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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 404 Session of  
2009

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INTRODUCED BY LEACH, BOSCOLA AND WASHINGTON, MARCH 5, 2009

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REFERRED TO JUDICIARY, MARCH 5, 2009

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AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, providing for procedures  
3 regarding the request and dispensation of lethal medication  
4 to patients seeking to die in a dignified and humane manner,  
5 for duties of attending physicians, for duties of consulting  
6 physicians, for insurance or annuity policies; imposing  
7 duties on the Department of Health; providing for immunities  
8 and for attorney fees; and imposing penalties.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Title 20 of the Pennsylvania Consolidated  
12 Statutes is amended by adding a chapter to read:

13 CHAPTER 54B

14 DEATH WITH DIGNITY

15 Sec.

16 54B01. Definitions.

17 54B02. Written request for medication.

18 54B03. Form of written request.

19 54B04. Attending physician responsibilities.

20 54B05. Consulting physician confirmation.

21 54B06. Counseling referral.

- 1 54B07. Informed decision.  
2 54B08. Family notification.  
3 54B09. Written and oral requests.  
4 54B10. Right to rescind request.  
5 54B11. Waiting periods.  
6 54B12. Medical record documentation requirements.  
7 54B13. Residency requirement.  
8 54B14. Reporting requirements.  
9 54B15. Effect on construction of wills and contracts.  
10 54B16. Insurance or annuity policies.  
11 54B17. Construction.  
12 54B18. Immunities.  
13 54B19. Health care provider participation; notification;  
14 permissible sanctions.  
15 54B20. Liabilities.  
16 54B21. Claims by governmental entity for costs incurred.  
17 54B22. Instrument.  
18 54B23. Penalties for mishandling instrument.  
19 § 54B01. Definitions.

20 The following words and phrases when used in this chapter  
21 shall have the meanings given to them in this section unless the  
22 context clearly indicates otherwise:

23 "Adult." An individual who is 18 years of age or older.

24 "Attending physician." The physician who has primary  
25 responsibility for the care of the patient and treatment of the  
26 patient's terminal disease.

27 "Capable." An opinion of either a court or a patient's  
28 attending physician or consulting physician, psychiatrist or  
29 psychologist that a patient has the ability to make and  
30 communicate health care decisions to health care providers,

1 including communication through persons familiar with the  
2 patient's manner of communicating if those persons are  
3 available.

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

7 "Counseling." One or more consultations as necessary,  
8 between a licensed psychiatrist or psychologist and a patient,  
9 for the purpose of determining that the patient is capable and  
10 not suffering from a psychiatric or psychological disorder or  
11 depression causing impaired judgment.

12 "Department." The Department of Health of the Commonwealth.

13 "Health care provider." A person licensed, certified or  
14 otherwise authorized or permitted by the laws of this  
15 Commonwealth to administer health care or dispense medication in  
16 the ordinary course of business or practice of a profession. The  
17 term includes a health care facility.

18 "Informed decision." A decision by a qualified patient to  
19 request and obtain a prescription to end his or her life in a  
20 humane and dignified manner, which decision is based on an  
21 appreciation of the relevant facts and after being fully  
22 informed by the attending physician of:

23 (1) His or her medical diagnosis.

24 (2) His or her prognosis.

25 (3) The potential risks associated with taking the  
26 medication to be prescribed.

27 (4) The probable result of taking the medication to be  
28 prescribed.

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

1 "Medically confirmed." The medical opinion of the attending  
2 physician has been confirmed by a consulting physician who has  
3 examined the patient and the patient's relevant medical records.

4 "Participate under this chapter." To perform the duties of  
5 an attending physician under section 54B04 (relating to  
6 attending physician responsibilities), the consulting physician  
7 function under section 54B05 (relating to consulting physician  
8 confirmation) or the consulting function under section 54B06  
9 (relating to counseling referral). The term does not include:

10 (1) making an initial determination that a patient has a  
11 terminal disease and informing the patient of the medical  
12 prognosis;

13 (2) providing information about this chapter to a  
14 patient upon his request;

15 (3) providing a patient, upon the request of the  
16 patient, with a referral to another physician; or

17 (4) contracting by a patient with his or her attending  
18 physician and consulting physician to act outside of the  
19 course and scope of the provider's capacity as an employee or  
20 independent contractor of the sanctioning health care  
21 provider.

22 "Patient." A person who is under the care of a physician.

