

SENATE FILE NO. SF0007

Fagan's death with dignity.

Sponsored by: Senator(s) Goodenough

A BILL

for

1 AN ACT relating to public health; providing procedures for
2 requesting medication to humanely end the life of a patient
3 with a terminal disease; specifying the numbers and forms
4 of requests; providing for witnesses; specifying duties and
5 responsibilities of physicians, counselors and others as
6 specified; specifying waiting periods and residency
7 requirements; specifying the effect of the act on insurance
8 policies, contracts and wills; providing immunities for
9 participation in the act; prohibiting certain acts and
10 providing criminal penalties; authorizing recovery of
11 costs; authorizing the collection and dissemination of
12 information as specified; specifying limitations; providing
13 definitions; and providing for an effective date.

14

15 *Be It Enacted by the Legislature of the State of Wyoming:*

16

1 **Section 1.** W.S. 35-29-101 through 35-29-118 are
2 created to read:

3

4

ARTICLE 29

5

DEATH WITH DIGNITY

6

7

35-29-101. Death with dignity act; short title.

8

9 This act shall be known and may be cited as the "Wyoming
10 Death with Dignity Act."

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35-29-102. Definitions.

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14

(a) As used in this act:

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(i) "Attending physician" means a physician who
has primary responsibility for the care of a patient and
treatment of the patient's terminal disease;

(ii) "Capable" means that in the opinion of a
court or in the opinion of the patient's attending physician
or consulting physician, psychiatrist, psychologist or other
licensed mental health care professional, a patient has the
ability to make and communicate health care decisions to

1 health care providers, including communication through
2 persons familiar with the patient's manner of communicating
3 if those persons are available;

4

5 (iii) "Consulting physician" means a physician
6 who is qualified by specialty or experience to make a
7 professional diagnosis and prognosis regarding the patient's
8 disease;

9

10 (iv) "Counseling" means one (1) or more
11 consultations as necessary between a licensed psychiatrist,
12 psychologist or other mental health care professional and a
13 patient for the purpose of determining that the patient is
14 capable and not suffering from a psychiatric or
15 psychological disorder or depression causing impaired
16 judgment;

17

18 (v) "Department" means the department of health;

19

20 (vi) "Health care" means any care, service or
21 product provided by a health care provider not including
22 retail, over-the-counter sales of nonprescription
23 medications and other retail sales of health-related
24 products;

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(vii) "Health care provider" means a person or entity who is licensed, certified or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession;

(viii) "Informed decision" means a decision by a qualified patient to request and obtain a prescription to end his life in a humane and dignified manner based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(A) The medical diagnosis and prognosis;

(B) The potential risks associated with taking the medication to be prescribed;

(C) The probable result of taking the medication to be prescribed; and

(D) The feasible alternatives, including comfort care, hospice care and pain control.

1 (ix) "Long term care facility" means any skilled
2 or intermediate care nursing home or board and care home,
3 adult day care facility, home health agency or other type of
4 personal care home or service subject to regulation and
5 licensure by the department of health;

6
7 (x) "Medically confirmed" means that the medical
8 opinion of the attending physician has been confirmed by a
9 consulting physician who has examined the patient and the
10 patient's relevant medical records;

11
12 (xi) "Patient" means a person who is under the
13 care of a physician;

14
15 (xii) "Physician" means a person authorized or
16 licensed to practice medicine as provided in W.S. 33-26-101
17 through 33-26-601;

18
19 (xiii) "Qualified patient" means a capable adult
20 who is a resident of Wyoming and has satisfied the
21 requirements of this act in order to obtain a prescription
22 for medication to end his life in a humane and dignified
23 manner;

24

1 (xiv) "Resident" means a domiciled resident and
2 citizen of Wyoming for a period of not less than one (1)
3 year who has not claimed residency elsewhere for any purpose
4 within a one (1) year period immediately preceding the date
5 of a request for medication for the purpose of ending his
6 life in a humane and dignified manner in accordance with
7 this act;

8

9 (xv) "Terminal disease" means an incurable and
10 irreversible disease that has been medically confirmed and
11 will, within reasonable medical judgment, produce death
12 within six (6) months;

13

14 (xvi) "This act" means W.S. 35-29-101 through
15 35-29-118.

