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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 651

Introduced by Assembly Members Berg and Levine
(Coauthors: Assembly Members Bass, Canciamilla, Chu,
Dymally, Goldberg, Koretz, Laird, Leno, and Wolk)
(Coauthors: Senators Kuehl, Lowenthal, and Romero)

February 17, 2005

An act to add Chapter 3.95 (commencing with Section 7195) to Part 1 of Division 7 of the Health and Safety Code, relating to death.

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as amended, Berg. California Compassionate Choices Act.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the California Compassionate Choices Act, which would authorize an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for

medication ~~for the purpose of ending his or her life in a humane and dignified manner~~ *prescribed pursuant to this bill to provide comfort with an assurance of peaceful dying if suffering becomes unbearable.* The bill would establish procedures for making these requests.

This bill would further provide that no provision in a contract, will, or other agreement, or in a health care service plan contract, policy of disability insurance, or health benefit plan contract, shall be valid to the extent it would affect whether a person may make or rescind a request for *the above-described medication* ~~for the purpose of ending his or her life in a humane and dignified manner.~~ The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, or the rate charged for any policy, from being conditioned upon or affected by the request. The bill would require that nothing in its provisions be construed to authorize ending a patient’s life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute suicide or homicide.

This bill would provide immunity from civil or criminal liability or professional disciplinary action for participating in good faith compliance with the act. The bill would provide that no health care provider is under any duty to participate in providing to a qualified patient medication to end that patient’s life and would authorize a general acute care hospital to prohibit a licensed physician from carrying out a patient’s request under this act on the premises of the hospital if the hospital has notified the licensed physician of its policy regarding this act.

This bill would require the State Department of Health Services to adopt regulations regarding the collection of information to determine the use of and compliance with the act, and would require the department to annually review a sample of certain records and make a statistical report of the information collected.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 3.95 (commencing with Section 7195)
- 2 is added to Part 1 of Division 7 of the Health and Safety Code, to
- 3 read:

1 CHAPTER 3.95. CALIFORNIA COMPASSIONATE CHOICES ACT

2
3 Article 1. General Provisions

4
5 7195. (a) The Legislature believes that dying patients should
6 have choices throughout the continuum of palliative care and that
7 much must be done to improve access to hospice care and pain
8 management. Hospice and effective palliative care successfully
9 assist many thousands of terminally ill patients to die with
10 dignity and without pain, and the Legislature hopes that all
11 patients considering the procedures available under this chapter
12 will properly consider other options, including hospice care and
13 effective pain management. The Legislature finds that medical
14 studies have shown that between 5 and 10 percent of dying
15 patients experience severe pain and suffering that cannot be
16 palliated by the best hospice or comfort care. The Legislature
17 finds that in response to the Death with Dignity Act in the State
18 of Oregon, that the referrals to hospice increased significantly. In
19 addition, doctors significantly increased the use of morphine and
20 other strong pain medications, thus improving the end-of-life
21 care for more dying patients.

22 (b) (1) It is the intent of the Legislature that the personal and
23 autonomous choice of dying patients regarding the time and
24 manner of their death provided under this chapter be viewed as
25 but one of several end-of-life options for dying patients.

26 (2) It is the intent of the Legislature that this chapter be strictly
27 construed and not expanded in any manner. The restrictions and
28 safeguards in the provisions of this chapter are based on the
29 intent of the Legislature to balance the personal and autonomous
30 choice of dying patients regarding the time and manner of their
31 death and the Legislature's goal of providing safeguards to
32 ensure that there are not instances of a coerced, unwanted, or
33 early death by a vulnerable dying patient.

34 (3) The Legislature finds and declares that historically persons
35 with disabilities have been subject to discrimination in the
36 provision of medical care and have been treated by some as
37 though their lives were less valuable or worthy of maintenance
38 than those without disabilities. The Legislature finds that this
39 discriminatory conduct is both illegal and reprehensible.

1 (4) It is the intent of the Legislature that a disability or age
2 alone ~~are not~~ *is not a* reason for a patient to be a qualified patient
3 as defined in subdivision (I) of Section 7195.1. Any disabled
4 individual or elderly person, and any physician who is the
5 attending physician to these individuals, must strictly comply
6 with all of the provisions of this chapter. Strict and rigorous
7 attention must be evidenced in distinguishing chronic conditions,
8 which are not eligible conditions under this chapter, and terminal
9 illnesses, which are eligible, as described in this chapter.