23 "Physician." A doctor of medicine or osteopathy licensed to  
24 practice by the State Board of Medicine or State Board of  
25 Osteopathy.

26 "Qualified patient." A capable adult who is a resident of  
27 this Commonwealth and has satisfied the requirements of this  
28 chapter in order to obtain a prescription for medication to end  
29 his or her life in a humane and dignified manner.

30 "Terminal disease." An incurable and irreversible disease

1 that has been medically confirmed and will, within reasonable  
2 medical judgment, produce death within six months.

3 § 54B02. Written request for medication.

4 Any adult resident of this Commonwealth who is capable and  
5 has been determined by the attending physician and consulting  
6 physician to be suffering from a terminal disease, and who has  
7 voluntarily expressed his or her wish to die, may make a written  
8 request for medication for the purpose of ending his or her life  
9 in a humane and dignified manner in accordance with this  
10 chapter. No person shall qualify to write a request for  
11 medication under this section solely because of age or  
12 disability.

13 § 54B03. Form of written request.

14 (a) Signature, date and attestation.--A valid request for  
15 medication under this chapter shall be in substantially the form  
16 described in section 54B22 (relating to instrument), signed and  
17 dated by the patient and witnessed by at least two individuals  
18 who, in the presence of the patient, attest that to the best of  
19 their knowledge and belief the patient is capable, acting  
20 voluntarily and not being coerced to sign the request.

21 (b) Witness.--One of the witnesses shall be a person who is  
22 not:

23 (1) a relative of the patient by blood, marriage or  
24 adoption;

25 (2) a person who, at the time the request is signed,  
26 would be entitled to any portion of the estate of the  
27 qualified patient upon death under any will or by operation  
28 of law; or

29 (3) an owner, operator or employee of a health care  
30 facility where the qualified patient is receiving medical

1 treatment or is a resident.

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

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

9 § 54B04. Attending physician responsibilities.

10 (a) Responsibilities.--The attending physician shall:

11 (1) Make the initial determination of whether a patient  
12 has a terminal disease, is capable and has made the request  
13 voluntarily.

14 (2) Request that the patient demonstrate Commonwealth  
15 residency under section 54B13 (relating to residency  
16 requirement).

17 (3) Ensure that the patient is making an informed  
18 decision and inform the patient of:

19 (i) His or her medical diagnosis.

20 (ii) His or her prognosis.

21 (iii) The potential risks associated with taking the  
22 medication to be prescribed.

23 (iv) The probable result of taking the medication to  
24 be prescribed.

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

27 (4) Refer the patient to a consulting physician for  
28 medical confirmation of the diagnosis and for a determination  
29 that the patient is capable and acting voluntarily.

30 (5) Refer the patient for counseling if appropriate

1 under section 54B06 (relating to counseling referral).

2 (6) Recommend the patient notify next of kin.

3 (7) Counsel the patient about the importance of having  
4 another person present when the patient takes the medication  
5 prescribed under this chapter and of not taking the  
6 medication in a public place.

7 (8) Inform the patient that he or she has an opportunity  
8 to rescind the request at any time and in any manner under  
9 section 54B10 (relating to right to rescind request) and  
10 offer the patient an opportunity to rescind at the end of the  
11 15-day waiting period under section 54B11 (relating to  
12 waiting periods).

13 (9) Immediately prior to writing a prescription for  
14 medication under this chapter, verify the patient is making  
15 an informed decision.

16 (10) Fulfill the medical record documentation  
17 requirements of section 54B12 (relating to medical record  
18 documentation requirements).

19 (11) Ensure the steps in this chapter are carried out  
20 prior to writing a prescription for medication to enable a  
21 qualified patient to end his or her life in a humane and  
22 dignified manner.

23 (12) (i) Dispense medications directly, including  
24 ancillary medications intended to facilitate the desired  
25 effect to minimize the patient's discomfort, provided the  
26 attending physician is authorized to do so in this  
27 Commonwealth, has a current Drug Enforcement  
28 Administration certificate and complies with any  
29 applicable administrative rule; or

30 (ii) with the patient's written consent:

1           (A) contact a pharmacist and inform the  
2           pharmacist of the prescription; and

3           (B) deliver the written prescription personally  
4           or by mail to the pharmacist, who will dispense the  
5           medications to either the patient, the attending  
6           physician or an expressly identified agent of the  
7           patient.

8       (b) Death certificate.--Notwithstanding any other provision  
9       of law, the attending physician may sign the patient's death  
10       certificate.