16

17 **35-29-103. Initiation of requests for medication;**
18 **number and form of requests; witnesses; limitations.**

19

20 (a) A capable adult who is a Wyoming resident, has
21 been determined by the attending physician and consulting
22 physician to be suffering from a terminal disease and has
23 voluntarily expressed his wish to die may request medication
24 for the purpose of ending his life in a humane and dignified

1 manner in accordance with this act. Upon completion of all
2 steps required by this act, the patient shall be qualified
3 to receive the requested medication.

4

5 (b) In order to receive a prescription for medication
6 to end his life in a humane and dignified manner, a patient
7 shall make to his attending physician:

8

9 (i) An initial oral request;

10

11 (ii) A written request in substantially the form
12 described in W.S. 35-29-107, signed and dated by the patient
13 and witnessed by at least two (2) persons who, in the
14 presence of the patient, attest that to the best of their
15 knowledge and belief the patient is capable, is acting
16 voluntarily and is not being coerced to sign the request;
17 and

18

19 (iii) A second oral request made not less than
20 fifteen (15) days after making the initial oral request nor
21 less than forty-eight (48) hours after making the written
22 request.

23

1 (c) One (1) of the witnesses required by paragraph
2 (b)(ii) of this section shall be a person who is not:

3

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

6

7 (ii) A person who at the time the request is
8 signed would be entitled to any portion of the estate of the
9 qualified patient upon death under any will or by operation
10 of law; or

11

12 (iii) Except as provided in subsection (e) of
13 this section, an owner, operator or employee of a health
14 care facility where the qualified patient is receiving
15 medical treatment or is a resident.

16

17 (d) The patient's attending physician at the time the
18 request is signed shall not be a witness.

19

20 (e) If the patient resides in a long-term care
21 facility at the time the written request is made, one (1) of
22 the witnesses shall be an individual designated by the
23 facility and having the qualifications specified by rule of
24 the department of health.

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35-29-104. Attending physician; responsibilities.

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4

(a) The attending physician shall:

5

6

(i) Make the initial determination of whether a patient has a terminal disease, is capable of making a request for medication and has made the request voluntarily;

9

10

11

(ii) Request that the patient demonstrate Wyoming residency;

12

13

14

(iii) Ensure the patient is making an informed decision by informing the patient of:

15

16

(A) The medical diagnosis and prognosis;

17

18

19

(B) The potential risks associated with taking the medication to be prescribed;

20

21

22

(C) The probable result of taking the medication to be prescribed; and

23

1 (D) Any feasible alternatives, including
2 comfort care, hospice care and pain control.

3

4 (iv) Refer the patient to a consulting physician
5 for medical confirmation of the diagnosis and prognosis and
6 a determination that the patient is capable, is acting
7 voluntarily and has made an informed decision;

8

9 (v) Refer the patient for counseling if
10 appropriate pursuant to W.S. 35-29-106;

11

12 (vi) Recommend that the patient notify next of
13 kin, provided that a patient who declines or is unable to
14 notify next of kin shall not have his request denied for
15 that reason;

16

17 (vii) Counsel the patient about the importance of
18 having another person present when the patient takes the
19 medication prescribed and of not taking the medication in a
20 public place;

21

22 (viii) Inform the patient that he has an
23 opportunity to rescind the request at any time and in any
24 manner. At the time a qualified patient makes the second

1 oral request at the end of the fifteen (15) day waiting
2 period required by W.S. 35-29-109, the attending physician
3 shall offer the patient an opportunity to rescind the
4 request;

5

6 (ix) Verify immediately prior to writing the
7 prescription for medication that the patient is making an
8 informed decision;

9

10 (x) Fulfill the medical record documentation
11 requirements of this act or other applicable law;

12

13 (xi) Ensure that all appropriate steps are
14 carried out pursuant to this act prior to writing a
15 prescription for medication to enable a qualified patient to
16 end his life in a humane and dignified manner.

