A bill to be entitled
An act relating to death with dignity; creating ch. 764, F.S., relating to personal autonomy; creating s. 764.101, F.S.; providing a short title; creating s. 764.102, F.S.; defining terms; creating s. 764.103, F.S.; providing legislative findings and intent; creating s. 764.104, F.S.; providing criteria for qualified patients; providing factors to demonstrate residency; requiring qualified patients to make oral and written requests for medication; requiring waiting periods before such requests may be made and such medication may be prescribed; providing a form for written requests; specifying requirements for the valid execution of such form; authorizing a qualified patient to rescind a request at any time and in any manner; creating s. 764.105, F.S.; specifying requirements for attending physicians; authorizing the attending physician to sign the qualified patient’s death certificate; specifying requirements for consulting physicians; specifying recordkeeping requirements; requiring certain health care providers to report certain information to the Department of Health; requiring the department to annually review certain records for compliance and publish a report on activities and compliance; providing the department rulemaking authority for a specified purpose; creating s. 764.106, F.S.; making certain provisions of legal instruments void and unenforceable under certain circumstances; prohibiting an individual’s
participation in certain provisions from affecting the sale, procurement, or issuance of certain insurance policies or the rates charged for such policies; creating s. 764.107, F.S.; providing criminal penalties and immunities; defining terms; providing grounds for prohibiting certain providers from participating in certain provisions; providing permissible sanctions; requiring certain providers to use due process procedures when imposing certain sanctions; providing that certain sanctions may not be the sole basis for certain disciplinary action against a health care provider’s license; providing construction; creating s. 764.108, F.S.; authorizing claims for costs and attorney fees in certain circumstances; creating s. 764.109, F.S.; providing construction and severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 764, Florida Statutes, consisting of sections 764.101-764.109, Florida Statutes, entitled “Personal Autonomy,” is created.

Section 2. Section 764.101, Florida Statutes, is created to read:

764.101 Short title.—Sections 764.101-764.109 may be cited as the “Death with Dignity Act.”

Section 3. Section 764.102, Florida Statutes, is created to read:
764.102 Definitions.—As used in this chapter, the term:

(1) “Attending physician” means the physician who has primary responsibility for the care of the patient and treatment of the patient’s terminal condition.

(2) “Competent” means that in the opinion of a court or in the opinion of the patient’s attending physician, consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through individuals familiar with the patient’s manner of communicating if those individuals are available.

(3) “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s medical condition.

(4) “Counseling” means one or more consultations as necessary between a psychiatrist or psychologist and a patient for the purpose of determining whether the patient is competent and whether the patient is suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(5) “Department” means the Department of Health.

(6) “Health care provider” means a health care practitioner, health care facility, or entity licensed or certified to provide health services in this state.

(7) “Informed decision” means a decision voluntarily made by a qualified patient to request and obtain a prescription to end his or her life after a sufficient explanation and disclosure of the subject matter to enable the qualified patient to appreciate the relevant facts, including the qualified
patient’s medical diagnosis and prognosis, the potential risks associated with taking the medication to be prescribed, the probable results of taking the medication, and the feasible alternatives to taking the medication, and to make a knowing health care decision without coercion or undue influence.

(8) “Medically confirmed” means 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.

(9) “Medication” means a drug as defined in s. 465.003 which an attending physician prescribes to a qualified patient under this chapter to end his or her life in a humane and dignified manner.

(10) “Physician” means a person who is licensed to practice medicine under chapter 458 or osteopathic medicine under chapter 459.

(11) “Psychiatrist” means a physician who has primarily diagnosed and treated nervous and mental disorders for a period of at least 3 years inclusive of a psychiatric residency.

(12) “Psychologist” means a person who is licensed to practice psychology under chapter 490.

(13) “Qualified patient” means an individual who has satisfied the requirements of this chapter to obtain a prescription for medication to end his or her life in a humane and dignified manner.

(14) “Terminal condition” means a medically confirmed condition caused by an injury, illness, or disease which is incurable and irreversible and which will, within reasonable medical judgment, cause the patient’s death within 6 months.
Section 4. Section 764.103, Florida Statutes, is created to read:

764.103 Legislative findings and intent.—The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, and recognizes that for some faced with a terminal condition, prolonging life may result in a painful or burdensome existence. It is the intent of the Legislature to establish a procedure to allow a competent individual who has a terminal condition, and who makes a fully informed decision that he or she no longer wants to live, to obtain medication to end his or her life in a humane and dignified manner.

Section 5. Section 764.104, Florida Statutes, is created to read:

764.104 Qualified patients; residency requirements; written and oral requests for medication; waiting periods; form requirements; right to rescind requests.—

(1)(a) An individual may request medication for the purpose of ending his or her life in a humane and dignified manner if the individual:

1. Is 18 years of age or older;
2. Is a resident of Florida;
3. Has been clinically diagnosed with a terminal condition by his or her attending physician which has been medically confirmed by a consulting physician;
4. Is competent;
5. Is making an informed decision; and
6. Has voluntarily expressed his or her wish to die.

