HB 2408

Introduced by
Representatives Powers Hannley: Andrade, Blanc, Cano, Engel, Friese,
Gabaldón, Peten, Rodriguez, Salman, Teller, Terán, Senator Gonzales

AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 33;
RELATING TO END-OF-LIFE DECISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:
  Section 1. Title 36, Arizona Revised Statutes, is amended by adding chapter 33, to read:

CHAPTER 33
DEATH WITH DIGNITY
ARTICLE 1. GENERAL PROVISIONS

36-3301. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "CONSULTING PHYSICIAN" MEANS A PHYSICIAN WHO IS QUALIFIED BY SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS REGARDING A PATIENT'S DISEASE.
2. "COUNSELING" MEANS A CONSULTATION BETWEEN A PATIENT AND A PSYCHIATRIST OR PSYCHOLOGIST WHO IS LICENSED BY THIS STATE TO DETERMINE WHETHER THE PATIENT IS SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.
3. "DEATH WITH DIGNITY" MEANS THE TERMINATION OF THE LIFE OF A QUALIFIED PATIENT IN A PAINLESS, HUMANE AND DIGNIFIED MANNER BY THE ISSUANCE OF A PRESCRIPTION FOR MEDICATION FOR SELF-ADMINISTRATION.
4. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.
5. "INFORMED DECISION" MEANS A DECISION THAT IS MADE BY A QUALIFIED PATIENT TO REQUEST AND OBTAIN A PRESCRIBED MEDICATION TO END THE PATIENT'S LIFE, THAT IS BASED ON AN APPRECIATION OF THE RELEVANT FACTS AND THAT IS MADE AFTER BEING FULLY INFORMED BY THE ATTENDING PHYSICIAN OF ALL OF THE FOLLOWING:
   (a) THE PATIENT'S MEDICAL DIAGNOSIS.
   (b) THE PATIENT'S PROGNOSIS.
   (c) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE PRESCRIBED MEDICATION.
   (d) THE PROBABLE RESULT OF TAKING THE PRESCRIBED MEDICATION.
   (e) FEASIBLE ALTERNATIVES TO TAKING THE PRESCRIBED MEDICATION, INCLUDING COMFORT CARE, HOSPICE CARE AND PAIN CONTROL.
7. "QUALIFIED PATIENT" MEANS A CAPABLE ADULT WHO HAS RESIDED IN THIS STATE FOR AT LEAST NINETY DAYS AND WHO HAS SATISFIED THE REQUIREMENTS OF THIS ARTICLE IN ORDER TO OBTAIN A PRESCRIPTION FOR MEDICATION TO END THE PATIENT'S LIFE.
8. "TERMINAL CONDITION" MEANS A CONDITION THAT RESULTS FROM AN ACCIDENT OR AN INCURABLE AND IRREVERSIBLE DISEASE, THAT HAS BEEN MEDICALLY CONFIRMED AND THAT WILL CAUSE DEATH, WITH REASONABLE MEDICAL JUDGMENT, WITHIN SIX MONTHS.
36-3302. Request for medication; requirements; witnesses; signatures

A. A QUALIFIED PATIENT MAY MAKE A WRITTEN REQUEST FOR A PRESCRIPTION FOR MEDICATION TO END THE PATIENT'S LIFE AS PRESCRIBED BY THIS ARTICLE.

B. A REQUEST FOR A PRESCRIPTION FOR MEDICATION UNDER THIS ARTICLE MUST BE IN SUBSTANTIALLY THE FORM DESCRIBED IN SECTION 36-3318, BE SIGNED AND DATED BY THE PATIENT AND BE WITNESSED BY AT LEAST TWO PERSONS WHO, IN THE PRESENCE OF THE PATIENT, ATTEST TO THE BEST OF THEIR KNOWLEDGE AND BELIEF THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND IS NOT BEING COERCED TO SIGN THE REQUEST.

C. AT LEAST ONE OF THE WITNESSES MUST BE A PERSON WHO IS NOT:
   1. A RELATIVE OF THE PATIENT BY BLOOD, MARRIAGE OR ADOPTION.
   2. AT THE TIME THE REQUEST IS SIGNED, ENTITLED TO ANY PORTION OF THE ESTATE OF THE PATIENT ON THE PATIENT'S DEATH UNDER ANY WILL OR BY OPERATION OF LAW.
   3. AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE PATIENT IS A RESIDENT OR IS RECEIVING MEDICAL TREATMENT.
   D. THE PATIENT'S ATTENDING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED MAY NOT BE A WITNESS.


