A Model Death with Dignity Act

Section 1. Definitions.

The definitions in this section apply throughout this Act unless the context clearly indicates otherwise.

(1) “Adult” means a person who is eighteen years of age or older.

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

(3) “Competent” 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 an informed decision 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 between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) “Health care provider” means:

(a) A person licensed, certified, or otherwise authorized or permitted by law to administer health care services or dispense medication in the ordinary course of business or practice of a profession; or
(b) A health care facility.

(7) “Informed decision” means a decision by a qualified patient to request and obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient’s life in a humane and dignified manner, that is based on an appreciation of the relevant facts and that is made after being fully informed by the attending physician of:

(a) The qualified patient’s medical diagnosis;
(b) The qualified patient’s 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 to taking the medication, including comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of an 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 in this state.

(11) “Qualified patient” means a competent adult who is a resident of this state and who has satisfied the requirements of this Act in order to obtain a prescription for medication that the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner.

(12) “Self-administer” means a qualified patient’s act of voluntarily ingesting medication to end the qualified patient's life in a humane and dignified manner.

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

Section 2. Written request for medication.

(1) An adult who is competent, is a resident of this state, and has been determined by an attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed the person's wish to die, may make a written request for medication that the person may self-administer to end the person’s life in a humane and dignified manner in accordance with this Act.

(2) A person does not qualify under this Act solely because of age or disability.

Section 3. Form of written request.

(1) A valid request for medication under this Act must be substantially in the form described in section 22 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 competent, acting voluntarily, and is not being coerced to sign the request.

(2) (a) The written language of a request for medication under this Act must be written in the same language as any conversations or consultations or interpreted conversations or consultations held between a patient and the patient’s attending or consulting physician.

(b) Notwithstanding paragraph (b) of this subsection, the written language of a request for medication under this Act may be prepared in English even when the conversations or consultations or interpreted conversations or consultations held between a patient and the patient’s attending or consulting physician were conducted in a language other than English if the form described in section 22 of this Act contains the attachment described in section 23 of this Act.

(3) One of the two witnesses required under this section and, if a request for medication is prepared pursuant to subsection (2)(b) of this section, the interpreter required under this section, may not be a person who is:
(a) A relative of the patient by blood, marriage, or adoption;
(b) 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 any law; or
(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(4) The patient’s attending physician at the time the request is signed may not be a witness.

(5) 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 ________________ [insert name of applicable state agency] by rule.

Section 4. Attending physician responsibilities.

(1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;
(b) Request that the patient demonstrate state residency as required by section 13 of this Act;
(c) To ensure that the patient is making an informed decision, inform the patient of:
   (i) The patient’s medical diagnosis;
   (ii) The patient’s prognosis;
   (iii) The potential risks associated with taking the medication to be prescribed;
   (iv) The probable result of taking the medication to be prescribed; and
   (v) The feasible alternatives to taking the medication to be prescribed, including comfort care, hospice care, and pain control;

(d) 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;
(e) Confirm that the patient’s request does not arise from coercion or undue influence by another individual by discussing with the patient, outside the presence of any other individual, except for an interpreter, whether the patient is feeling coerced or unduly influenced;
(f) Refer the patient for counseling, if appropriate, as described in section 6 of this Act;
(g) Recommend that the patient notify next of kin;
(h) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this Act, and counsel the patient about not taking the medication prescribed under this Act in a public place;
(i) 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 the request at the end of the fifteen-day waiting period under section 9 of this Act;
(j) Verify, immediately before writing the prescription for medication under this Act, that the patient is making an informed decision;
(k) Fulfill the medical record documentation requirements of section 12 of this Act;
(l) Ensure that all appropriate steps are carried out in accordance with this Act before writing a prescription for medication to enable a qualified patient to end the qualified patient’s life in a humane and dignified manner; and
(m)(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under state law or rule to dispense medications and has a current drug enforcement administration certificate; 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, by mail or electronically to the pharmacist, who will dispense the medications in person to either the patient, the attending physician, or an expressly identified agent of the patient.

(2) The attending physician may sign the patient's death certificate which must list the underlying terminal disease as the cause of death.

Section 5. Consulting physician confirmation.

Before a patient is qualified under this Act, a consulting physician shall examine the patient and the patient's 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 competent, is acting voluntarily, and has made an informed decision.

Section 6. 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, the physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner may not 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 7. Informed Decision.

A person may not receive a prescription for medication to end the person's life in a humane and dignified manner unless the person has made an informed decision. Immediately before writing a prescription for medication under this Act, the attending physician shall verify that the qualified patient is making an informed decision.

Section 8. Notification of next of kin.