17

18 (b) In addition to other requirements, the attending
19 physician shall:

20

21 (i) Dispense medications directly, including
22 ancillary medications intended to facilitate the desired
23 effect to minimize the patient's discomfort, provided that
24 the attending physician has complied with applicable state

1 and federal laws and rules regarding the dispensing of
2 medications; or

3

4 (ii) With the patient's written consent:

5

6 (A) Contact a pharmacist and inform the
7 pharmacist of the prescription; and

8

9 (B) Deliver the written prescription
10 personally or by mail to the pharmacist, who will dispense
11 the medications to either the patient, the attending
12 physician or an expressly identified agent of the patient.

13

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

17

18 **35-29-105. Qualification; consulting physician**
19 **required; confirmation.**

20

21 (a) No person shall qualify under this act solely
22 because of age or disability. No person shall be qualified
23 for a prescription for medication to end his life in a

1 humane and dignified manner under this act unless the person
2 has made an informed decision.

3

4 (b) Before a patient may be qualified under this act,
5 a consulting physician shall examine the patient and his
6 relevant medical records, confirm in writing the attending
7 physician's diagnosis and prognosis that the patient is
8 suffering from a terminal disease and verify in writing that
9 the patient is capable, is acting voluntarily and has made
10 an informed decision.

11

12 **35-29-106. Counseling referral.**

13

14 If in the opinion of the attending physician or the
15 consulting physician a patient may be suffering from a
16 psychiatric or psychological disorder or depression causing
17 impaired judgment, either physician shall refer the patient
18 for counseling. No medication to end a patient's life in a
19 humane and dignified manner shall be prescribed until the
20 person performing the counseling determines that the patient
21 is not suffering from a psychiatric or psychological
22 disorder or depression causing impaired judgment.

23

24 **35-29-107. Form of the request.**

1

2 (a) A request for a medication made pursuant to this
3 act shall be in substantially the following form:

4

5 REQUEST FOR MEDICATION TO END MY LIFE IN A
6 HUMANE AND DIGNIFIED MANNER

7

8 I,, am an adult of sound mind.

9 I am suffering from, which my attending physician
10 has determined is a terminal disease and which has been
11 medically confirmed by a consulting physician.

12 I have been fully informed of my diagnosis, prognosis,
13 the nature of medication to be prescribed and potential
14 associated risks, the expected result and the feasible
15 alternatives, including comfort care, hospice care and pain
16 control.

17 I request that my attending physician prescribe
18 medication that will end my life in a humane and dignified
19 manner.

20

21 INITIAL ONE:

22 I have informed my family of my decision and taken
23 their opinions into consideration.

1 I have decided not to inform my family of my
2 decision.

3 I have no family to inform of my decision.

4 I understand that I have the right to rescind this
5 request at any time.

6 I understand the full import of this request and I
7 expect to die when I take the medication to be prescribed.
8 I further understand that although most deaths occur within
9 three (3) hours, my death may take longer and my physician
10 has counseled me about this possibility.

11 I make this request voluntarily and without
12 reservation, and I accept full moral responsibility for my
13 actions.

14

15 SIGNATURE: Sign and date the form here:

16

17

18

(date)

(sign your name)

19

20

21

(address)

(print your name)

22

23

24

(city)

(state)

1

2 DECLARATION OF WITNESSES

3

4 We declare that the person signing this request:

5

6 (a) Is personally known to us or has provided
7 proof of identity;

8

9 (b) Signed this request in our presence;

10

11 (c) Appears to be of sound mind and not under
12 duress, fraud or undue influence;

13

14 (d) Is not a patient for whom either of us is
15 attending physician.

