

AMENDED IN ASSEMBLY MAY 25, 2007

AMENDED IN ASSEMBLY MAY 14, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 374

Introduced by Assembly Members Berg, Levine, and Nunez

(Principal coauthor: Assembly Member Feuer)

(Coauthors: Assembly Members Bass, Beall, Brownley, De Leon, DeSaulnier, Dymally, Eng, Evans, Huffman, Jones, Karnette, Laird, Leno, Ma, Saldana, and Wolk)

(Coauthors: Senators Calderon, Kuehl, Lowenthal, Oropeza, Romero, Steinberg, and Wiggins)

February 15, 2007

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 374, as amended, Berg. California Compassionate Choices Act.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Services. Effective July 1, 2007, responsibility for the administration of the abovementioned provisions will be transferred to the State Department of Public Health.

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 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. 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 Public Health 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 dignity
10 and without pain, and the Legislature hopes that all patients
11 considering the procedures available under this chapter will
12 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 patients
15 experience severe pain and suffering that cannot be palliated by
16 the best hospice or comfort care. The Legislature finds that in
17 response to the Death with Dignity Act in the State of Oregon, that
18 the referrals to hospice increased significantly. In addition, doctors
19 significantly increased the use of morphine and other strong pain
20 medications, thus improving the end-of-life care for more dying
21 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 manner
24 of their death provided under this chapter be viewed as but one of
25 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 intent
29 of the Legislature to balance the personal and autonomous choice
30 of dying patients regarding the time and manner of their death and
31 the Legislature's goal of providing safeguards to ensure that there
32 are not instances of a coerced, unwanted, or early death by a
33 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 though
37 their lives were less valuable or worthy of maintenance than those
38 without disabilities. The Legislature finds that this discriminatory
39 conduct is both illegal and reprehensible.

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

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

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

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

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

(c) “Capable” means that in the opinion of the patient’s attending physician or consulting physician, 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.

(d) “Consulting physician” means a physician, other than the attending physician, who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease.

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

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

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

1 (2) "Hospice" means a comprehensive, interdisciplinary program
2 of medical and socially supportive care delivered to patients with
3 a terminal disease in order to palliate their symptoms and pain
4 since the patient's condition is no longer amenable to curative
5 therapies and for whom the primary therapeutic goal is comfort
6 and dignity at the end of life.

7 (h) "Informed decision" means a decision, made by a qualified
8 patient, to request and obtain a prescription to end his or her life
9 in a humane and dignified manner, that is not based on coercion
10 by the patient's next-of-kin or any other third party; that is not
11 based on financial coercion by any other individual or entity; is
12 based on an appreciation of the relevant facts, and is made after
13 being fully informed by the attending physician of all of the
14 following:

15 (1) His or her medical diagnosis.

16 (2) His or her prognosis.

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

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

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

23 (i) "Medically confirmed" means the medical opinion of the
24 attending physician has been confirmed by a consulting physician
25 who has examined the patient and the patient's relevant medical
26 records.

27 (j) "Medication" means medication prescribed pursuant to this
28 chapter to provide comfort with an assurance of peaceful dying if
29 suffering becomes unbearable.

30 (k) "Patient" means a person who is under the care of a
31 physician.

32 (l) "Physician" means a doctor of medicine or osteopathy
33 licensed to practice medicine by the Medical Board of California.

34 (m) "Qualified patient" means a capable adult who is a resident
35 of California and has satisfied the requirements of this chapter in
36 order to obtain a prescription for medication .

37 (n) "Resident" means a person who has lived in a principal place
38 of residence in the State of California for six months or more.

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

7195.3. An adult who is capable, is a resident of California, has been determined by the attending physician and a consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to obtain life-ending medication to his or her attending physician shall, in addition to the other requirements of this chapter, make both an oral and a written request for medication in accordance with this chapter in order to be eligible for qualification under this chapter.

7195.5. (a) A valid written request for medication under this chapter shall be in substantially the form prescribed by Section 7199, 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) Both of the witnesses shall be a person who is not any of the following:

(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.

(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.

Article 2. Safeguards

7196. Upon being voluntarily informed by a qualified patient that the patient wishes to receive medication in accordance with this chapter, the attending physician shall do all of the following:

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

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

(1) His or her medical diagnosis.

(2) His or her prognosis.

1 (3) The potential risks associated with taking the medication to
2 be prescribed.

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

4 (5) The feasible alternatives, including, but not limited to,
5 comfort care, hospice care, and pain control, *or, if appropriate to*
6 *the patient's faith tradition spiritual healing*. This disclosure must
7 be provided in writing to the patient, and shall include, but not be
8 limited to, contact information about locally based providers of
9 comfort and hospice care.

