STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2585

By: Kouplen

AS INTRODUCED

An Act relating to public health and safety; ordering a legislative referendum pursuant to the Oklahoma Constitution; creating the Oklahoma Death with Dignity Act; defining certain terms; permitting Oklahoma resident suffering from terminal disease to make certain request for medication for the purpose of ending his or her life in a humane and dignified manner; setting forth certain requirements for valid request; providing certain responsibilities of attending physician; requiring certain confirmation by consulting physician; providing for codification; providing an effective date; providing ballot title; and directing filing.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next Primary Election, to be held on June 26, 2018.
SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Death with Dignity Act:

1. "Adult" means an individual who is eighteen (18) years of age or older;

2. "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease;

3. "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist 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;

4. "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease;
5. "Counseling" means one or more consultations as necessary between a state-licensed psychiatrist or psychologist 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;

6. "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility;

7. "Informed decision" means a decision by a qualified patient to request and obtain a prescription to end his or her life in a humane and dignified manner, which is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:
   a. his or her medical diagnosis,
   b. his or her prognosis,
   c. the potential risks associated with taking the medication to be prescribed,
   d. the probable result of taking the medication to be prescribed, and
   e. the feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;
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. "Patient" means a person who is under the care of a physician;

10. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the State Board of Medical Licensure and Supervision;

11. "Qualified patient" means a capable adult who is a resident of Oklahoma and has satisfied the requirements of the Oklahoma Death with Dignity Act in order to obtain a prescription for medication to end his or her life in a humane and dignified manner; and

12. "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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An adult who is capable, is a resident of Oklahoma, has been determined by the attending physician and consulting physician to be suffering from a terminal disease and who has voluntarily expressed his or her wish to die may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with the Oklahoma Death with Dignity Act.
B. No person shall qualify under the provisions of the Oklahoma Death with Dignity Act solely because of age or disability.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A valid request for medication under the Oklahoma Death with Dignity Act shall be in substantially the form described in Section 23 of this act, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily and is not being coerced to sign the request.

B. One of the witnesses shall 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 patient's attending physician at the time the request is signed shall not be a witness.

D. If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be
an individual designated by the facility and having the qualifications specified by the State Department of Health by rule.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The attending physician shall:

1. Make the initial determination of whether a patient has a terminal disease, is capable and has made the request voluntarily;

2. Request that the patient demonstrate Oklahoma residency pursuant to Section 15 of this act;

3. To ensure that the patient is making an informed decision, inform the patient of:

   a. his or her medical diagnosis,

   b. his or her prognosis,

   c. the potential risks associated with taking the medication to be prescribed,

   d. the probable result of taking the medication to be prescribed, and

   e. the feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;

4. Refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is capable and acting voluntarily;
5. Refer the patient for counseling if appropriate pursuant to Section 8 of this act;

6. Recommend that the patient notify next of kin;

7. Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to the Oklahoma Death with Dignity Act and of not taking the medication in a public place;

8. Inform the patient that he or she has an opportunity to 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 pursuant to Section 11 of this act;

9. Verify, immediately prior to writing the prescription for medication under the Oklahoma Death with Dignity Act, that the patient is making an informed decision;

10. Fulfill the medical record documentation requirements of Section 14 of this act;

11. Ensure that all appropriate steps are carried out in accordance with the Oklahoma Death with Dignity Act prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

12. a. Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, provided the attending physician is registered as a dispensing
physician with the State Board of Medical Licensure and Supervision, has a current Drug Enforcement Administration certificate and complies with any applicable administrative rule, or

b. With the patient's written consent:

(1) contact a pharmacist and inform the pharmacist of the prescription, and

(2) 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.

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

Before a patient is qualified under the Oklahoma Death with Dignity Act, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease and verify that the patient is capable, acting voluntarily and has made an informed decision.
SECTION 8.    NEW LAW    A new section of law to be codified in the Oklahoma Statutes as Section 3002.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 9.    NEW LAW    A new section of law to be codified in the Oklahoma Statutes as Section 3002.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision as defined in Section 3 of this act. Immediately prior to writing a prescription for medication under the Oklahoma Death with Dignity Act, the attending physician shall verify that the patient is making an informed decision.