11       § 54B05. Consulting physician confirmation.

12       Before a patient is qualified under this chapter, a  
13       consulting physician shall examine the patient and the patient's  
14       relevant medical records to confirm the attending physician's  
15       diagnosis that the patient is suffering from a terminal disease.  
16       This confirmation shall be in writing. The consulting physician  
17       must also verify the patient:

18           (1) Is capable.

19           (2) Is acting voluntarily.

20           (3) Has made an informed decision.

21       § 54B06. Counseling referral.

22       If the opinion of the attending physician or the consulting  
23       physician is that the patient may be suffering from a  
24       psychiatric or psychological disorder or depression causing  
25       impaired judgment, either physician shall refer the patient for  
26       counseling. No medication to end a patient's life in a humane  
27       and dignified manner shall be prescribed until the person  
28       performing the counseling determines that the patient is not  
29       suffering from a psychiatric or psychological disorder or  
30       depression causing impaired judgment.



1 § 54B07. Informed decision.

2 No person shall receive a prescription for medication to end  
3 his or her life in a humane and dignified manner unless he or  
4 she has made an informed decision. Immediately prior to writing  
5 a prescription for medication under this chapter, the attending  
6 physician shall verify the patient is making an informed  
7 decision.

8 § 54B08. Family notification.

9 The attending physician shall recommend that the patient  
10 notify the next of kin of his or her request for medication  
11 under this chapter. A patient who declines or is unable to  
12 notify the next of kin shall not have his or her request denied  
13 for that reason.

14 § 54B09. Written and oral requests.

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

23 § 54B10. Right to rescind request.

24 A patient may rescind his or her request at any time and in  
25 any manner without regard to his or her mental state. No  
26 prescription for medication under this chapter may be written  
27 without the attending physician's offering the qualified patient  
28 an opportunity to rescind the request.

29 § 54B11. Waiting periods.

30 No less than 15 days shall elapse between the patient's

1 initial oral request and the writing of a prescription under  
2 this chapter. No less than 48 hours shall elapse between the  
3 patient's written request and the writing of a prescription  
4 under this chapter.

5 § 54B12. Medical record documentation requirements.

6 The following shall be documented or filed in the patient's  
7 medical record:

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

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

12 (3) The attending physician's diagnosis and prognosis  
13 and determination that the patient is capable and acting  
14 voluntarily and has made an informed decision.

15 (4) The consulting physician's diagnosis and prognosis  
16 and verification that the patient is capable and acting  
17 voluntarily and has made an informed decision.

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

20 (6) The attending physician's offer to the patient to  
21 rescind his or her request at the time of the patient's  
22 second oral request under section 54B09 (relating to written  
23 and oral requests).

24 (7) A note by the attending physician indicating the  
25 requirements under this chapter have been met and the steps  
26 taken to carry out the request, including a notation of the  
27 medication prescribed.

28 § 54B13. Residency requirement.

29 Only requests made by Commonwealth residents under this  
30 chapter shall be granted. Factors demonstrating residency

1 include, but are not limited to:

2 (1) Possession of a driver's license.

3 (2) Voter registration.

4 (3) Evidence the person owns or leases property in this  
5 Commonwealth.

6 (4) A tax return filed in the most recent year.

7 § 54B14. Reporting requirements.

8 (a) Review.--

9 (1) The department shall annually review a sample of  
10 records maintained under this chapter.

11 (2) The department shall require any health care  
12 provider to file a copy of the dispensing record with the  
13 department upon dispensing medication under this chapter.

14 (b) Rulemaking.--The department shall promulgate rules to  
15 facilitate the collection of information regarding compliance  
16 with this chapter. Except as otherwise provided by law, the  
17 information collected shall not be a public record and may not  
18 be made available for inspection by the public.

19 (c) Report.--The department shall generate and make  
20 available to the public an annual statistical report of  
21 information collected under subsection (b).

22 § 54B15. Effect on construction of wills and contracts.

23 (a) Effect on existing agreements.--No provision in a  
24 contract, will or other agreement, whether written or oral,  
25 shall be valid which affects whether a person may make or  
26 rescind a request for medication to end his or her life in a  
27 humane and dignified manner.

28 (b) Obligations under an existing contract.--No obligation  
29 under an existing contract shall be conditioned or affected by a  
30 person's making or rescinding of a request for medication to end

1 his or her life in a humane and dignified manner.

2 § 54B16. Insurance or annuity policies.