The attending physician shall recommend that the patient notify the next of kin of the patient's request for medication under this Act. A patient who declines or is unable to notify next of kin may not have the patient's request denied for that reason.

Section 9. Written and oral requests.

To receive a prescription for medication that the qualified patient may self-administer to end the qualified patient's life in a humane and dignified manner, a qualified patient must make an oral request and a written request, and reiterate the oral request to the qualified patient's attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes the qualified patient's second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.
Section 10. Right to rescind request.

A patient may rescind the patient’s request at any time and in any manner without regard to the patient’s mental state. A prescription for medication may not be written under this Act without the attending physician offering the qualified patient an opportunity to rescind the request.

Section 11. Waiting periods.

(1) At least fifteen days must elapse between the patient’s initial oral request and the date the patient signs the written request.

(2) At least forty-eight hours must elapse between the date the patient signs the written request and the writing of a prescription under this Act.

Section 12. Medical record documentation requirement.

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 the attending physician’s determination that the patient is competent, is acting voluntarily, and has made an informed decision;

(4) The consulting physician’s diagnosis and prognosis, and the consulting physician’s verification that the patient is competent, is acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if counseling is provided as described in section 6 of this Act;

(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 under section 9 of this Act; and

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

Section 13. Residency requirement.

For purposes of this Act, only requests made by residents of this state may be granted. Factors demonstrating state residency include:

(1) Possession of a driver’s license issued by the __________ [insert name of applicable state agency];

(2) Registration to vote in this state; or

(3) Evidence that the person owns or leases property in this state.
Section 14. Disposal of unused medications.

A person who has custody of or control over any unused drugs prescribed pursuant to this Act after the death of the patient shall personally deliver the unused drugs to the nearest facility qualified to dispose of controlled substances or, if delivering the unused drugs to the nearest facility qualified to dispose of controlled substances is impracticable, personally dispose of the unused drugs by any lawful means, in accordance with any guidelines promulgated by __________ [insert name of applicable state agency].

Section 15. Reporting of information; adoption of rules; information collected not a public record; annual statistical report.

(1)(a) The __________ [insert name of applicable state agency] shall annually review all records maintained under this Act.
(b) The __________ [insert name of applicable state agency] shall require any health care provider upon writing a prescription or dispensing medication under this Act to file a copy of the prescription or dispensing record and other administratively required documentation associated with writing the prescription or dispensing the medication with the __________ [insert name of applicable state agency].
(c) Documentation required to be filed under paragraph (b) of this subsection must be mailed or otherwise transmitted as allowed by rules of the __________ [insert name of applicable state agency] no later than thirty calendar days after the writing of the prescription or the dispensing of medication under this Act, except that all documents required to be filed with the __________ [insert name of applicable state agency] by the prescribing physician after the death of the patient must be submitted no later than thirty calendar days after the date of the death of the patient.
(d) In the event that anyone required under this Act to report information to the __________ [insert name of applicable state agency] provides an inadequate or incomplete report, the department shall contact the person to request an adequate or complete report.

(2) The __________ [insert name of applicable state agency] shall adopt rules to facilitate the collection of information regarding compliance with this Act. Except as otherwise provided by law, the information collected is confidential, is not a public record, and may not be made available for inspection by the public.

(3) The __________ [insert name of applicable state agency] shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section.

Section 16. Effect on construction of will, contracts, and statutes.

(1) Any 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 the person’s life in a humane and dignified manner, is not valid.

(2) Any obligation owing under any currently existing contract may not be conditioned or affected by the making or rescinding of a request by a person for medication to end the person’s life in a humane and dignified manner.
Section 17. 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 life, health, or accident insurance or annuity policy may not be conditioned upon or affected by the making or rescinding of a request by a person for medication that the person may self-administer to end the person’s life in a humane and dignified manner. A qualified patient’s act of ingesting medication to end the qualified patient’s life in a humane and dignified manner does not have an effect upon a life, health, or accident insurance or annuity policy.

Section 18. Authority of Act; references to acts committed under Act; applicable standard of care.
(1) This Act does not 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 Act do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports may not refer to acts committed under this Act as “suicide” or “assisted suicide.” Consistent with the provisions of sections 1 to 23 of this Act, state reports must refer to acts committed under this Act as obtaining and self-administering life-ending medication.

(2) Nothing contained in this Act shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider providing services under this Act.

Section 19. Immunities; basis for prohibiting health care provider from participation; notification; permissible actions.
(1) Except as provided in section 20 of this Act and subsection (2) of this section:

(a) A person is not subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this Act, including being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.
(b) A professional organization or association, health care licensing agency, or health care provider may not subject a person to censure, discipline, suspension, loss of licensure, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this Act.
(c) A patient’s request for, or provision by an attending physician of, medication in good faith compliance with this Act does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.
(d) Only willing health care providers may provide to a qualified patient medication to end the qualified 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 Act, and the health care provider transfers the patient’s 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.