F. IF THE PATIENT IS COMPETENT BUT IS UNABLE TO WRITE OR TO SIGN A STATEMENT, THE PATIENT MAY SUBSTITUTE A VIDEO RECORDING, WITNESSED BY TWO QUALIFIED INDIVIDUALS, FOR THE WRITTEN REQUEST.

36-3303. Safeguards; attending physician; requirements

THE ATTENDING PHYSICIAN SHALL DO ALL OF THE FOLLOWING:

1. MAKE THE INITIAL DETERMINATION OF WHETHER A PATIENT HAS A TERMINAL CONDITION, IS COMPETENT AND HAS MADE THE REQUEST VOLUNTARILY.

2. INFORM THE PATIENT OF ALL OF THE FOLLOWING:

   (a) THE PATIENT'S MEDICAL DIAGNOSIS.
   (b) THE PATIENT'S PROGNOSIS.
   (c) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE PRESCRIBED MEDICATION.
   (d) THE PROBABLE RESULT OF TAKING THE PRESCRIBED MEDICATION.
   (e) FEASIBLE ALTERNATIVES TO TAKING THE PRESCRIBED MEDICATION, INCLUDING COMFORT CARE, HOSPICE CARE AND PAIN CONTROL.

3. REFER THE PATIENT TO A CONSULTING PHYSICIAN FOR MEDICAL CONFIRMATION OF THE DIAGNOSIS AND FOR A DETERMINATION THAT THE PATIENT IS COMPETENT AND IS ACTING VOLUNTARILY.

4. REFER THE PATIENT FOR COUNSELING IF REQUIRED PURSUANT TO SECTION 36-3305.
5. Request that the patient notify the patient's next of kin.

6. Inform the patient that the patient may rescind the request at any time and in any manner and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period prescribed in Section 36-3310.

7. Verify, immediately before writing the prescription for medication, that the patient is making an informed decision.

8. Fulfill the medical record documentation requirement of Section 36-3311.

9. Ensure that all appropriate steps are carried out in accordance with this article before writing a prescription for medication to enable the qualified patient to end the patient's life in a humane and dignified manner.

36-3304. Consulting physician; confirmation of diagnosis

A. Before a patient is deemed qualified under this article, a consulting physician shall do all of the following:
   1. Examine the patient and the patient's relevant medical records.
   2. Confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal condition.
   3. Verify that the patient is competent, is acting voluntarily and has made an informed decision.

B. The consulting physician may not be a partner, shareholder or employee in the same medical practice as the attending physician.

36-3305. Counseling referral

A. 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, the physician shall refer the patient for counseling.

B. A physician may not prescribe medication to end a patient's life until the counseling psychiatrist or psychologist determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

C. A counseling psychiatrist or psychologist may not be a partner, shareholder or employee in the same practice as the attending physician.

36-3306. Informed decision

A patient may not receive a prescription for medication to end the patient's life unless the patient has made an informed decision and completed the request for medication form prescribed in Section 36-3318.

36-3307. Family notification

The attending physician shall ask the patient to notify the patient's next of kin of the patient's request for a prescription for medication pursuant to this article. The physician may not deny a request for a prescription for medication if the patient declines or is unable to notify the patient's next of kin.
36-3308. Written and oral requests
A. In order to receive a prescription for medication under this article, the patient shall make both an oral and a written request and shall reiterate the oral request to the patient's attending physician at least fifteen days after making the initial oral request.
B. At the time the qualified patient makes the second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

36-3309. Right to rescind request; effect
A patient may rescind a request for a prescription for medication at any time and in any manner without regard to the patient's mental state. The attending physician may not write a prescription for medication under this article without offering the qualified patient an opportunity to rescind the request. If the patient rescinds the request, it is as if the request were never made.