SECTION 10.    NEW LAW    A new section of law to be codified in the Oklahoma Statutes as Section 3002.9 of Title 63, unless there is created a duplication in numbering, reads as follows:
The attending physician shall recommend that the patient notify the next of kin of his or her request for medication pursuant to the Oklahoma Death with Dignity Act. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

In order to receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request and reiterate the oral request to his or her attending physician no less than fifteen (15) days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under the Oklahoma Death with Dignity Act may be written without the attending physician offering the qualified patient an opportunity to rescind the request.
SECTION 13.     NEW LAW    A new section of law to be codified in the Oklahoma Statutes as Section 3002.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

SECTION 14.     NEW LAW    A new section of law to be codified in the Oklahoma Statutes as Section 3002.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

The following shall be documented or filed in the patient's medical record:

1. All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

2. All written requests by a patient for medication to end his or her life in a humane and dignified manner;

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

4. The consulting physician's diagnosis and prognosis, and verification that the patient is capable, acting voluntarily and has made an informed decision;
5. A report of the outcome and determinations made during counseling, if performed;

6. The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request pursuant to Section 11 of this act; and

7. A note by the attending physician indicating that all requirements under the Oklahoma Death with Dignity Act have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

Only requests made by Oklahoma residents under the Oklahoma Death with Dignity Act shall be granted. Factors demonstrating Oklahoma residency include but are not limited to:

1. Possession of an Oklahoma driver license;

2. Registration to vote in Oklahoma;

3. Evidence that the person owns or leases property in Oklahoma; or

4. Filing of an Oklahoma tax return for the most recent tax year.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.15 of Title 63, unless there is created a duplication in numbering, reads as follows:
A. 1. The State Department of Health shall annually review a sample of records maintained pursuant to the Oklahoma Death with Dignity Act.

2. The Department shall require any health care provider upon dispensing medication pursuant to the Oklahoma Death with Dignity Act to file a copy of the dispensing record with the Department.

B. The Department shall promulgate rules to facilitate the collection of information regarding compliance with the Oklahoma Death with Dignity Act. Except as otherwise required by law, the information collected 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 under subsection B of this section.

SECTION 17. NEW LAW  A new section of law to be codified in the Oklahoma Statutes as Section 3002.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No 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 to end his or her life in a humane and dignified manner, shall be valid.

B. No obligation owing under any currently existing contract shall be conditioned or effected by the making or rescinding of a
request, by a person, for medication to end his or her life in a
humane and dignified manner.

SECTION 18. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3002.17 of Title 63, unless
there is created a duplication in numbering, reads as follows:

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 effected by the making or
rescinding of a request by a person for medication to end his or her
life in a humane and dignified manner. Neither shall a qualified
patient's act of ingesting medication to end his or her life in a
humane and dignified manner have an effect upon a life, health or
accident insurance or annuity policy.

SECTION 19. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3002.18 of Title 63, unless
there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Death with Dignity 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 in accordance with the Oklahoma Death
with Dignity Act shall not, for any purpose, constitute suicide,
assisted suicide, mercy killing or homicide, under the law.
SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.19 of Title 63, unless there is created a duplication in numbering, reads as follows:

Except as provided in the Oklahoma Death with Dignity Act:

1. No person shall be subject to civil or criminal liability or professional disciplinary action for participating in good-faith compliance with the Oklahoma Death with Dignity Act, including being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

2. 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 good-faith compliance with the Oklahoma Death with Dignity Act;

3. No request by a patient for or provision by an attending physician of medication in good-faith compliance with the provisions of the Oklahoma Death with Dignity Act shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator;

4. No health care provider shall be under any duty, whether by contract, statute or any other legal requirement, to participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under the
Oklahoma Death with Dignity Act, 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. Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in the Oklahoma Death with Dignity Act on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in the Oklahoma Death with Dignity Act. A health care provider may provide services to a patient that do not constitute participation in the Oklahoma Death with Dignity Act.