(2)(a) A health care provider may prohibit another health care provider from providing services under this Act on the premises of the prohibiting health care provider if the prohibiting health care provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting health care provider’s policy regarding providing services under this Act. This subsection does not prevent a health care provider from providing health care services to a patient that do
(b) A health care provider may subject another health care provider to the following sanctions if the sanctioning health care provider has notified the sanctioned health care provider before providing services under this Act that the sanctioning health care provider prohibits providing services under this Act:

(i) Loss of privileges, loss of membership, or other sanctions 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 provides services under this Act while on the health care facility premises of the sanctioning health care provider that are not the private medical office of a physician or other health care provider;

(ii) Termination of a lease or other property contract, or other nonmonetary remedies provided by a lease or other property contract, not including loss or restriction of medical staff privileges or exclusion from a health care provider panel, if the sanctioned health care provider provides services under this 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

(iii) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned health care provider provides services under this Act 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, except that:

(A) A health care provider may provide services under this Act while acting outside the course and scope of the health care provider’s capacity as an employee or independent contractor; and

(B) A patient may contract with his or her attending physician and consulting physician to act outside the course and scope of the health care provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under paragraph (b) of this subsection shall follow all due process and other procedures that the sanctioning health care provider uses to impose sanctions on health care providers for acts not described in this Act.

(d) For the purposes of this subsection:

(i) “Notify” means a separate statement in writing to a health care provider specifically informing the health care provider before the health care provider’s provision of services under this Act of the sanctioning health care provider’s policy about providing services described in this Act.

(ii) “Provides services under this Act” means to perform the duties of an attending physician under section 4 of this Act or a consulting physician under section 5 of this Act or to perform counseling under section 6 of this Act. “Provides services under this 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 _________ [insert name of applicable state] 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 an attending physician or consulting physician to act outside of the course and scope of the attending physician’s or consulting physician’s capacity as an employee or independent contractor of a sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not
reportable to the __________ [insert name of applicable state licensing board]. Action taken under this Act may not be the sole basis for a report of unprofessional conduct under __________ [insert reference to applicable state law].

(4) References to “good faith” in subsection (1)(a), (b), and (c) of this section do not allow a lower standard of care for health care providers in this state.

Section 20. Willful alteration or forgery; coercion or undue influence; penalties; civil damages; other penalties not precluded.

(1) 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 a patient’s death is guilty of a class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient’s life, or to destroy a rescission of a request, is guilty of a class A felony.

(3) This Act does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by a person.

(4) The penalties in this Act do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this Act.

Section 21. Claims by government entity for costs incurred.

Any governmental entity that incurs costs resulting from a person terminating the person’s life under this Act in a public place has a claim against the estate of the person to recover the costs and reasonable attorneys’ fees related to enforcing the claim.

Section 22. Form of the request.

A request for a medication as authorized by this Act shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMAN [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 feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

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 informs 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 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

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Witness 1  Witness 2
Initials   Initials

1. Is personally known to us or has provided proof of identity;
2. Signed this request in our presence on the date of the person's signature;
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 the attending physician.

Printed Name of Witness 1:   _______________________________________________
Signature of Witness 1/Date: _______________________________________________

Printed Name of Witness 2:   _______________________________________________
Signature of 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 23. Form of interpreter attachment.

The form of an attachment for purposes of providing interpretive services as described in section 3(2) of this Act must be in substantially the following form:
I, ____________________, am fluent in English and ____________________ (insert language of patient). On ____________________ (insert date) at approximately ____________________ (insert time) I read the “REQUEST FOR MEDICATION TO END MY LIFE IN A HUMAN [HUMANE] AND DIGNIFIED MANNER” to ____________________ (insert name of patient) in ____________________ (insert language of patient). Mr./Ms. ____________________ (insert name of patient) affirmed to me that he/she understands the content of this form, that he/she desires to sign this form under his/her own power and volition, and that he/she requested to sign the form after consultations with an attending physician and a consulting physician.

Under penalty of perjury, I declare that I am fluent in English and ____________________ (insert language of patient) and that the contents of this form, to the best of my knowledge, are true and correct.

Executed at ________________ (insert name of city, county and state) on __________________ (insert date).

Interpreter’s signature:        _______________________________________________
Interpreter’s printed name: _______________________________________________
Interpreter’s address:           _______________________________________________

Section 23. Short title.

This act may be known and cited as the ________ [insert name of applicable state] Death with Dignity Act.