1) of this subsection shall not constitute an inquiry for the purposes of section 12 of the Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-211); provided, that an investigation authorized by paragraph (1) of this subsection shall constitute an inquiry for the purposes of the Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-211).

Sec. 7. Medical record documentation requirements.

(a) The attending physician shall document and file in the medical record of the patient requesting a covered medication:

(1) All oral requests by a patient for a covered medication;

(2) All written requests by a patient for a covered medication;

(3) The attending physician's:

(A) Diagnosis and prognosis of the patient;

(B) Determination that the patient is a District resident and is capable, acting voluntarily, and has made an informed decision when requesting a covered medication;

(C) Offer to the patient to rescind his or her request for a covered medication before the patient makes his or her second oral request;

(D) Notation that all requirements under this act have been met; and

(E) Notation regarding all steps taken to carry out the patient's request for a covered medication, including a notation of the covered medication prescribed;

(4) The consulting physician's:

(A) Diagnosis and prognosis of the patient;

(B) Verification that the patient is capable, acting voluntarily, and has made an informed decision when requesting a covered medication; and

(5) If a patient is referred to counseling pursuant to section 5, a report by the psychiatrist or psychologist of the outcome and determinations made during counseling.

Sec. 8. Reporting requirements.

(a) Beginning one year after the effective date of this act, and on an annual basis thereafter, the Department shall review the records maintained under section 7 for the purpose of gathering data and ensuring compliance with this act.

(b) The Department shall generate and make available to the public an annual statistical report of information collected pursuant to subsection (a) of this section. The report shall include:

(1) The number of qualified patients for whom a prescription for a covered medication was written;

(2) The number of known qualified patients who died each year for whom a prescription for a covered medication was written, and the cause of death of those patients;

(3) The number of known deaths in the District from using a covered medication;

(4) The number of physicians who wrote prescriptions for a covered medication; and

(5) Of the qualified patients who died due to using a covered medication, demographic percentages organized by the following characteristics:

(A) Age at death;

(B) Education level, if known;

(C) Race;

(D) Sex;

(E) Type of insurance, including whether or not they had insurance, if known; and

(F) Terminal disease.

Sec. 9. Effect on construction of wills and contracts.

(a) A provision in a contract, will, or other agreement executed on or after the effective date of this act, whether written or oral, is not valid if the provision would affect whether a person may make or rescind a request for a covered medication.

(b) An obligation owing under any contract, will, or other agreement executed on or after the effective date of this act may not be conditioned or affected by a person making or rescinding a request for a covered medication.

Sec. 10. Insurance and annuity policies.

(a) The sale, procurement, or issuance of any life, health, accident insurance, annuity policy, employment benefits, or the rate charged for any policy may not be conditioned upon or affected by the making or rescinding of a qualified patient's request for a covered medication.

(b) A qualified patient's act of ingesting a covered medication shall not have an effect upon a life, health, accident insurance, annuity policy, or employment benefits.

(c) Nothing in this section shall be construed to limit the ability of an insurance or annuity provider from investigating a claim for benefits for a death.

Sec. 11. Health care provider participation; notification; permissible sanctions.

(a) No health care provider shall be obligated under this act, by contract, or otherwise, to participate in the provision of a covered medication to a qualified patient.

(b) If a health care provider is unable or unwilling to carry out a patient's request for a covered medication 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 of the patient, a copy of the patient's relevant medical records to the new health care provider.

(c) A health care provider may prohibit any other health care provider that it employs or contracts with from providing a covered medication under this act on the prohibiting health care provider's premises; provided, that the prohibiting health care provider has notified the health care provider of this policy before the employee or contractor has provided a covered medication.

(d) Notwithstanding section 12, if, before a covered medication has been provided, the prohibiting health care provider has notified the sanctioned health care provider that it prohibits providing a covered medication under this act, the prohibiting health care provider may impose the following sanctions:

(1) Loss of privileges, loss of membership, or other sanction pursuant to the prohibiting health care provider's medical staff bylaws, policies, and procedures, if the sanctioned health care provider is a member of the prohibiting health care provider's medical staff and participates under this act while on staff on the premises of the prohibiting health care provider's health care facility;

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

(3) Termination of an employment contract or other nonmonetary remedies provided by contract if the sanctioned health care provider participates under this act in the course and scope of the sanctioned health care provider's duties as an employee or independent contractor of the prohibiting health care provider; or

(4) Any other sanctions and penalties in accordance with the prohibiting health care provider's policies and practices; provided, that no sanctions or penalties shall be imposed under this paragraph without a procedure for contesting the sections and penalties.

(e) Nothing in this section shall be construed to prevent:

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

(2) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the health care provider's duties as an employee or independent contractor of the prohibiting health care provider;

(3) A health care provider from making an initial determination pursuant to the standard of care that a patient has a terminal disease and informing him or her of the medical prognosis;

(4) A health care provider from providing information about this act upon the request of the patient; or

(5) A health care provider from providing a patient, upon request, with a referral to another health care provider.

(f) Sanctions issued pursuant to subsection (d) of this section are not reportable under section 513(a)(4)(C) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.13(a)(4)(C)).

Sec. 12. Immunities, liabilities, and exceptions.

(a) Except as provided in section 11, no person shall be subject to civil or criminal liability or professional disciplinary action for:

(1) Participating in good faith compliance with this act;

(2) Refusing to participate in providing a covered medication under this act; or

(3) Being present when a qualified patient takes a covered medication.

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

(c) No request by a patient for a covered medication made in good-faith compliance with the provisions of this act shall provide the basis for the appointment of a guardian or conservator.

Sec. 13. Claims by District government for costs incurred.

If the District government incurs costs resulting from the death of a qualified patient ingesting a covered medication pursuant to this act in a public place, the District government shall have a claim against the estate of the qualified patient to recover such costs and reasonable attorney fees related to enforcing the claim.

Sec. 14. Penalties.

(a) A person who, without authorization of the patient, willfully alters or forges a request for a covered medication or conceals or destroys a rescission of a request for a covered medication with the intent or effect of causing the patient's death is punishable as a Class A felony.

(b) A person who, without authorization of the patient, willfully coerces or exerts undue influence on a patient to request or ingest a covered medication with the intent or effect of causing the patient's death is punishable as a Class A felony.

Sec. 15. Rules.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to:

(1) Develop the form to collect the medical record information required by section 7;

(2) Facilitate the collection of the medical record information required by section 7; and

(3) Provide for the return of and safe disposal of unused covered medications.

(b) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act, including rules to:

(1) Specify the recommended methods by which a qualified patient, who so desires, may notify first responders of his or her intent to ingest a covered medication; and

(2) Establish training opportunities for the medical community to learn about the use of covered medications by qualified patients seeking to die in a humane and peaceful manner, including best practices for prescribing the covered medication.

Sec. 16. Construction.

(a) Nothing in this act may be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, active euthanasia, or any other method or medication not authorized under this act.

(b) Actions taken in accordance with this act do not constitute suicide, assisted suicide, mercy killing, or homicide.

(c) Nothing in this act shall be construed to authorize a qualified patient to ingest a covered medication in a public place.

Sec. 17. Freedom of Information Act exemption.

The information collected by the Department pursuant to this act shall not be a public record and may not be made available for inspection by the public under the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), or any other law.

Sec. 18. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 18. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 19. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia