

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE DRH20205-MG-112 (03/24)

Short Title: Enact Death With Dignity Act. (Public)

Sponsors: Representatives Harrison and Fisher (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A DEATH WITH DIGNITY ACT TO ALLOW QUALIFIED
3 PATIENTS DIAGNOSED WITH A TERMINAL ILLNESS TO END LIFE IN A
4 HUMANE AND DIGNIFIED MANNER.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 90 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 23A.

9 "Death With Dignity Act.

10 "§ 90-325. Definitions.

11 The following definitions apply in this Article:

- 12 (1) Adult. – An individual who is 18 years of age or older.
- 13 (2) Attending physician. – The licensed physician who has primary
14 responsibility for the care of the patient and treatment of the patient's
15 terminal disease.
- 16 (3) Capable. – In the opinion of a court or in the opinion of the patient's
17 attending physician or consulting physician, psychiatrist, or psychologist, a
18 patient has the ability to make and communicate health care decisions to
19 health care providers, including communication through persons familiar
20 with the patient's manner of communicating if those persons are available.
- 21 (4) Consulting physician. – A licensed physician who is qualified by specialty or
22 experience to make a professional diagnosis and prognosis regarding the
23 patient's disease.
- 24 (5) Counseling. – One or more consultations as necessary between a licensed
25 psychiatrist or psychologist and a patient for the purpose of determining that
26 the patient is capable and not suffering from a psychiatric or psychological
27 disorder or depression causing impaired judgment.
- 28 (6) Department. – The North Carolina Department of Health and Human
29 Services.
- 30 (7) Health care provider. – An individual who is licensed, certified, or otherwise
31 authorized under Chapter 90 of the General Statutes to provide health care
32 services in the ordinary course of business or practice of a profession; or a
33 health care facility licensed under Chapter 131E of the General Statutes,
34 where health care services are provided to patients. The term includes: (i) an
35 agent or employee of a health care facility that is licensed, certified, or
36 otherwise authorized to provide health care services; (ii) the officers and



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1 directors of a health care facility; and (iii) an agent or employee of a health
2 care provider who is licensed, certified, or otherwise authorized to provide
3 health care services.

4 (8) Informed decision. – A decision by a qualified patient to request and obtain a
5 prescription to end his or her life in a humane and dignified manner based on
6 an appreciation of the relevant facts and after being fully informed by the
7 attending physician of:

8 a. The patient's medical diagnosis.

9 b. The patient's prognosis.

10 c. The potential risks associated with taking the medication to be
11 prescribed.

12 d. The probable result of taking the medication to be prescribed.

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

15 (9) Medically confirmed. – Confirmation of the medical opinion of the attending
16 physician by a consulting physician who has examined the patient and the
17 patient's relevant medical records.

18 (10) Patient. – An individual who is under the care of a licensed physician.

19 (11) Physician. – An individual licensed to practice medicine by the North
20 Carolina Board of Medical Examiners under Article 1 of Chapter 90 of the
21 General Statutes.

22 (12) Qualified patient. – A capable patient who is a resident of North Carolina
23 and has satisfied the requirements of this Article in order to obtain a
24 prescription for medication to end his or her life in a humane and dignified
25 manner.

26 (13) Terminal disease. – An incurable and irreversible disease that has been
27 medically confirmed and will, within reasonable medical judgment, produce
28 death within six months.

29 **§ 90-325.1. Who may initiate written request for medication.**

30 (a) An adult who meets all of the following criteria may make a written request for
31 medication for the purpose of ending his or her life in a humane and dignified manner in
32 accordance with the provisions of this Article:

33 (1) Is capable.

34 (2) Is a resident of this State.

35 (3) Has been determined by the attending physician and consulting physician to
36 be suffering from a terminal disease.

37 (4) Has voluntarily expressed the wish to die.

38 (b) No person shall qualify to make a written request for medication for the purpose of
39 ending his or her life under the provisions of this Article solely because of age or disability.

40 **§ 90-325.2. Form of the written request.**

41 (a) A valid request for medication under this Article shall be in substantially the form
42 described in G.S. 90-325.21, signed and dated by the patient, and witnessed by at least two
43 individuals who, in the presence of the patient, attest that to the best of their knowledge and
44 belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

45 (b) One of the witnesses shall be an individual who is not any of the following:

46 (1) A relative of the patient by blood, marriage, or adoption.

47 (2) An individual who at the time the request is signed would be entitled to any
48 portion of the estate of the qualified patient upon death under any will or by
49 operation of law.

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

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

3 (d) If the patient is a patient in a long-term care facility at the time the written request is
4 made, one of the witnesses shall be an individual designated by the facility who has
5 qualifications specified by the Department of Health and Human Services.

6 **"§ 90-325.3. Attending physician responsibilities.**

7 (a) The attending physician shall be responsible for all of the following:

8 (1) Making the initial determination of whether a patient has a terminal disease,
9 is capable, and has made the request for medication under this Article
10 voluntarily.

11 (2) Requesting that the patient demonstrate residency.

12 (3) Ensuring that the patient is making an informed decision by informing the
13 patient of all of the following:

14 a. The patient's medical diagnosis.

15 b. The patient's prognosis.

16 c. The potential risks associated with taking the medication to be
17 prescribed.

18 d. The probable result of taking the medication to be prescribed.

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

21 (4) Referring the patient to a consulting physician for medical confirmation of
22 the diagnosis and for a determination that the patient is capable and acting
23 voluntarily.

24 (5) Referring the patient for counseling if appropriate pursuant to G.S. 90-325.5.

25 (6) Recommending that the patient notify next of kin.

26 (7) Counseling the patient about the importance of having another person
27 present when the patient takes the medication prescribed pursuant to this
28 Article and of not taking the medication in a public place.

29 (8) Informing the patient of the opportunity to rescind the request at any time
30 and in any manner, and offering the patient an opportunity to rescind at the
31 end of the 15-day waiting period pursuant to G.S. 90-325.8.

32 (9) Verifying, immediately prior to writing the prescription for medication under
33 this Article, that the patient is making an informed decision.

34 (10) Fulfilling the medical record documentation requirements of G.S. 90-325.11.

35 (11) Ensuring that all appropriate steps are carried out in accordance with this
36 Article prior to writing a prescription for medication to enable a qualified
37 patient to end his or her life in a humane and dignified manner.

38 (12) Dispensing medications directly, including ancillary medications intended to
39 facilitate the desired effect to minimize the patient's discomfort, provided the
40 attending physician is registered as a dispensing physician with the Board of
41 Medical Examiners, has a current Drug Enforcement Administration
42 certificate, and complies with any applicable administrative rule; or with the
43 patient's written consent doing either of the following:

44 a. Contacting a pharmacist and informing the pharmacist of the
45 prescription.

46 b. Delivering the written prescription personally or by mail to the
47 pharmacist, for dispensation of the medications to either the patient,
48 the attending physician, or an expressly identified agent of the
49 patient.

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

"§ 90-325.4. Consulting physician confirmation.

No individual shall be deemed a qualified patient under this Article and receive a prescription for medication to end his or her life in a humane and dignified manner unless a consulting physician does both of the following:

- (1) Examines the patient and the patient's relevant medical records and confirms in writing the attending physician's diagnosis that the patient is suffering from a terminal disease.
- (2) Verifies that the patient is capable, is acting voluntarily, and has made an informed decision.

"§ 90-325.5. 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. No medication to end a patient's life in a humane and dignified manner shall 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.

"§ 90-325.6. Informed decision.

No patient shall receive a prescription for medication to end his or her life in a humane and dignified manner unless the patient has made an informed decision as defined in G.S. 90-325. Immediately prior to writing a prescription for medication under this Article, the attending physician shall verify that the patient is making an informed decision.

"§ 90-325.7. Family notification.

The attending physician shall recommend that the patient notify the next of kin of the patient's request for medication pursuant to this Article. The request of a patient who declines or is unable to notify next of kin shall not be denied solely for that reason.

"§ 90-325.8. Written and oral requests.

In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall make both an oral request and a written request, and shall reiterate the oral request to the attending physician no less than 15 days after making the initial oral request. At the time the qualified patient makes the second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

"§ 90-325.9. Right to rescind request.

A patient may rescind a request at any time and in any manner without regard to the patient's mental state. An attending physician shall not write a prescription for medication under this Article without offering the qualified patient an opportunity to rescind the request.

"§ 90-325.10. Waiting periods.

No less than 15 days shall elapse between the patient's initial oral request and the writing of a prescription under this Article. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription under this Article.

"§ 90-325.11. Medical records documentation.

All of 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, determination that the patient is capable, acting voluntarily, and has made an informed decision.
- (4) The consulting physician's diagnosis and prognosis and verification that the patient is capable, acting voluntarily, and has made an informed decision.
- (5) A report of the outcome and determinations made during counseling, if performed.

1 (6) The attending physician's offer to the patient to rescind his or her request at
2 the time of the patient's second oral request pursuant to G.S. 90-325.8.

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

6 **"§ 90-325.12. Residency requirement.**

7 Only requests made under this Article by North Carolina residents shall be granted. Factors
8 demonstrating residency include, but are not limited to, the following:

9 (1) Possession of a North Carolina drivers license.

10 (2) Registration to vote in North Carolina.

11 (3) Evidence that the person owns or leases property in North Carolina.

12 (4) Filing of a North Carolina tax return for the most recent tax year.

13 **"§ 90-325.13. Reporting requirements.**

14 The Department shall be responsible for doing all of the following:

15 (1) Conducting an annual review of a sample of records maintained pursuant to
16 this Article.

17 (2) Requiring each health care provider, upon dispensing medication pursuant to
18 this Article, to file a copy of the dispensing record with the Department.

19 (3) Adopting rules to facilitate the collection of information regarding
20 compliance with this Article. Except as otherwise required by law, the
21 information collected shall not constitute a public record under Chapter 132
22 of the General Statutes and shall not be made available for inspection by the
23 public.

24 (4) Generating and making available to the public an annual statistical report of
25 information collected under subsection (3) of this section.

26 **"§ 90-325.14. Effect on construction of wills, contracts, and statutes.**

27 (a) No provision in a contract, will, or other agreement, whether written or oral, to the
28 extent the provision would affect whether a person may make or rescind a request for
29 medication to end his or her life in a humane and dignified manner, shall be valid.

30 (b) No obligation owed under any currently existing contract shall be conditioned or
31 affected by the making or rescinding of a request, by a person, for medication to end his or her
32 life in a humane and dignified manner.

33 **"§ 90-325.15. Insurance or annuity policies.**

34 The sale, procurement, or issuance of any life, health, or accident insurance or annuity
35 policy or the rate charged for any policy shall not be conditioned upon or affected by the
36 making or rescinding of a request, by a person, for medication to end his or her life in a humane
37 and dignified manner. Neither shall a qualified patient's act of ingesting medication to end his
38 or her life in a humane and dignified manner have an effect upon a life, health, or accident
39 insurance or annuity policy.

40 **"§ 90-325.16. Construction of Article.**

41 Nothing in this Article shall be construed to authorize a physician, a health care provider, or
42 any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia.
43 Actions taken in accordance with this Article shall not, for any purpose, constitute suicide,
44 assisted suicide, mercy killing, or homicide under the laws of this State.

45 **"§ 90-325.17. Immunities; permissible sanctions.**

46 (a) No person shall be subject to civil or criminal liability or professional disciplinary
47 action for participating in good-faith compliance with the provisions of this Article. This
48 includes being present when a qualified patient takes the prescribed medication to end his or
49 her life in a humane and dignified manner.

50 (b) No professional organization or association, or health care provider, may subject a
51 person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership,

1 or other penalty for participating or refusing to participate in good-faith compliance with the
2 provisions of this Article.

3 (c) No request by a patient for or provision by an attending physician of medication in
4 good-faith compliance with the provisions of this Article shall constitute neglect for any
5 purpose of law or provide the sole basis for the appointment of a guardian or conservator.

6 (d) No health care provider shall be under any duty, whether by contract, by statute, or
7 by any other legal requirement to participate in the provision to a qualified patient of
8 medication to end his or her life in a humane and dignified manner. If a health care provider is
9 unable or unwilling to carry out a patient's request under the provisions of this Article, and the
10 patient transfers his or her care to a new health care provider, the prior health care provider
11 shall transfer, upon request, a copy of the patient's relevant medical records to the new health
12 care provider.

13 (e) Notwithstanding any other provision of law to the contrary, a health care provider
14 may prohibit another health care provider from participating in activities authorized by this
15 Article on the premises of the prohibiting provider if the prohibiting provider has notified the
16 health care provider of the provider's policy prohibiting such participation. Nothing in this
17 subsection shall be construed to prevent a health care provider from providing health care
18 services to a patient that does not constitute participation in activities authorized under this
19 Article.

20 (f) Notwithstanding any other provision of law to the contrary, a health care provider
21 may subject another health care provider to the sanctions stated in this subsection if the
22 sanctioning health care provider has notified the sanctioned provider prior to participation in
23 activities authorized by this Article of its policy against such participation:

24 (1) Loss of privileges, loss of membership, or other sanction provided pursuant
25 to the medical staff bylaws, policies, and procedures of the sanctioning
26 health care provider if the sanctioned provider is a member of the
27 sanctioning provider's medical staff and participates in activities authorized
28 by this Article while on the health care facility premises of the sanctioning
29 health care provider. For the purpose of this subdivision, the private medical
30 office of a physician or other provider is not included in the premises of the
31 sanctioning health care provider.