3 The sale, procurement or issuance of life, health or accident  
4 insurance or an annuity policy or the rate charged for any  
5 policy shall not be conditioned upon or affected by the making  
6 or rescinding of a request, by a person, for medication to end  
7 his or her life in a humane and dignified manner. Neither shall  
8 a qualified patient's act of ingesting medication to end his or  
9 her life in a humane and dignified manner have an effect upon a  
10 life, health or accident insurance or an annuity policy.

11 § 54B17. Construction.

12 Nothing under this chapter shall be construed to authorize a  
13 physician or any other person to end a patient's life by lethal  
14 injection, mercy killing or active euthanasia. Actions taken in  
15 accordance with this chapter shall not constitute suicide,  
16 assisted suicide, mercy killing or homicide under the law.

17 § 54B18. Immunities.

18 Except as provided in section 54B20 (relating to  
19 liabilities):

20 (1) No person shall be subject to civil or criminal  
21 liability or professional disciplinary action for  
22 participating in good faith compliance with this chapter.  
23 This includes being present when a qualified patient takes  
24 the prescribed medication to end his or her life in a humane  
25 and dignified manner.

26 (2) No professional organization or association or  
27 health care provider may subject a person to censure,  
28 discipline, suspension, loss of license, loss of privileges,  
29 loss of membership or other penalty for participating in good  
30 faith or refusing to participate under this chapter.

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

6 § 54B19. Health care provider participation; notification;  
7           permissible sanctions.

8           (a) Participation not required.--No health care provider  
9           shall be under any duty, whether by contract, by statute or by  
10           any other legal requirement, to participate in the provision to  
11           a qualified patient of medication to end his or her life in a  
12           humane and dignified manner. If a health care provider is unable  
13           or unwilling to carry out a patient's request under this chapter  
14           and the patient transfers his or her care to a new health care  
15           provider, the prior health care provider shall transfer, upon  
16           request, a copy of the patient's relevant medical records to the  
17           new health care provider.

18           (b) Prohibiting participation.--Notwithstanding any other  
19           provision of law, a health care provider may prohibit another  
20           health care provider from participating under this chapter on  
21           the premises of the prohibiting provider if the prohibiting  
22           provider has notified the health care provider of the  
23           prohibiting provider's policy regarding participating under this  
24           chapter. Nothing in this subsection prevents a health care  
25           provider from providing health care services to a patient that  
26           does not constitute participation under this chapter.

27           (c) Sanctions by health care provider.--Notwithstanding  
28           subsection (a) or section 54B18 (relating to immunities), a  
29           health care provider may subject another health care provider to  
30           the sanctions stated in this subsection if the sanctioning

1 health care provider has notified the sanctioned provider prior  
2 to its participation under this chapter that it prohibits  
3 participation under this chapter. The available sanctions shall  
4 include:

5 (1) loss of privileges, loss of membership or other  
6 sanction provided under the medical staff bylaws, policies  
7 and procedures of the sanctioning health care provider if the  
8 sanctioned provider is a member of the sanctioning provider's  
9 medical staff and participates under this chapter while on  
10 the premises of a health care facility of the sanctioning  
11 health care provider, but not including the private medical  
12 office of a physician or other provider;

13 (2) termination of lease or other property contract or  
14 other nonmonetary remedies provided by lease contract, not  
15 including loss or restriction of medical staff privileges or  
16 exclusion from a provider panel, if the sanctioned provider  
17 participates under this chapter while on the premises of the  
18 sanctioning health care provider or on property that is owned  
19 by or under the direct control of the sanctioning health care  
20 provider; or

21 (3) termination of contract or other nonmonetary  
22 remedies provided by contract if the sanctioned provider  
23 participates under this chapter while acting in the course  
24 and scope of the sanctioned provider's capacity as an  
25 employee or independent contractor of the sanctioning health  
26 care provider. Nothing in this paragraph shall be construed  
27 to prevent:

28 (i) a health care provider from participating under  
29 this chapter while acting outside the course and scope of  
30 the provider's capacity as an employee or independent

1 contractor; or  
2 (ii) a patient from contracting with his or her  
3 attending physician and consulting physician to act  
4 outside the course and scope of the provider's capacity  
5 as an employee or independent contractor of the  
6 sanctioning health care provider.

7 (d) Due process.--A health care provider that imposes  
8 sanctions under subsection (c) must follow all due process and  
9 other procedures the sanctioning health care provider may have  
10 that are related to the imposition of sanctions on another  
11 health care provider.