36-3310. Waiting periods
A. At least fifteen days must elapse between the patient's initial oral request and the writing of a prescription for medication under this article. At least forty-eight hours must elapse between the patient's written request and the writing of a prescription for medication under this article.
B. If all other requirements of this article are met, the waiting periods provided in this section may be shortened if the attending physician certifies in writing that the patient is in extreme pain and that the imposition of a waiting period would serve only to extend the patient's suffering.

36-3311. Medical records; documentation; requirements
The following information must be documented or filed in the patient's medical record:
1. All oral requests by the patient for medication to end the patient's life.
2. All written requests by the patient for medication to end the patient's life.
3. The attending physician's diagnosis and prognosis and verification that the patient is competent, is acting voluntarily and has made an informed decision.
4. The consulting physician's diagnosis and prognosis and verification that the patient is competent, is acting voluntarily and has made an informed decision.
5. A report of the outcome of and determinations made during counseling, if performed.
6. The attending physician's offer to the patient to rescind the patient's request at the time of the patient's second oral request pursuant to section 36-3308.
7. THE ATTENDING PHYSICIAN'S CONFIRMATION THAT ALL REQUIREMENTS UNDER THIS ARTICLE HAVE BEEN MET AND A NOTATION OF THE STEPS TAKEN TO CARRY OUT THE REQUEST, INCLUDING THE MEDICATION PRESCRIBED.

36-3312. Review; rules; annual report
A. THE DEPARTMENT SHALL ANNUALLY REVIEW A SAMPLE OF RECORDS MAINTAINED PURSUANT TO THIS ARTICLE.
B. THE DEPARTMENT SHALL ADOPT RULES TO FACILITATE THE COLLECTION OF INFORMATION REGARDING COMPLIANCE WITH THIS ARTICLE. THE INFORMATION COLLECTED IS NOT A PUBLIC RECORD AND IS NOT AVAILABLE FOR INSPECTION BY THE PUBLIC.

C. THE DEPARTMENT SHALL GENERATE AND MAKE AVAILABLE TO THE PUBLIC AN ANNUAL STATISTICAL REPORT OF INFORMATION COLLECTED UNDER THIS ARTICLE.

36-3313. Effect on construction of wills and contracts
A. A PROVISION IN ANY CONTRACT, WILL OR OTHER AGREEMENT, WHETHER WRITTEN OR ORAL, THAT WOULD AFFECT WHETHER A PERSON MAY MAKE OR RESCIND A REQUEST FOR A PRESCRIPTION FOR MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER IS NOT VALID.
B. AN OBLIGATION OWING UNDER ANY CURRENTLY EXISTING CONTRACT MAY NOT BE CONDITIONED ON OR AFFECTED BY A PERSON MAKING OR RESCINDING A REQUEST FOR A PRESCRIPTION FOR MEDICATION TO END THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED MANNER.

36-3314. Insurance and annuity policies
A. THE SALE, PROCUREMENT OR ISSUANCE OF ANY LIFE, HEALTH OR ACCIDENT INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR ANY POLICY MAY NOT BE CONDITIONED ON OR AFFECTED BY A PERSON MAKING OR RESCINDING A REQUEST FOR A PRESCRIPTION FOR MEDICATION TO END THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED MANNER.
B. AN INSURER MAY NOT REQUIRE OR REQUEST AN INSURED TO DISCLOSE WHETHER THE INSURED HAS CONSIDERED OR EXECUTED A REQUEST FOR DEATH WITH DIGNITY.
C. A QUALIFIED PATIENT'S ACT OF INGESTING MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER DOES NOT AFFECT A LIFE, HEALTH OR ACCIDENT INSURANCE OR ANNUITY POLICY.

36-3315. Construction of article
THIS ARTICLE DOES NOT AUTHORIZE A PHYSICIAN OR ANY OTHER PERSON TO END A PATIENT'S LIFE BY LETHAL INJECTION, MERCY KILLING OR ACTIVE EUTHANASIA. NOTWITHSTANDING ANY OTHER LAW, ACTIONS TAKEN IN ACCORDANCE WITH THIS ARTICLE DO NOT CONSTITUTE, FOR ANY PURPOSE, SUICIDE, ASSISTED SUICIDE, MERCY KILLING OR HOMICIDE.

36-3316. Immunities
EXCEPT AS PROVIDED IN SECTION 36-3317:
1. A person is not subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this article, including being present when a qualified patient takes the prescribed medication to end the patient's life in a humane and dignified manner.