16

17 First witness

 Second witness

18

19 _____

20 (print name)

 (print name)

21

22 _____

23 (address)

 (address)

24

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|------------------------|------------------------|
| _____ | _____ |
| (city) (state) | (city) (state) |
| _____ | _____ |
| (signature of witness) | (signature of witness) |
| _____ | _____ |
| (date) | (date) |

10 NOTE: One (1) witness shall not be a relative (by
 11 blood, marriage or adoption) of the person signing this
 12 request, shall not be entitled to any portion of the
 13 person's estate upon death and shall not own, operate or be
 14 employed at a health care facility where the person is a
 15 patient or resident. If the patient is an inpatient at a
 16 health care facility, one (1) of the witnesses shall be an
 17 individual designated by the facility pursuant to rule of
 18 the department of health.

19

35-29-108. Right to rescind request.

20

21
 22 A patient may rescind his request at any time and in any
 23 manner without regard to his mental state. No prescription
 24 for medication under this act may be written without the

1 attending physician offering the patient an opportunity to
2 rescind the request.

3

4 **35-29-109. Waiting periods.**

5

6 No less than fifteen (15) days shall elapse between the
7 patient's initial oral request and the writing of a
8 prescription. No less than forty-eight (48) hours shall
9 elapse between the patient's written request and the writing
10 of a prescription under this act.

11

12 **35-29-110. Residency requirement.**

13

14 (a) Only requests made by Wyoming residents pursuant
15 to this act shall be granted. For the purposes of this act,
16 factors demonstrating Wyoming residency shall include but
17 shall not be limited to:

18

19 (i) Possession of a valid Wyoming driver's
20 license;

21

22 (ii) Registration to vote in Wyoming;

23

1 (iii) Evidence that the person owns or leases
2 property in Wyoming; or

3

4 (iv) Possession of a valid Wyoming resident
5 hunting or fishing license.

6

7 **35-29-111. Medical record documentation requirements.**

8

9 (a) The following shall be documented and filed in the
10 patient's medical record:

11

12 (i) All oral requests by a patient for medication
13 to end his life in a humane and dignified manner;

14

15 (ii) All written requests by a patient for
16 medication to end his life in a humane and dignified manner;

17

18 (iii) The attending physician's diagnosis and
19 prognosis, determination that the patient is capable, is
20 acting voluntarily and has made an informed decision;

21

22 (iv) The consulting physician's confirmation of
23 the diagnosis and prognosis and verification that the

1 patient is capable, is acting voluntarily and has made an
2 informed decision;

3

4 (v) A report of the outcome and determinations
5 made during counseling, if performed;

6

7 (vi) The attending physician's offer to the
8 patient to rescind his request at the time of the patient's
9 second oral request; and

10

11 (vii) A note by the attending physician
12 indicating that all requirements of this act have been met
13 and indicating the steps taken to carry out the request,
14 including a notation of the medication prescribed.

15

16 **35-29-112. Reporting requirements.**

17

18 (a) The department shall require health care providers
19 upon dispensing medication to file a copy of the dispensing
20 record and the note required by W.S. 35-29-111(a)(vi) with
21 the department. The department shall make rules to
22 facilitate the collection of information regarding
23 compliance with this act.

24

1 (b) The department of health shall annually review a
2 sample of the records maintained pursuant to this act.
3 Except as otherwise provided by law, information collected
4 by the department shall not be a public record and shall not
5 be made available for inspection by the public.

6

7 (c) The department shall generate and make available
8 to the public an annual statistical report of information
9 collected pursuant to this section.

10

11 **35-29-113. Effect on construction of contracts, wills**
12 **and other agreements.**

13

14 (a) No provision in a contract, will or other
15 agreement, whether written or oral, which affects whether a
16 person may make or rescind a request for medication to end
17 his life in a humane and dignified manner pursuant to this
18 act shall be valid.