b. Notwithstanding the provisions of paragraphs 1 through 4 of this section, a health care provider may subject another health care provider to the sanctions stated in this subparagraph if the sanctioning health care provider has notified the sanctioned provider prior to participation in the Oklahoma Death with Dignity Act:

(1) loss of privileges, loss of membership or other sanction provided pursuant to the medical staff
bylaws, policies and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in the Oklahoma Death with Dignity Act while on the health care 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 the Oklahoma Death with Dignity Act 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 the Oklahoma Death with Dignity Act while acting in the course and scope of the sanctioned provider's capacity as an
employee or independent contractor of the
sanctioning health care provider. Nothing in
this division shall be construed to prevent:

(a) a health care provider from participating in
the Oklahoma Death with Dignity Act 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.

c. A health care provider that imposes sanctions pursuant
to subparagraph b of this paragraph must follow all
due process and other procedures the sanctioning
health care provider may have that are related to the
imposition of sanctions on another health care
provider.

d. For purposes of this paragraph:

(1) "notify" means a separate statement in writing to
the health care provider specifically informing
the health care provider prior to the provider's
participation in the Oklahoma Death with Dignity Act of the sanctioning health care provider's policy about participation in activities covered by the Oklahoma Death with Dignity Act,

(2) "participate in the Oklahoma Death with Dignity Act" means to perform the duties of an attending physician pursuant to Section 6 of this act, the consulting physician function pursuant to Section 7 of this act or the counseling function pursuant to Section 8 of this act. "Participate in the Oklahoma Death with Dignity Act" 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 Oklahoma 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;

6. Suspension or termination of staff membership or privileges under paragraph 5 of this section is not reportable under the Oklahoma Death with Dignity Act. Action taken pursuant to the Oklahoma Death with Dignity Act shall not be the sole basis for a report of unprofessional conduct; and

7. No provision of the Oklahoma Death with Dignity Act shall be construed to allow a lower standard of care for patients in the community where the patient is treated or a similar community.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death shall be guilty of a felony.

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 rescission of such a request, shall be guilty of a felony.
C. Nothing in the Oklahoma Death with Dignity Act limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

D. The penalties in the Oklahoma Death with Dignity Act do not preclude criminal penalties applicable under other laws for conduct which is inconsistent with the provisions of the Oklahoma Death with Dignity Act.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.21 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any governmental entity that incurs costs resulting from a person terminating his or her life pursuant to the provisions of the Oklahoma Death with Dignity Act in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.22 of Title 63, unless there is created a duplication in numbering, reads as follows:

A request for a medication as authorized by the Oklahoma Death with Dignity 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.

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

____________ Witness 1/Date _________
____________ Witness 2/Date _________

NOTE: One 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 of the witnesses shall be an individual designated by the facility.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3002.23 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It shall be a felony for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument or any
other evidence or document reflecting the principal's desires and interests, 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 principal.

B. Except as provided in subsection A of this section, it shall be a misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a health care decision.

SECTION 25. Sections 2 through 24 of this act shall become effective upon certification of election returns favoring passage of the Oklahoma Death with Dignity Act contained in those sections.

SECTION 26. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. ____  State Question No. ____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would allow an Oklahoma resident who is suffering from a terminal disease and who voluntarily expresses his or her wish to die, to make a written request for medication for the purpose of ending his or her life in a humane and dignified manner. The individual making the written request for
medication to end his or her life must complete a form containing certain requirements. The attending physician is required to complete certain requirements before the medication is dispensed, including making a determination that the individual has a terminal disease, is capable and has made the request for medication to end his or her life voluntarily. The attending physician is also required to refer the individual to a consulting physician for medical confirmation of the diagnosis and for a determination that the individual is capable and acting voluntarily.

SHALL THE PROPOSAL BE APPROVED?
FOR THE PROPOSAL — YES
AGAINST THE PROPOSAL — NO

SECTION 27. The Chief Clerk of the House of Representatives, immediately after the passage of this act, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 26 hereof, with the Secretary of State and one copy with the Attorney General.