(b) An individual may not qualify for medication under this...
(2) Factors demonstrating Florida residency include, but are not limited to:

(a) Possession of a Florida driver license;
(b) Registration to vote in Florida; or
(c) Evidence that the individual owns or leases property in Florida.

(3) To obtain medication under this chapter, a qualified patient must first make two oral requests and then one written request for the medication.

(a) A qualified patient may not make the second oral request until at least 15 days after making the first oral request. However, if the qualified patient’s attending physician has medically confirmed that the qualified patient will, within reasonable medical judgment, die within 15 days after making the first oral request, the qualified patient may make the oral request to his or her attending physician at any time after making the first oral request.

(b) After a qualified patient makes a second oral request, the attending physician must give the qualified patient an opportunity to rescind the request.

(c) A qualified patient may make a written request for medication under this chapter after he or she has made a second oral request for the medication and has been offered the opportunity to rescind the request.

(d) An attending physician may not prescribe medication to a qualified patient under this chapter until at least 48 hours after the qualified patient makes a written request for the medication.
(4)(a) A written request for medication under this chapter must be in a form substantially similar to the following:

REQUEST FOR MEDICATION
TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER
I,...(name of qualified patient)..., am an adult of sound mind.
I am suffering from ...(medical condition)..., which my attending physician has determined is a terminal condition and which has been medically confirmed by a consulting physician.
I have been fully informed of my diagnosis, prognosis, the nature of the medication to be prescribed and potential associated risks, the expected result of taking the medication, and the feasible alternatives, including comfort care, hospice care, and pain control.
Pursuant to chapter 764, Florida Statutes, 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 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.
PURSUANT TO SECTION 764.104, FLORIDA STATUTES, I UNDERSTAND THAT
I HAVE THE RIGHT TO RESCIND THIS REQUEST AT ANY TIME AND IN ANY MANNER, REGARDLESS OF MY MENTAL STATE.

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 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.

Signed: ...(signature of qualified patient)...
Dated: ...(date)...

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 not under duress, fraud, or undue influence; and
4. Is not a patient for whom either of us is the attending physician.

First witness Second witness
...(print name).... ...(print name)....
...(signature).... ...(signature)....
...(date).... ...(date)....
NOTE: At least one witness may not be a relative (by blood, marriage, or adoption) of the person signing this request, may not be entitled to any portion of the person’s estate upon death, and may not be an owner, operator, or employee of a health care facility where the person is a patient or resident.

(b) To be valid, the written request must be signed by the qualified patient and witnessed by at least two individuals who, in the presence of the qualified patient, attest that to the best of their knowledge and belief, the qualified patient is competent, is acting voluntarily, and is not being coerced to sign the request. 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. 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
3. An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(c) The qualified patient’s attending physician at the time the request is signed may not serve as a witness.

(5) A qualified patient may rescind his or her request at any time and in any manner without regard to his or her mental state.

Section 6. Section 764.105, Florida Statutes, is created to read:

764.105 Attending physician responsibilities; consulting
(1) The attending physician shall do all of the following:
   (a) Make the initial determination of whether a patient has a terminal condition, is competent, and has voluntarily made the request for medication to end his or her life.
   (b) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily.
   (c) Ensure that the patient is making an informed decision by fully informing the patient of the facts relevant to all of the following:
      1. The patient’s medical diagnosis.
      2. The patient’s prognosis.
      3. The potential risks associated with taking the medication to be prescribed.
      4. The probable result of taking the medication to be prescribed.
      5. The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control.
   (d) Verify the patient’s Florida residency.
   (e) Refer the patient to a psychiatrist or psychologist for counseling if the physician believes the patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment. The physician may not prescribe medication under this chapter until the psychiatrist or psychologist counseling the patient determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
   (f) Recommend that a patient notify next of kin of the
patient’s decision. The physician may not refuse to prescribe medication to a qualified patient because he or she declines or is unable to notify next of kin.

(g) Inform the qualified patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the qualified patient an opportunity to rescind the request after the qualified patient’s second oral request at the end of the 15-day waiting period pursuant to s. 764.104.

(h) Immediately before writing a prescription for medication under this chapter, verify that the qualified patient is making an informed decision.

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

(j) Comply with the medical record documentation requirements of this section.

(k) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner.

(l) 1. Dispense medications directly, including ancillary medications intended to minimize the patient’s discomfort, provided the attending physician is registered as a dispensing practitioner under s. 465.0276, has a current Drug Enforcement Administration number, and complies with applicable laws and rules; or

2. 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, the patient’s legal representative, or an individual whom the patient designates in writing.

(2) Notwithstanding any other law, the attending physician may sign the patient’s death certificate.