19

20 (b) No obligation owing under any currently existing
21 contract or other agreement shall be conditioned or affected
22 by the making or rescinding of a request by a person for
23 medication to end his life in a humane and dignified manner
24 pursuant to this act.

1

2

35-29-114. Insurance or annuity policies.

3

4 The sale, procurement or issuance of any life, health or
5 accident insurance or annuity policy or the rate charged for
6 any policy shall not be conditioned upon or affected by the
7 making or rescinding of a request by a person for medication
8 to end his life in a humane and dignified manner pursuant to
9 this act. A qualified patient's act of ingesting medication
10 to end his life in a humane and dignified manner pursuant to
11 this act shall have no effect upon a life, health or
12 accident insurance or annuity policy.

13

14

35-29-115. Construction of act.

15

16 (a) Nothing in this act shall be construed to
17 authorize a physician or any other person to end a patient's
18 life by lethal injection, mercy killing or active
19 euthanasia. Actions taken pursuant to this act shall not
20 for any purpose constitute suicide, assisted suicide, mercy
21 killing or homicide under the laws of this state.

22

1 (b) Nothing in this act shall be construed to allow
2 for a lower standard of care for patients in the community
3 where the patient is treated or a similar community.

4

5 **35-29-116. Immunities; basis for prohibiting health**
6 **care provider from participation; notification; permissible**
7 **sanctions.**

8

9 (a) As used in this section:

10

11 (i) "Notify" means to make a separate statement
12 in writing to a health care provider specifically informing
13 the health care provider prior to the provider's
14 participation in this act of the prohibiting health care
15 provider's policies about participation in activities
16 covered by this act;

17

18 (ii) "Participation in this act" means the
19 performance of the duties of an attending physician pursuant
20 to W.S. 35-29-104, the consulting physician function
21 pursuant to W.S. 35-29-105 or the counseling function
22 pursuant to W.S. 35-29-106. "Participation in this act"
23 shall not include:

24

1 (A) Making an initial determination that a
2 patient has a terminal disease and informing the patient of
3 the medical prognosis;

4
5 (B) Providing information about the Wyoming
6 Death with Dignity Act to a patient upon the request of the
7 patient;

8
9 (C) Providing a patient, upon the request of
10 the patient, with a referral to another physician; or

11
12 (D) Contracting with a patient as his
13 attending physician, consulting physician or counselor when
14 acting outside of the course and scope of the contractor's
15 capacity as an employee or independent contractor of a
16 prohibiting health care provider.

17
18 (b) Except as provided in W.S. 35-29-117:

19
20 (i) No person shall be subject to civil or
21 criminal liability or professional disciplinary action for
22 participation in this act in good faith. This includes
23 being present when a qualified patient takes the prescribed
24 medication to end his life in a humane and dignified manner;

1

2 (ii) No professional organization or association
3 or health care provider may subject a person to censure,
4 discipline, suspension, loss of license, loss of privileges,
5 loss of membership or other penalty for participating or
6 refusing to participate in this act in good faith;

7

8 (iii) No request by a patient for, or provision
9 by an attending physician of, medication in good faith
10 pursuant to this act shall constitute neglect for any
11 purpose of law or provide the sole basis for the appointment
12 of a guardian or conservator;

13

14 (iv) No health care provider shall be under any
15 duty, whether by contract, by statute or by any other legal
16 requirement to participate in the provision to a qualified
17 patient of medication to end his life in a humane and
18 dignified manner. If a health care provider is unable or
19 unwilling to carry out a patient's request under this act,
20 and the patient transfers his care to a new health care
21 provider, the prior health care provider shall transfer upon
22 request of the patient a copy of the patient's relevant
23 medical records to the new health care provider.

24

1 (c) Notwithstanding any other provision of law, a
2 health care provider may prohibit another health care
3 provider from participation in this act on the premises of
4 the prohibiting provider if the prohibiting provider has
5 notified the health care provider of the prohibiting
6 provider's policy. Nothing in this paragraph prevents a
7 health care provider from providing health care services to
8 a patient that do not constitute participation in this act.