10 (5) *It is the intent of the Legislature for the physician*
11 *discussions and written patient documents in this chapter to be*
12 *translated in a manner that is consistent with Section 7295.2 of*
13 *the Government Code, Section 10133.8 of the Insurance Code,*
14 *and Section 1367.04 if the otherwise qualified patient is*
15 *non-English proficient and meets the criteria of those sections.*

16 7195.1. For purposes of this chapter the following definitions
17 shall apply:

18 (a) "Adult" means an individual who is 18 years of age or
19 older.

20 (b) "Attending physician" means the physician who has
21 primary responsibility for the care of the patient and for
22 treatment of the patient's terminal disease.

23 (c) "Capable" means that in the opinion of the patient's
24 attending physician or consulting physician, a patient has the
25 ability to make and communicate health care decisions to health
26 care providers, including communication through persons
27 familiar with the patient's manner of communicating, if those
28 ~~persons are available. Incapable means that the patient does not~~
29 ~~have the mental capacity to make and understand decisions about~~
30 ~~his or her medical care.~~ *persons are available.*

31 (d) "Consulting physician" means a physician, other than the
32 attending physician, who is qualified by specialty or experience
33 to make a professional diagnosis and prognosis regarding the
34 patient's disease.

35 (e) "Counseling" means a consultation between a state
36 licensed psychiatrist or psychologist and a patient for the purpose
37 of determining whether the patient is suffering from a psychiatric
38 or psychological disorder, or depression causing impaired
39 judgment.

1 (f) “Health care provider” means a person licensed, certified,
2 or otherwise authorized or permitted by the law of this state to
3 administer health care in the ordinary course of business or
4 practice of a profession, and includes a licensed health care
5 facility.

6 (g) (1) “Health care facility” means any health facility
7 described in Section 1250.

8 (2) “Hospice” means a comprehensive, interdisciplinary
9 program of medical and socially supportive care delivered to
10 patients with a terminal disease in order to palliate their
11 symptoms and pain since the patient’s condition is no longer
12 amenable to curative therapies and for whom the primary
13 therapeutic goal is comfort and dignity at the end of life.

14 (h) “Informed decision” means a decision, made by a qualified
15 patient, to request and obtain a prescription to end his or her life
16 in a humane and dignified manner, that is not based on coercion
17 by the patient’s next-of-kin or any other third parties, is based on
18 an appreciation of the relevant facts, and is made after being fully
19 informed by the attending physician of all of the following:

20 (1) His or her medical diagnosis.

21 (2) His or her prognosis.

22 (3) The potential risk associated with taking the medication to
23 be prescribed.

24 (4) The probable result of taking the medication to be
25 prescribed.

26 (5) The feasible alternatives, as provided in paragraph (5) of
27 subdivision (b) of Section 7196, including, but not limited to,
28 comfort care, hospice care, and pain control.

29 (i) “Medically confirmed” means the medical opinion of the
30 attending physician has been confirmed by a consulting
31 physician who has examined the patient and the patient’s relevant
32 medical records.

33 (j) “*Medication*” means medication prescribed pursuant to
34 this chapter to provide comfort with an assurance of peaceful
35 dying if suffering becomes unbearable.

36 (j)

37 (k) “Patient” means a person who is under the care of a
38 physician.

39 (k)

1 (l) “Physician” means a doctor of medicine or osteopathy
2 licensed to practice medicine by the Medical Board of California.

3 ~~(t)~~

4 (m) “Qualified patient” means a capable adult who is a
5 resident of California and has satisfied the requirements of this
6 chapter in order to obtain a prescription for medication ~~to end his~~
7 ~~or her life in a humane and dignified manner.~~

8 ~~(m)~~

9 (n) “Resident” means a person who has lived in a principal
10 place of residence in the State of California for six months or
11 more.

12 ~~(n)~~

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

16 7195.3. An adult who is capable, is a resident of California,
17 has been determined by the attending physician and a consulting
18 physician to be suffering from a terminal disease, and who has
19 voluntarily expressed his or her wish to obtain life-ending
20 medication to his or her attending physician shall, in addition to
21 the other requirements of this chapter, make a written request for
22 medication ~~for the purpose of ending his or her life in a humane~~
23 ~~and dignified manner~~ medication in accordance with this chapter
24 in order to be eligible for qualification under this chapter.

25 7195.5. (a) A valid written request for medication under this
26 chapter shall be in substantially the form prescribed by Section
27 7199, signed and dated by the patient and witnessed by at least
28 two individuals who, in the presence of the patient, attest that to
29 the best of their knowledge and belief the patient is capable,
30 acting voluntarily, and is not being coerced to sign the request.