(3) A consulting physician shall examine the patient and his or her relevant medical records to confirm, in writing, whether the consulting physician agrees with the attending physician’s diagnosis that the patient is suffering from a terminal condition, and verify whether the patient is competent, is acting voluntarily, and has made an informed decision. A consulting physician must refer the patient to a psychiatrist or psychologist for counseling if the physician believes the patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(4) An attending physician is responsible for ensuring that all of the following is documented or filed in the patient’s medical record:

(a) All oral requests by a patient for medication under this chapter.
(b) All written requests by a patient for medication under this chapter.
(c) The attending physician’s diagnosis, prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision.
(d) The consulting physician’s diagnosis, prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision.

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

(f) The attending physician’s offer to the patient to rescind his or her request at the time of the patient’s second oral request.

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

(5) A health care provider who dispenses medication prescribed under this chapter must file a copy of the dispensing record with the department.

(6) The department shall annually review a sample of records maintained under this chapter for compliance and annually publish a statistical report on activities and compliance pursuant to this chapter. The department shall adopt rules to collect information for this purpose.

Section 7. Section 764.106, Florida Statutes, is created to read:

764.106 Effect on construction of wills, contracts, and statutes; insurance or annuity policies.—

(1) A provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication under this chapter, is void and unenforceable.

(2) An obligation owed under any existing contract may not
be conditioned or affected by a person making or rescinding a request for medication under this chapter.

(3) 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 upon or affected by a person making or rescinding a request for medication under this chapter. A qualified patient’s act of ingesting medication prescribed under this chapter may not affect a life, health, or accident insurance or annuity policy.

Section 8. Section 764.107, Florida Statutes, is created to read:

764.107 Penalties; liabilities; immunities; grounds for prohibiting health care provider participation; notification; permissible sanctions.—

(1) A person who:

(a) Without authorization of the patient, willfully alters or forges a request for medication under this chapter or conceals or destroys a rescission of that request with the intent or effect of causing the patient’s death commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Coerces or exerts undue influence on a patient to request medication under this chapter for the purpose of ending the patient’s life or to destroy a rescission of a medication request commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) This chapter does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.
(3) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter.

(4) Except as provided in subsections (1) and (5):

(a) A person is not subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter. This includes being present when a qualified patient takes the medication prescribed under this chapter.

(b) A professional organization or association, or a health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty solely for refusing to participate in this chapter or for participating in good faith compliance with this chapter.

(c) A request by a patient for, or provision by an attending physician of, medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(d) A health care provider is not under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision of medication prescribed under this chapter to a qualified patient. If a health care provider is unable or unwilling to carry out a patient’s request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient’s relevant medical records to the new health care provider.
(5) (a) As used in this subsection, the term:

1. "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider’s participation in this chapter of the sanctioning health care provider’s policy about participation in activities covered by this chapter.

2. “Participation in this chapter” means to perform the duties of an attending physician, the consulting physician function, or the counseling function pursuant to s.764.105. The term does 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 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. A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(b) Notwithstanding any other law, a health care provider may prohibit participation in this chapter on the premises of facilities that it owns or operates if it first notifies the health care providers practicing in its facilities of its policy. This paragraph does not prevent a health care provider from providing health care services to a patient which do not constitute participation in this chapter.

(c) Notwithstanding subsection (4), if a health care
provider has a policy prohibiting its facilities, operators, or employees from participation in this chapter and has notified them of the policy, then the prohibiting health care provider may subject its facilities, operators, or employees to the following sanctions for participating in this chapter in violation of that policy:

1. Loss of privileges, loss of membership, or other sanction provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned health care provider is a member of the sanctioning health care provider’s medical staff and participates in this chapter while on the facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

2. 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 sanctioned provider participates in this chapter while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

3. Termination of contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in this chapter while acting in the course and scope of the sanctioned health care provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

This subparagraph may not be construed to prevent:

a. A health care provider from participating in carrying out the provisions of this chapter while acting outside the
course and scope of the provider’s capacity as an employee or independent contractor; or

b. A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(d) A health care provider that imposes sanctions under paragraph (c) must follow all due process and other procedures the sanctioning health care provider may have which are related to the imposition of sanctions on another health care provider.

(6) Suspension or termination of staff membership or privileges under subsection (5) may not be the sole basis for a disciplinary complaint or investigation against a health care provider’s license.

(7) This chapter may not be construed to allow a lower standard of care for patients.

Section 9. Section 764.108, Florida Statutes, is created to read:

764.108 Claims by governmental entity for costs incurred.—Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to this chapter in a public place shall have a claim against the estate of the person to recover the costs and reasonable attorney fees related to enforcing the claim.

Section 10. Section 764.109, Florida Statutes, is created to read:

764.109 Construction; severability.—

(1) This chapter may not 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 in accordance with this chapter do not constitute suicide, assisted suicide, mercy killing, or homicide for any purpose under the law.

(2) Any section of this chapter being held invalid as to any person or circumstance does not affect the application of any other section of this chapter which can be given full effect without the invalid section or application, and to this end the provisions of this chapter are severable.

Section 11. This act shall take effect July 1, 2020.