9

10 (d) Notwithstanding the provisions of paragraphs
11 (b) (i) through (iv) of this section, if the prohibiting
12 health care provider has notified the participating provider
13 prior to participation in this act that it prohibits
14 participation, the prohibiting health care provider may
15 subject the participating health care provider to:

16

17 (i) Loss of privileges, loss of membership or
18 other sanction provided pursuant to the medical staff
19 bylaws, policies and procedures of the prohibiting health
20 care provider if the participating provider is a member of
21 the prohibiting provider's medical staff and participates in
22 this act while on the health care facility premises of the
23 prohibiting health care provider, excluding the private
24 medical office of a physician or other health care provider;

1

2 (ii) Termination of lease or other property
3 contract or other nonmonetary remedies provided by lease
4 contract, not including loss or restriction of medical staff
5 privileges or exclusion from a provider panel, if the
6 participating provider participates in this act while on the
7 premises of the prohibiting health care provider or on
8 property that is owned by or under the direct control of the
9 prohibiting health care provider; or

10

11 (iii) Termination of contract or other
12 nonmonetary remedies provided by contract if the
13 participating provider participates in this act while acting
14 in the course and scope of the participating provider's
15 capacity as an employee or independent contractor of the
16 prohibiting health care provider. Nothing in this paragraph
17 shall be construed to prevent:

18

19 (A) A health care provider from
20 participating in this act while acting outside the course
21 and scope of the provider's capacity as an employee or
22 independent contractor of the prohibiting provider; or

23

1 (B) A patient from contracting with his
2 health care provider to act outside the course and scope of
3 the provider's capacity as an employee or independent
4 contractor of the prohibiting health care provider.

5
6 (e) A prohibiting health care provider that imposes
7 sanctions specified in this section shall follow all due
8 process and other procedures the prohibiting health care
9 provider may have that are related to the imposition of
10 sanctions on another health care provider. Nothing in this
11 section shall be construed to limit the ability of a
12 participating provider from seeking redress in the courts.

13

14 **35-29-117. Offenses; penalties.**

15

16 (a) A person who without authorization of the patient
17 willfully alters or forges a request for medication or
18 conceals or destroys a reinstatement or rescission of a
19 request for medication with the intent or effect of causing
20 the patient's death or with the intent and effect of causing
21 a withholding or withdrawal of life-sustaining procedures or
22 of artificially administered nutrition and hydration which
23 hastens the death of the patient shall be guilty of a felony

1 punishable by imprisonment for a term not less than twenty
2 (20) years.

3

4 (b) A person who coerces or exerts undue influence on
5 a patient to request medication for the purpose of ending
6 the patient's life or to destroy a reinstatement or
7 rescission of a request for medication shall be guilty of a
8 felony punishable by imprisonment for a term not more than
9 twenty (20) years.

10

11 (c) A person who without authorization of the
12 principal willfully alters, forges, conceals or destroys an
13 instrument, the reinstatement or revocation of an instrument
14 or any other evidence or document reflecting a patient's
15 desires and interests with the intent or effect of affecting
16 a health care decision shall be guilty of a misdemeanor
17 punishable by imprisonment for a term not more than one (1)
18 year, a fine of not more than two thousand dollars
19 (\$2,000.00), or both.

20

21 (d) Nothing in this act shall be construed to limit
22 further criminal or civil liability resulting from other
23 intentional or negligent conduct by any person.

24

1 **35-29-118. Claims by governmental entity for costs**
2 **incurred.**

3

4 Any governmental entity that incurs costs resulting from a
5 person terminating his life pursuant to this act in a public
6 place shall have a claim against the estate of the person
7 for the costs and reasonable attorney fees.

8

9 **Section 2.** This act is effective July 1, 2004.

10

11

(END)

1