
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 238 Session of
2017

INTRODUCED BY LEACH AND BOSCOLA, JANUARY 26, 2017

REFERRED TO JUDICIARY, JANUARY 26, 2017

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 and 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 between
8 a licensed psychiatrist or psychologist and a patient for the
9 purpose of determining that the patient is capable and not
10 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 the qualified patient's
20 life in a humane and dignified manner, which decision is based
21 on an appreciation of the relevant facts and after being fully
22 informed by the attending physician of:

23 (1) The qualified patient's medical diagnosis.

24 (2) The qualified patient's 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 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 the patient's
18 attending physician and consulting physician to act outside
19 of the course and scope of the provider's capacity as an
20 employee or independent contractor of the sanctioning health
21 care 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 the adult's 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 An adult resident of this Commonwealth who is capable and has
5 been determined by the attending physician and consulting
6 physician to be suffering from a terminal disease, and who has
7 voluntarily expressed the wish to die, may make a written
8 request for medication for the purpose of ending the adult's
9 life in a humane and dignified manner in accordance with this
10 chapter. No person may qualify to write a request for medication
11 under this section solely because of age or disability.

12 § 54B03. Form of written request.

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

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

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

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

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

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

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

8 § 54B04. Attending physician responsibilities.

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

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

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

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

18 (i) The patient's medical diagnosis.

19 (ii) The patient's prognosis.

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

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

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

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

29 (5) Refer the patient for counseling if appropriate
30 under section 54B06 (relating to counseling referral).

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

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

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

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

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

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

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

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

30 (A) contact a pharmacist and inform the

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

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

10 § 54B05. Consulting physician confirmation.

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

17 (1) Is capable.

18 (2) Is acting voluntarily.

19 (3) Has made an informed decision.

20 § 54B06. Counseling referral.

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

30 § 54B07. Informed decision.

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

7 § 54B08. Family notification.

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

12 § 54B09. Written and oral requests.

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

22 § 54B10. Right to rescind request.

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

28 § 54B11. Waiting periods.

29 No less than 15 days shall elapse between the patient's
30 initial oral request and the writing of a prescription under

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

4 § 54B12. Medical record documentation requirements.

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

7 (1) All oral requests by a patient for medication to end
8 the patient's life in a humane and dignified manner.

9 (2) All written requests by a patient for medication to
10 end the patient's life in a humane and dignified manner.

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

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

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

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

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

27 § 54B13. Residency requirement.

28 Only requests made by Commonwealth residents under this
29 chapter shall be granted. Factors demonstrating residency
30 include, but are not limited to:

- 1 (1) Possession of a driver's license.
- 2 (2) Voter registration.
- 3 (3) Evidence the person owns or leases property in this
4 Commonwealth.
- 5 (4) A tax return filed in the most recent year.

6 § 54B14. Reporting requirements.

7 (a) Review.--

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

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

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

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

21 § 54B15. Effect on construction of wills and contracts.

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

27 (b) Obligations under an existing contract.--No obligation
28 under an existing contract may be conditioned or affected by a
29 person's making or rescinding of a request for medication to end
30 the person's life in a humane and dignified manner.

1 § 54B16. Insurance or annuity policies.

2 The sale, procurement or issuance of life, health or accident
3 insurance or an annuity policy or the rate charged for any
4 policy shall not be conditioned upon or affected by the making
5 or rescinding of a request, by a person, for medication to end
6 the person's life in a humane and dignified manner. A qualified
7 patient's act of ingesting medication to end the qualified
8 patient's life in a humane and dignified manner may not have an
9 effect upon a life, health or accident insurance or an annuity
10 policy.

11 § 54B17. Construction.

12 Nothing under this chapter may 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 may 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 the qualified patient's life
25 in a humane 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 of medication in good faith compliance
3 with this chapter may 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 may
9 be under any duty, whether by contract, by statute or by any
10 other legal requirement, to participate in the provision to a
11 qualified patient of medication to end the qualified patient's
12 life in a humane and dignified manner. If a health care provider
13 is unable or unwilling to carry out a patient's request under
14 this chapter and the patient transfers 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 may be construed to
27 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 the patient's
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) may not be the sole basis for
17 a report of unprofessional or dishonorable conduct to the State
18 Board of Medicine or the State Board of Osteopathic Medicine.

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

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

26 § 54B20. Liabilities.

27 (a) Mishandling instrument.--A person who without
28 authorization of the patient willfully alters or forges a
29 request for medication or conceals or destroys a rescission of
30 that request with the intent or effect of causing the patient's

1 death shall not be immune from criminal liability under section
2 54B18 (relating to immunities).

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

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

11 § 54B21. Claims by governmental entity for costs incurred.

12 A governmental entity that incurs costs resulting from a
13 person terminating the person's life under the provisions of
14 this chapter in a public place shall have a claim against the
15 estate of the person to recover those costs and reasonable
16 attorney fees related to enforcing the claim.

17 § 54B22. Instrument.

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

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

23 I, _____, am an adult of sound mind.

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

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

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

3 INITIAL ONE:

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

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

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

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

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

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

17 Signed:

18 Date:

19 DECLARATION OF WITNESSES

20 We declare that the person signing this request:

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

23 (b) Signed this request in our presence.

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

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

28 Date:

29 Witness' signature:

30 Number and Street:

1 City, State and Zip Code:

2 Witness' signature:

3 Number and Street:

4 City, State and Zip Code:

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

12 § 54B23. Penalties for mishandling instrument.

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

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

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