2. This article does not authorize any person to assist in administering prescribed medication unless that person is designated by a qualified patient to administer or dispense the medication because of the qualified patient's physical inability to self-administer the prescribed medication.

3. A professional organization or association or a health care provider may not subject a person to censure, discipline, suspension, loss of privileges, loss of membership or any other penalty for participating or refusing to participate in good faith compliance with this article.

4. A patient's request for or an attending physician's provision of prescribed medication in good faith compliance with this article does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

5. A health care provider is not under any duty, whether by contract, by statute or by any other legal requirement, to participate in providing prescribed medication to a qualified patient to end the patient's 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 article, the health care provider shall promptly transfer the responsibility to another provider who is willing to act in accordance with the qualified patient's wishes. The health care provider shall transfer, on request, a copy of the patient's relevant medical records to the new health care provider.

6. A health care facility that refuses to allow death with dignity to be prescribed or administered on its premises may not deny staff privileges or employment to a person for the sole reason that the person previously participated in death with dignity.

7. A licensed pharmacist who dispenses lethal medicine based on a valid prescription by a physician aiding a qualifying patient to die under this article is not subject to civil, criminal or administrative liability for doing so.

36-3317. Violations; classification; liability

A. A person who without authorization of the patient wilfully alters or forges a request for a prescription for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of manslaughter.

B. A person who coerces or exerts undue influence on a patient to request a prescription for medication for the purpose of ending the patient's life or to destroy a rescission of such a request is guilty of manslaughter.
C. THIS ARTICLE DOES NOT LIMIT FURTHER LIABILITY FOR CIVIL DAMAGES RESULTING FROM OTHER NEGLECTFUL CONDUCT OR INTENTIONAL MISCONDUCT BY ANY PERSON.

D. THE PENALTIES IN THIS ARTICLE DO NOT PRECLUDE CRIMINAL PENALTIES APPLICABLE UNDER ANY OTHER LAW FOR CONDUCT THAT IS INCONSISTENT WITH THIS ARTICLE.

36-3318. Request for a prescription for medication; sample form

A REQUEST FOR A PRESCRIPTION FOR MEDICATION AS AUTHORIZED BY THIS ARTICLE MUST BE IN SUBSTANTIALLY THE FOLLOWING FORM:

REQUEST FOR A PRESCRIPTION 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 CONDITION AND A CONSULTING PHYSICIAN HAS MEDICALLY CONFIRMED. I HAVE BEEN FULLY INFORMED OF MY DIAGNOSIS, MY 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 MEMBERS OF MY DECISION AND HAVE TAKEN THEIR OPINIONS INTO CONSIDERATION.

_____ I HAVE DECIDED NOT TO INFORM MY FAMILY MEMBERS OF MY DECISION.

_____ I HAVE NO FAMILY MEMBERS 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 PRESCRIBED MEDICATION.

I MAKE THIS REQUEST VOLUNTARILY AND WITHOUT RESERVATION, AND I ACCEPT FULL MORAL RESPONSIBILITY FOR MY ACTIONS.

SIGNED: ________________________
DATED: ________________________

DECLARATION OF WITNESSES

WE DECLARE THAT THE PERSON SIGNING THIS REQUEST:

1. IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF IDENTITY.

2. SIGNED THIS REQUEST IN OUR PRESENCE.

3. APPEARS TO BE OF SOUND MIND AND TO NOT BE UNDER DURESS, FRAUD OR UNDUE INFLUENCE.
4. IS NOT A PATIENT FOR WHOM EITHER OF US IS THE ATTENDING PHYSICIAN.

WITNESS 1 ________________________________
DATE _____________________________________
WITNESS 2 ________________________________
DATE _____________________________________

NOTE: ONE WITNESS MUST NOT BE A RELATIVE (BY BLOOD, MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, MUST NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE ON DEATH AND MUST NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE FACILITY WHERE THE PERSON IS A PATIENT OR RESIDENT. IF THE PERSON IS AN INPATIENT AT A HEALTH CARE FACILITY, ONE WITNESS MUST BE AN INDIVIDUAL DESIGNATED BY THE FACILITY.

Sec. 2. **Short title**

This act may be cited as the "Death with Dignity Act of 2019".