32 (2) Termination of lease or other property contract or other nonmonetary
33 remedies provided by lease contract, not including loss or restriction of
34 medical staff privileges or exclusion from a provider panel, if the sanctioned
35 provider participates in activities authorized by this Article while on the
36 premises of the sanctioning health care provider or on property that is owned
37 by or under the direct control of the sanctioning health care provider.

38 (3) Termination of contract or other nonmonetary remedies provided by contract
39 if the sanctioned provider participates in activities authorized under this
40 Article while acting in the course and scope of the sanctioned provider's
41 capacity as an employee or independent contractor of the sanctioning health
42 care provider. Nothing in this subsection shall be construed to prevent either
43 of the following:

44 a. A health care provider from participating in activities authorized
45 under this Article while acting outside the course and scope of the
46 provider's capacity as an employee or independent contractor.

47 b. A patient from contracting with an attending physician and
48 consulting physician to act outside the course and scope of the
49 provider's capacity as an employee or independent contractor of the
50 sanctioning health care provider.

1 (g) A health care provider that imposes sanctions pursuant to subsection (f) of this
2 section shall follow all due process and other procedures the sanctioning health care provider
3 may have that are related to the imposition of sanctions on another health care provider.

4 (h) The following definitions apply in this section:

5 (1) Notify. – A separate statement in writing to the health care provider
6 specifically informing the health care provider prior to the provider's
7 participation in activities authorized under this Article of the sanctioning
8 health care provider's policy prohibiting such participation.

9 (2) Participation in activities authorized under this Article. – Performing the
10 duties of an attending physician pursuant to G.S. 90-325.3, a consulting
11 physician pursuant to G.S. 90-325.4, or a counselor pursuant to
12 G.S. 90-325.5. The term does not include any of the following:

13 a. Making an initial determination that a patient has a terminal disease
14 and informing the patient of the medical prognosis.

15 b. Providing information about the North Carolina Death With Dignity
16 Act to a patient upon the request of the patient.

17 c. Providing a patient, upon the request of the patient, with a referral to
18 another physician.

19 d. A patient contracting with his or her attending physician and
20 consulting physician to act outside of the course and scope of the
21 provider's capacity as an employee or independent contractor of the
22 sanctioning health care provider.

23 (i) The suspension or termination of staff membership or privileges under subsection
24 (f) of this section is not reportable to a professional licensing board. Action taken pursuant to
25 this Article shall not be the sole basis for a report of unprofessional or dishonorable conduct
26 under Chapter 90 of the General Statutes.

27 (j) No provision of this Article shall be construed to allow a lower standard of care for
28 patients in the community where the patient is treated or a similar community.

29 **"§ 90-325.18. Liabilities.**

30 (a) A person who without authorization of the patient willfully alters or forges a request
31 for medication or conceals or destroys a rescission of that request with the intent or effect of
32 causing the patient's death shall be guilty of a Class A felony.

33 (b) A person who coerces or exerts undue influence on a patient to request medication
34 for the purpose of ending the patient's life, or to destroy a rescission of such a request, shall be
35 guilty of a Class A felony.

36 (c) Nothing in this Article limits further liability for civil damages resulting from other
37 negligent conduct or intentional misconduct by any person.

38 (d) The penalties in this Article do not preclude criminal penalties applicable under
39 other law for conduct which is inconsistent with the provisions of this Article.

40 **"§ 90-325.19. Claims by governmental entity for costs incurred.**

41 Any governmental entity that incurs costs resulting from a person terminating his or her life
42 pursuant to the provisions of this Article in a public place shall have a claim against the estate
43 of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim.

44 **"§ 90-325.20. Severability.**

45 If any part of this Article is for any reason held unconstitutional, inoperative, or void, such
46 holding of invalidity shall not affect the remaining portions of the Article; and it shall be
47 construed to have been the legislative intent to pass this Article without such unconstitutional,
48 invalid, or inoperative part therein; and the remainder of this Article, after the exclusion of such
49 part or parts, shall be valid as if such parts were not contained therein.

50 **"§ 90-325.21. Form of request; penalties for altering, forging, concealing, or destroying.**

(a) A request for a medication as authorized by this Article 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 will end my life in a humane and dignified manner.

INITIAL ALL THAT APPLY:

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

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 attending physician.

Witness 1/Date

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."

(b) It shall be a Class A felony for a person without authorization of the principal to willfully alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the principal.

(c) Except as provided in subsection (b) of this section, it shall be a Class A misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a health care decision.

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.