SENATE FILE NO. SF0007

Fagan's death with dignity.

Sponsored by: Senator(s) Goodenough

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

Be It Enacted by the Legislature of the State of Wyoming:
Section 1. W.S. 35-29-101 through 35-29-118 are created to read:

ARTICLE 29
DEATH WITH DIGNITY


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

35-29-102. Definitions.

(a) As used in this act:

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

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

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

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

(vi) "Health care" means any care, service or product provided by a health care provider not including retail, over-the-counter sales of nonprescription medications and other retail sales of health-related products;
(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.
(ix) "Long term care facility" means any skilled or intermediate care nursing home or board and care home, adult day care facility, home health agency or other type of personal care home or service subject to regulation and licensure by the department of health;

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

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

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

(xiii) "Qualified patient" means a capable adult who is a resident of Wyoming and has satisfied the requirements of this act in order to obtain a prescription for medication to end his life in a humane and dignified manner;
(xiv) "Resident" means a domiciled resident and citizen of Wyoming for a period of not less than one (1) year who has not claimed residency elsewhere for any purpose within a one (1) year period immediately preceding the date of a request for medication for the purpose of ending his life in a humane and dignified manner in accordance with this act;

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

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

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

(a) A capable adult who is a Wyoming resident, has been determined by the attending physician and consulting physician to be suffering from a terminal disease and has voluntarily expressed his wish to die may request medication for the purpose of ending his life in a humane and dignified
manner in accordance with this act. Upon completion of all
steps required by this act, the patient shall be qualified
to receive the requested medication.

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

(i) An initial oral request;

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

and

(iii) A second oral request made not less than
fifteen (15) days after making the initial oral request nor
less than forty-eight (48) hours after making the written
request.
(c) One (1) of the witnesses required by paragraph (b)(ii) of this section shall be a person who is not:

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

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

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

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

(e) If the patient resides in a long-term care facility at the time the written request is made, one (1) of the witnesses shall be an individual designated by the facility and having the qualifications specified by rule of the department of health.
35-29-104. Attending physician; responsibilities.

(a) The attending physician shall:

(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;

(ii) Request that the patient demonstrate Wyoming residency;

(iii) Ensure the patient is making an informed decision by informing the patient 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) Any feasible alternatives, including comfort care, hospice care and pain control.

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

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

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

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

(viii) Inform the patient that he has an opportunity to rescind the request at any time and in any manner. At the time a qualified patient makes the second
oral request at the end of the fifteen (15) day waiting period required by W.S. 35-29-109, the attending physician shall offer the patient an opportunity to rescind the request;

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

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

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

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

(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided that the attending physician has complied with applicable state
and federal laws and rules regarding the dispensing of medications; or

(ii) With the patient's written consent:

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

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

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

35-29-105. Qualification; consulting physician required; confirmation.

(a) No person shall qualify under this act solely because of age or disability. No person shall be qualified for a prescription for medication to end his life in a
humane and dignified manner under this act unless the person
has made an informed decision.

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

35-29-106. Counseling referral.

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

35-29-107. Form of the request.
(a) A request for a medication made pursuant to this act shall be in substantially the following form:

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

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

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

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

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

INITIAL ONE:

.... I have informed my family of my decision and taken their opinions into consideration.
I have decided not to inform my family of my decision.

I have no family to inform of my decision.

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

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

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

SIGNATURE: Sign and date the form here:

_______________________      __________________________
(date)                   (sign your name)

_______________________      __________________________
(address)                  (print your name)

_________________________  
(city)         (state)
DECLARATION OF WITNESSES

We declare that the person signing this request:

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

(b) Signed this request in our presence;

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

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

First witness             Second witness
_______________________      __________________________
(print name)              (print name)
_______________________      __________________________
(address)                   (address)
NOTE: One (1) witness shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall not be entitled to any portion of the person’s estate upon death and shall not own, operate or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one (1) of the witnesses shall be an individual designated by the facility pursuant to rule of the department of health.

35-29-108. Right to rescind request.

A patient may rescind his request at any time and in any manner without regard to his mental state. No prescription for medication under this act may be written without the
attending physician offering the patient an opportunity to rescind the request.

35-29-109. Waiting periods.

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

35-29-110. Residency requirement.

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

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

(ii) Registration to vote in Wyoming;
(iii) Evidence that the person owns or leases property in Wyoming; or 

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

35-29-111. Medical record documentation requirements.

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

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

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

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

(iv) The consulting physician's confirmation of the diagnosis and prognosis and verification that the
patient is capable, is acting voluntarily and has made an informed decision;

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

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

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

35-29-112. Reporting requirements.

(a) The department shall require health care providers upon dispensing medication to file a copy of the dispensing record and the note required by W.S. 35-29-111(a)(vi) with the department. The department shall make rules to facilitate the collection of information regarding compliance with this act.
(b) The department of health shall annually review a sample of the records maintained pursuant to this act. Except as otherwise provided by law, information collected by the department shall not be a public record and shall not be made available for inspection by the public.

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

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

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

(b) No obligation owing under any currently existing contract or other agreement shall be conditioned or affected by the making or rescinding of a request by a person for medication to end his life in a humane and dignified manner pursuant to this act.
35-29-114. Insurance or annuity policies.

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


(a) Nothing in this act shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken pursuant to this act shall not for any purpose constitute suicide, assisted suicide, mercy killing or homicide under the laws of this state.
Nothing in this act shall be construed to allow for a lower standard of care for patients in the community where the patient is treated or a similar community.

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

(a) As used in this section:

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

(ii) "Participation in this act" means the performance of the duties of an attending physician pursuant to W.S. 35-29-104, the consulting physician function pursuant to W.S. 35-29-105 or the counseling function pursuant to W.S. 35-29-106. "Participation in this act" shall not include:
(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

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

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

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

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

(i) No person shall be subject to civil or criminal liability or professional disciplinary action for participation in this act in good faith. This includes being present when a qualified patient takes the prescribed medication to end his life in a humane and dignified manner;
(ii) No professional organization or association or health care provider may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in this act in good faith;

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

(iv) No health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this act, and the patient transfers his care to a new health care provider, the prior health care provider shall transfer upon request of the patient a copy of the patient's relevant medical records to the new health care provider.
(c) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participation in this act on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy. Nothing in this paragraph prevents a health care provider from providing health care services to a patient that do not constitute participation in this act.

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

   (i) Loss of privileges, loss of membership or other sanction provided pursuant to the medical staff bylaws, policies and procedures of the prohibiting health care provider if the participating provider is a member of the prohibiting provider's medical staff and participates in this act while on the health care facility premises of the prohibiting health care provider, excluding the private medical office of a physician or other health care provider;
(ii) Termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the participating provider participates in this act while on the premises of the prohibiting health care provider or on property that is owned by or under the direct control of the prohibiting health care provider; or

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

(A) A health care provider from participating in this act while acting outside the course and scope of the provider's capacity as an employee or independent contractor of the prohibiting provider; or
(B) A patient from contracting with his health care provider to act outside the course and scope of the provider's capacity as an employee or independent contractor of the prohibiting health care provider.

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

35-29-117. Offenses; penalties.

(a) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a reinstatement or rescission of a request for medication with the intent or effect of causing the patient's death or with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration which hastens the death of the patient shall be guilty of a felony
punishable by imprisonment for a term not less than twenty (20) years.

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

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

(d) Nothing in this act shall be construed to limit further criminal or civil liability resulting from other intentional or negligent conduct by any person.
35-29-118. Claims by governmental entity for costs incurred.

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

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