31 (b) Both of the witnesses shall be a person who is not any of
32 the following:

- 33 (1) A relative of the patient by blood, marriage, or adoption.
- 34 (2) A person who at the time the request is signed would be
35 entitled to any portion of the estate of the qualified patient upon
36 death under any will or by operation of law.
- 37 (3) An owner, operator, or employee of a health care facility
38 where the qualified patient is receiving medical treatment or is a
39 resident.

1 (c) The patient’s attending physician at the time the request is
2 signed shall not be a witness.

3
4 Article 2. Safeguards
5

6 7196. Upon being voluntarily informed by a qualified patient
7 that the patient wishes to receive medication ~~for the purpose of~~
8 ~~ending his or her life in a humane and dignified manner in~~ *in*
9 accordance with this chapter, the attending physician shall do all
10 of the following:

11 (a) Make the initial determination of whether a patient has a
12 terminal disease, is capable, and has made the request
13 voluntarily.

14 (b) Inform the patient of all of the following:

15 (1) His or her medical diagnosis.

16 (2) His or her prognosis.

17 (3) The potential risks associated with taking the medication to
18 be prescribed.

19 (4) The probable result of taking the medication to be
20 prescribed.

21 (5) The feasible alternatives, including, but not limited to,
22 comfort care, hospice care, and pain control. This disclosure
23 must be provided in writing to the patient, and shall include, but
24 not be limited to, contact information about locally based
25 providers of comfort and hospice care.

26 (c) Refer the patient to a consulting physician for medical
27 confirmation of the diagnosis, and for a determination that the
28 patient is capable and acting voluntarily.

29 (d) Refer the patient for counseling, if appropriate pursuant to
30 Section 7196.2.

31 (e) Request that the patient notify next of kin.

32 (f) Inform the patient that he or she has an opportunity to
33 rescind the request at any time and in any manner, and offer the
34 patient an opportunity to rescind at the end of the 15-day waiting
35 period described in Section 7196.5.

36 (g) Verify, immediately prior to writing the prescription for
37 medication under this chapter, that the patient is making an
38 informed decision.

39 (h) Fulfill the medical record documentation requirements of
40 Section 7196.8.

1 (i) Ensure that all appropriate steps are carried out in
2 accordance with this chapter prior to writing a prescription for
3 ~~medication to enable a qualified patient to end his or her life in a~~
4 ~~humane and dignified manner. medication.~~

5 7196.1. Before a patient is qualified under this chapter, a
6 consulting physician shall examine the patient and his or her
7 relevant medical records and shall, in writing, confirm, the
8 attending physician's diagnosis and that the patient is suffering
9 from a terminal disease and verify that the patient is capable, is
10 acting voluntarily, and has made an informed decision.

11 7196.2. If, in the opinion of the attending physician or the
12 consulting physician, a patient may be suffering from a
13 psychiatric or psychological disorder that impairs judgment or
14 from depression or medication that impairs judgment, or the
15 patient is not a hospice patient, the attending physician or
16 consulting physician shall require the patient to undergo
17 counseling as specified in subdivision (e) of Section 7195.1. In
18 ~~this case, no medication to end the patient's life in a humane and~~
19 ~~dignified manner~~ *this case, no medication* shall be prescribed
20 unless the patient first undergoes the requisite consultation or
21 counseling and until the person performing the counseling
22 determines that the patient is not suffering from a psychiatric or
23 psychological disorder that impairs judgment, or from impaired
24 judgment caused by depression or medication.

25 7196.3. No person shall receive a prescription for medication
26 ~~to end his or her life in a humane and dignified manner unless he~~
27 ~~unless he~~ or she has made an informed decision as defined in
28 subdivision (h) of Section 7195. Immediately prior to writing a
29 prescription for medication in accordance with this chapter, the
30 attending physician shall verify that the patient is making an
31 informed decision.

32 7196.4. The attending physician shall ask the patient to notify
33 the patient's next of kin of his or her request for medication
34 pursuant to this chapter. A patient who declines or is unable to
35 notify next of kin shall not have his or her request denied for that
36 reason.

37 7196.5. In order to receive a prescription for medication ~~to~~
38 ~~end his or her life in a humane and dignified manner, a qualified,~~
39 *a qualified* patient shall have made an oral request and a written
40 request, and reiterate the oral request to his or her attending

1 physician no less than 15 days after making the initial oral
2 request. At the time the qualified patient makes his or her second
3 oral request, the attending physician shall offer the patient an
4 opportunity to rescind the request.

5 7196.6. A patient may rescind his or her request at any time
6 and in any manner without regard to his or her mental state. No
7 prescription for medication under this chapter may be written
8 without the attending physician offering the qualified patient an
9 opportunity to rescind the request.

10 7196.7. No less than 15 days shall elapse between the
11 patient's initial oral request and the writing of a prescription
12 under this chapter. No less than 48 hours shall elapse between the
13 patient's written request and the writing of a prescription under
14 this chapter.

15 7196.8. The following shall be documented or filed in the
16 patient's medical record:

17 ~~(a) All oral requests by a patient for medication to end his or~~
18 ~~her life in a humane and dignified manner.~~

19 ~~(b) All written requests by a patient for medication to end his~~
20 ~~or her life in a humane and dignified manner.~~

21 *(a) All oral requests by a patient for medication.*

22 *(b) All written requests by a patient for medication.*

23 (c) The attending physician's diagnosis and prognosis, and his
24 or her determination that the patient is capable, acting
25 voluntarily, and has made an informed decision.

26 (d) The consulting physician's diagnosis and prognosis, and
27 his or her verification that the patient is capable, acting
28 voluntarily, and has made an informed decision.

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

31 (f) The attending physician's offer to the patient to rescind his
32 or her request at the time of the patient's second oral request
33 pursuant to Section 7196.5.

34 (g) The attending physician's discussion with the patient of
35 feasible alternatives, including, but not limited to, hospice care,
36 comfort care, and pain control.

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

1 7196.9. Only requests made by California residents under this
 2 chapter shall be granted.

3 7197.1. (a) The department shall adopt regulations regarding
 4 requirements for the collection of information to determine the
 5 use of and compliance with this chapter. The information
 6 collected shall not be a public record and shall not be made
 7 available for inspection by the public.

8 (b) The department shall generate and make available to the
 9 public an annual statistical report of information collected,
 10 *disaggregated by age, gender, race, ethnicity, and language*
 11 *spoken at home*, pursuant to subdivision (a).

12 (c) The department shall annually review a sample of records
 13 maintained pursuant to this chapter.

14 7197.3. (a) No provision in a contract, will, or other
 15 agreement, whether written or oral, to the extent the provision
 16 would affect whether a person may make or rescind a request for
 17 ~~medication to end his or her life in a humane and dignified~~
 18 ~~manner, shall be valid.~~ *medication, shall be valid.*

19 (b) No obligation owing under any contract in existence on or
 20 before January 1, ~~2006, 2007~~, shall be conditioned or affected by
 21 the making or rescinding of a request by a person for medication
 22 ~~to end his or her life in a humane and dignified manner.~~

23 (c) No health care service plan contract, as defined in
 24 subdivision (r) of Section 1345, shall be conditioned upon or
 25 affected by the making or rescinding of a request by a person for
 26 ~~medication to end his or her life in a humane and dignified~~
 27 ~~manner~~ *medication*. Any such contract provision shall be invalid.

28 (d) No provision of a policy of disability insurance or a health
 29 benefit plan contract that provides coverage for hospital, medical,
 30 or surgical expenses pursuant to Part 2 (commencing with
 31 Section 10110) of Division 2 of the Insurance Code shall be
 32 conditioned upon or affected by the making or rescinding of a
 33 request by a person to end his or her life in a humane and
 34 dignified manner. Any such policy provision shall be invalid.

35 7197.5. The sale, procurement, or issuance of any life, health,
 36 or accident insurance or annuity policy or the rate charged for
 37 any policy shall not be conditioned upon or affected by the
 38 making or rescinding of a request by a person for ~~medication to~~
 39 ~~end his or her life in a humane and dignified manner.~~ *A qualified*
 40 *medication. A qualified* patient's act of ingesting medication to

1 end his or her life in a humane and dignified manner in
2 accordance with this chapter shall not have an effect upon a life,
3 health, or accident insurance or annuity policy.

4 7197.7. Nothing in this chapter shall be construed to
5 authorize a physician or any other person to end a patient’s life
6 by lethal injection, mercy killing, or active euthanasia. The
7 patient must self-administer the medication provided under this
8 chapter. Actions taken in accordance with this chapter shall not,
9 for any purpose, constitute suicide, assisted suicide, mercy
10 killing, or homicide, under the law. *Every state agency,
11 department, or office that prepares or issues a document or
12 report that describes or refers to the medical practice described
13 in this chapter shall use the phrase “aid in dying” to describe or
14 reference the medical practice in the document or report.*

15 7197.8. *Nothing in this chapter shall affect the authority of a
16 coroner or medical examiner to investigate a death.*

17
18 Article 3. Immunities and Liabilities

19
20 7198. Except as provided in Section 7198.5:

21 (a) Notwithstanding any other provision of law, no person
22 shall be subject to civil or criminal liability or professional
23 disciplinary action for participating in good faith compliance
24 with this chapter. This includes being present when a qualified
25 patient takes the prescribed medication to end his or her life in a
26 humane and dignified manner.

