

## The Death with Dignity Bill – Summary of the Bill with Details

### Findings

This section notes some of the data that have been collected in Oregon since the law passed there in 1997, as well as some Vermont statistics.

- In twelve years, a total of 460 patients took medication to hasten their death.
- Vermont's population is 1/6 the size of Oregon's.
- Oregon's hospice enrollment has increased significantly, from 20% of dying patients in 1993 to 54% in 2005.
- In 2009, 91.5% of the patients using medication under the Death with Dignity Act were enrolled in hospice.
- In Oregon, approximately 1 in 6 requests for a prescription are granted, and approximately 1 in 10 requests actually results in a hastened death.

### Definitions

This section of the bill defines terms used in the bill, and the definitions of these terms are only relevant for the Death with Dignity chapter of law. Several terms are defined, and a few are highlighted below (the definitions are quoted from the bill).

- *informed decision* – means a decision by a patient to request and obtain a prescription to hasten his or her death based on the patient's understanding and appreciation of the relevant facts and that was made after the patient was fully informed by the attending physician of all of the following:
  - The patient's medical diagnosis
  - The patient's prognosis
  - The range of possible results, including the potential risks associated with taking the medication to be prescribed.
  - The probable result of taking the medication prescribed
  - All feasible end-of-life services, including comfort care, hospice care, and pain control
- *patient* – means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.
- *qualified patient* – means a patient with capacity who has satisfied the requirements of this chapter in order to obtain a prescription for medication to hasten his or her death. No individual shall qualify under the provisions of this chapter solely because of age or disability.
- *terminal condition* – means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

### Requests for Medication

This section outlines what the patient must do in order to request and receive a prescription for medication to hasten his or her death. The safeguards that the bill requires are outlined below in this section and the section outlining the duties of the physician.

1. The patient must have a terminal illness and must have a prognosis of fewer than six months left to live.
2. The patient must make two oral requests in the presence of his or her physician – with 15 days in between. When the patient asks the second time, the physician must offer the patient an opportunity to rescind the request.
3. In addition to the two oral requests, the patient must make a written request for the medication. This request must be signed and dated by the patient, and there must be 2 witness – these witnesses must be at least 18, and must sign in the presence of the patient and attest that the patient understands what s/he is requesting and appears to be free from duress or undue influence.
  - a. Neither of the witnesses can be a physician caring for the patient, a counselor who has provided counseling to the patient, a close relative of the patient, anyone who might benefit from the patient's death, or an owner, operator or employee of a facility where the patient is receiving care.
4. The written request can be completed only after the patient gets a second opinion on his or her diagnosis and prognosis.
5. No one can make any of the requests except the patient himself or herself.

### Duties of the Attending Physician

The physician who is taking care of the patient who requests this medication has some specific duties with regard to the request. They are listed below.

1. The physician must determine that the patient has a terminal condition, has capacity and is acting voluntarily.
2. The physician must request proof of Vermont residency.
3. The physician must inform the patient in writing of the patient's diagnosis and prognosis, the range of possible results from taking the medicine, the probable result of taking the medication, and all feasible end-of-life services – including comfort care, hospice care, and pain control.
4. The physician must refer the patient for a second opinion on diagnosis and prognosis, as well as whether the patient has capacity and is acting voluntarily.
5. The physician must refer the patient for counseling if either the attending or consulting physician believe that the patient may be suffering from a mental disorder or disease, including depression, causing impaired judgment.
6. The physician must refer the patient for a palliative care consultation if the patient is not already receiving hospice services. The physician must attest that this consultation was completed.
7. The physician must recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship. It is still the patient's choice about whether to do this.
8. The physician must counsel that patient about the importance of ensuring that someone else is with the patient when the patient takes the medication, and that the patient must not take the medication in a public place.

### **Duties of the Attending Physician, cont.**

9. The physician must inform the patient that the patient can change his or her mind at any time and in any manner. In addition, the physician must specifically offer the patient the opportunity to rescind his or her request after the 15-day waiting period.
10. The physician must verify just before writing the prescription that the patient is making an informed decision.
11. The physician has the responsibility to make sure all of the steps have been taken and all of the documentation has been collected before writing a prescription. The documentation must be included in the patient's medical record.
  - a. If the physician is licensed to do so, s/he may dispense the medication directly.
  - b. If the physician is not licensed to dispense the medication, the physician will deliver the prescription to a pharmacist who has agreed to dispense it. The pharmacist will give the medication directly to the patient or to an expressly identified agent of the patient.
12. The physician may sign the death certificate of the patient.
13. After the patient makes the last of the three requests (oral or written), the physician must wait 48 hours before writing the prescription.

### **Reporting by the Department of Health**

This section stipulates that the Vermont Department of Health shall review the medical records of qualified patients who have hastened their deaths each year. Any physician who writes a prescription for lethal medication must file a report with the Department of Health. The physician must also report on the total number of requests s/he received each year, regardless of whether the physician actually provided a prescription. The Department of Health will provide to the public an annual report that includes the statistics collected, as well as any instances where medication was taken without the intended effect.

### **Safe Disposal of Unused Medications**

This section deals with how to dispose of medications that patients receive but do not use. Because the patient has the right to change their mind at any time, they may decide not to take the medication after they have received it. The bill stipulates that the Vermont Department of Health will adopt rules that specify a safe way to dispose of unused medication. This rulemaking will be expedited so that the rules for medication disposal are in place as soon as possible after the bill's enactment.

### **Immunities**

- This section specifies that those who are involved with this process are not subject to civil or criminal penalties, as long as they have followed the law and acted in good faith.
- This section also says that no professional organization can punish a member for participating in the process, and no health care provider can be required to participate if they do not want to.
- It also says that if a patient makes a request for a prescription for lethal medication, this action cannot be the sole basis for the appointment of a guardian or conservator.

### **Health Care Facility Exception**

This section says that if a health care facility does not want to participate in this process, it can prohibit a physician from writing a prescription for a patient who is a resident in the facility, if the patient intends to use the medication on the facility's premises.

### **Liabilities and Penalties**

This section clarifies that if a physician is not acting within the law or in good faith, the immunities provided in the Immunities section will not apply.

### **Form of the Written Request**

This section outlines what needs to be in the written request from the patient, including specific language and the affirmation of witnesses.

### **Statutory Construction**

This section specifies that this bill will not allow a physician (or anyone) to end a person's life by lethal injection, mercy killing, or active euthanasia. It also specifies that actions that are within the law are not considered suicide, assisted suicide, mercy killing, or homicide.

### **Violation of Patient Choice & Control at End of Life Act**

This section specifies that someone who violates the law with the intent to cause the death of a patient will be prosecuted for homicide.

### **False Witnessing**

This section specifies that a person who acts as a witness on the written request, but is not eligible to do so, or who otherwise violates the provisions of acting as a witness, can be imprisoned for up to 10 years and can be fined for up to \$2000, or both.

### **Effective Date**

The Act will take effect on September 1, 2011, if it is enacted.