12 (e) Unprofessional or dishonorable conduct reports.--Action  
13 taken under section 54B03 (relating to form of written request),  
14 54B04 (relating to attending physician responsibilities), 54B05  
15 (relating to consulting physician confirmation) or 54B06  
16 (relating to counseling referral) shall not be the sole basis  
17 for a report of unprofessional or dishonorable conduct to the  
18 State Board of Medicine or the State Board of Osteopathic  
19 Medicine.

20 (f) Standard of care.--No provision of this chapter shall be  
21 construed to allow a lower standard of care for patients in the  
22 community where the patient is treated or a similar community.

23 (g) Definition.--As used in this section, the term "notify"  
24 means a separate written statement to the health care provider  
25 which sanctions its participation in activities covered by this  
26 chapter before the participation occurs.

27 § 54B20. Liabilities.

28 (a) Mishandling instrument.--A person who without  
29 authorization of the patient willfully alters or forges a  
30 request for medication or conceals or destroys a rescission of

1 that request with the intent or effect of causing the patient's  
2 death shall not be immune from criminal liability under section  
3 54B18 (relating to immunities).

4 (b) Undue influence.--A person who coerces or exerts undue  
5 influence on a patient to request medication for the purpose of  
6 ending the patient's life or to destroy a rescission of such a  
7 request shall not be immune from criminal liability under  
8 section 54B18.

9 (c) Civil damages.--Nothing under this chapter limits  
10 liability for civil damages resulting from negligent or  
11 intentional misconduct by any person.

12 § 54B21. Claims by governmental entity for costs incurred.

13 Any governmental entity that incurs costs resulting from a  
14 person terminating his or her life under the provisions of this  
15 chapter in a public place shall have a claim against the estate  
16 of the person to recover such costs and reasonable attorney fees  
17 related to enforcing the claim.

18 § 54B22. Instrument.

19 A request for a medication as authorized under this chapter  
20 shall be in substantially the following form:

21 REQUEST FOR MEDICATION

22 TO END MY LIFE IN A HUMANE

23 AND DIGNIFIED MANNER

24 I, \_\_\_\_\_, am an adult of sound mind.

25 I am suffering from \_\_\_\_\_, which my attending physician has  
26 determined is a terminal disease and which has been medically  
27 confirmed by a consulting physician.

28 I have been fully informed of my diagnosis and prognosis, the  
29 nature of medication to be prescribed and potential associated  
30 risks, the expected result and the feasible alternatives,



1 including comfort care, hospice care and pain control.

2 I request that my attending physician prescribe medication  
3 that will end my life in a humane and dignified manner.

4 INITIAL ONE:

5 ( ) I have informed my family of my decision and taken their  
6 opinions into consideration.

7 ( ) I have decided not to inform my family of my decision.

8 ( ) I have no family to inform of my decision.

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

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

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

18 Signed:

19 Date:

20 DECLARATION OF WITNESSES

21 We declare that the person signing this request:

22 (a) Is personally known to us or has provided proof of  
23 identity.

24 (b) Signed this request in our presence.

25 (c) Appears to be of sound mind and not under duress, fraud  
26 or undue influence.

27 (d) Is not a patient for whom either of us is an attending  
28 physician.

29 Date:

30 Witness' signature:

1 Number and Street:  
2 City, State and Zip Code:  
3 Witness' signature:

4 Number and Street:  
5 City, State and Zip Code:

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

13 § 54B23. Penalties for mishandling instrument.

14 (a) Intent to hasten death.--A person who without  
15 authorization of the principal willfully alters, forges,  
16 conceals or destroys an instrument, the reinstatement or  
17 revocation of an instrument or any other evidence or document  
18 reflecting the principal's desires and interests with the intent  
19 and effect of causing a withholding or withdrawal of life-  
20 sustaining procedures or of artificially administered nutrition  
21 and hydration which hastens the death of the principal commits a  
22 felony of the first degree.

23 (b) Intent to affect health care decision.--Except as  
24 provided in subsection (a), a person without authorization of  
25 the principal who willfully alters, forges, conceals or destroys  
26 an instrument, the reinstatement or revocation of an instrument,  
27 or any other evidence or document reflecting the principal's  
28 desires and interests with the intent or effect of affecting a  
29 health care decision commits a misdemeanor of the first degree.

30 Section 2. This act shall take effect in 60 days.