27 (b) No professional organization or association, or health care
28 provider, may subject a person to censure, discipline, suspension,
29 loss of license, loss of privileges, loss of membership, or other
30 penalty for participating or refusing to participate in good faith
31 compliance with this chapter.

32 (c) No request by a patient for or provision by an attending
33 physician of medication in good faith compliance with this
34 chapter shall constitute neglect for any purpose of law or provide
35 the sole basis for the appointment of a guardian or conservator.

36 (d) No health care provider shall be under any duty, whether
37 by contract, by statute, or by any other legal requirement to
38 participate in the provision to a qualified patient of ~~medication to~~
39 ~~end his or her life in a humane and dignified manner.~~ *If a health
40 medication. If a health care provider is unable or unwilling to*

1 carry out a patient’s request under this chapter, and the patient
2 transfers his or her care to a new health care provider, the prior
3 health care provider shall transfer, upon request, a copy of the
4 patient’s relevant medical records to the new health care
5 provider.

6 (e) Notwithstanding any other provision of law, a general
7 acute care hospital, as defined in subdivision (a) of Section 1250,
8 may prohibit a licensed physician from carrying out a patient’s
9 request under this chapter on the premises of the hospital if the
10 hospital has notified the licensed physician of its policy regarding
11 this chapter.

12 7198.5. (a) Nothing in this chapter limits civil or criminal
13 liability resulting from other negligent conduct or intentional
14 misconduct by any person.

15 (b) The penalties in this chapter do not preclude criminal
16 penalties applicable under other law for conduct that is
17 inconsistent with this chapter.

18
19 Article 4. Severability

20
21 7198.9. Any section of this chapter that is held invalid as to
22 any person or circumstance shall not affect the application of any
23 other section of this chapter that can be given full effect without
24 the invalid section or portion thereof.

25
26 Article 5. Form of the Request

27
28 7199. A request for a medication as authorized by this chapter
29 shall be in substantially the following form:

30
31
32 REQUEST FOR MEDICATION

33 TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

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

35 I am suffering from _____, which my attending physician has
36 determined is a terminal disease which will, within reasonable medical
37 judgment, likely lead to my death within six months, and which has been
38 medically confirmed by a consulting physician.

39 I have been fully informed of my diagnosis, prognosis, the nature of
40 the medication to be prescribed, and the potential associated risks, the

1 expected result, and the feasible alternatives, including comfort care, hospice
2 care, and pain control.

3 I request that my attending physician prescribe medication that will
4 allow me to hasten the end of my life in a humane and dignified manner.

5
6 INITIAL ONE:

7 _____ I have informed my family of my decision and taken their
8 opinions into consideration.

9 _____ I have decided not to inform my family of my decision.

10 _____ I have no family to inform of my decision.

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

12 I understand the full import of this request, and I expect to die when I
13 take the medication to be prescribed.

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

16 Signed: _____

17 Dated: _____

18
19 DECLARATION OF WITNESSES

20 We declare that the person signing this request:

- 21 (a) Is personally known to us or has provided proof of identity;
- 22 (b) Signed this request in our presence;
- 23 (c) Appears to be of sound mind and not under duress, fraud, or undue
24 influence;
- 25 (d) Is not a patient for whom either of us is the attending physician.

26 _____ Witness 1/Date

27 _____ Witness 2/Date

28
29 ~~NOTE: One witness shall not be a relative (by blood, marriage, or adoption)~~
30 ~~of the person signing this request, shall not be entitled to any portion of the~~
31 ~~person's estate upon death, and shall not own, operate, or be employed at a~~
32 ~~health care facility where the person is a patient or resident.~~

33 *NOTE: Neither witness shall be a relative (by blood, marriage, or adoption)*
34 *of the person signing this request. Neither witness shall be entitled to any*
35 *portion of the person's estate upon death. Neither witness shall own,*
36 *operate, or be employed at a health care facility where the person is a*
37 *patient or resident.*

- 1
- 2 **CORRECTIONS:**
- 3 **Text — Pages 9 & 10.**
- 4

O