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

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

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

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

20 (g) Verify, immediately prior to writing the prescription for
21 medication under this chapter, that the patient is making an
22 informed decision. ~~In cases where a patient is not expected to live~~
23 ~~more than three months, prior to issuing a prescription for~~
24 ~~medication provided under this chapter, the physician shall include~~
25 ~~a notation on the prescription indicating the patient's current~~
26 ~~prognosis.~~ *informed decision. No prescription shall be written*
27 *until the physician verifies that the patient's current prognosis is*
28 *three months to live or less.*

29 (h) Fulfill the medical record documentation requirements of
30 Section 7196.8.

31 (i) Ensure that all appropriate steps are carried out in accordance
32 with this chapter prior to writing a prescription for medication.

33 7196.1. Before a patient is qualified under this chapter, a
34 consulting physician shall examine the patient and his or her
35 relevant medical records and shall, in writing, confirm, the
36 attending physician's diagnosis and that the patient is suffering
37 from a terminal disease and verify that the patient is capable, is
38 acting voluntarily, and has made an informed decision.

39 7196.2. If, in the opinion of the attending physician or the
40 consulting physician, a patient may be suffering from a psychiatric

1 or psychological disorder that impairs judgment or from depression
2 or medication that impairs judgment, or the patient is not a hospice
3 patient, the attending physician or consulting physician shall
4 require the patient to undergo counseling as specified in subdivision
5 (e) of Section 7195.1. In this case, no medication shall be
6 prescribed unless the patient first undergoes the requisite
7 consultation or counseling and until the person performing the
8 counseling determines that the patient is not suffering from a
9 psychiatric or psychological disorder that impairs judgment, or
10 from impaired judgment caused by depression or medication.

11 7196.3. No person shall receive a prescription for medication
12 unless he or she has made an informed decision as defined in
13 subdivision (h) of Section 7195. Immediately prior to writing a
14 prescription for medication in accordance with this chapter, the
15 attending physician shall verify that the patient is making an
16 informed decision.

17 7196.4. The attending physician shall ask the patient to notify
18 the patient's next of kin of his or her request for medication
19 pursuant to this chapter. A patient who declines or is unable to
20 notify next of kin shall not have his or her request denied for that
21 reason.

22 7196.5. In order to receive a prescription for medication, a
23 qualified patient shall have made an oral request and a written
24 request, and reiterate the oral request to his or her attending
25 physician no less than 15 days after making the initial oral request.
26 At the time the qualified patient makes his or her second oral
27 request, the attending physician shall offer the patient an
28 opportunity to rescind the request.

29 7196.6. A patient may rescind his or her request at any time
30 and in any manner without regard to his or her mental state. No
31 prescription for medication under this chapter may be written
32 without the attending physician offering the qualified patient an
33 opportunity to rescind the request.

34 7196.7. No less than 15 days shall elapse between the patient's
35 initial oral request and the writing of a prescription under this
36 chapter. No less than 48 hours shall elapse between the patient's
37 written request and the writing of a prescription under this chapter.

38 7196.8. The following shall be documented or filed in the
39 patient's medical record:

- 40 (a) All oral requests by a patient for medication.

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

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

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

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

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

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

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

20 7196.9. Only requests made by California residents under this
21 chapter shall be granted.

22 7197. Any medication prescribed under this chapter for the
23 purpose of aiding a terminally ill patient that was not
24 self-administered by that qualified patient shall be ~~disposed of~~
25 *destroyed. This disposal shall be* in accordance with applicable
26 laws and regulations governing the disposal of unused medications
27 after the patient's death.

28 7197.1. (a) The department shall adopt regulations regarding
29 requirements for the collection of information to determine the
30 use of and compliance with this chapter. The information collected
31 shall not be a public record and shall not be made available for
32 inspection by the public.

33 (b) The department shall generate and make available to the
34 public an annual statistical report of information collected,
35 disaggregated by age, gender, race, ethnicity, and language spoken
36 at home, pursuant to subdivision (a).

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

39 7197.3. (a) No provision in a contract, will, or other agreement,
40 whether written or oral, to the extent the provision would affect

1 whether a person may make or rescind a request for medication,
2 shall be valid.

3 (b) No obligation owing under any contract in existence on or
4 before January 1, 2008, shall be conditioned or affected by the
5 making or rescinding of a request by a person for medication.

6 (c) No health care service plan contract, as defined in
7 subdivision (r) of Section 1345, shall be conditioned upon or
8 affected by the making or rescinding of a request by a person for
9 medication. Any such contract provision shall be invalid.

10 (d) No provision of a policy of disability insurance or a health
11 benefit plan contract that provides coverage for hospital, medical,
12 or surgical expenses pursuant to Part 2 (commencing with Section
13 10110) of Division 2 of the Insurance Code shall be conditioned
14 upon or affected by the making or rescinding of a request by a
15 person to end his or her life in a humane and dignified manner.
16 Any such policy provision shall be invalid.

17 7197.5. The sale, procurement, or issuance of any life, health,
18 or accident insurance or annuity policy or the rate charged for any
19 policy shall not be conditioned upon or affected by the making or
20 rescinding of a request by a person for medication. A qualified
21 patient's act of ingesting medication to end his or her life in a
22 humane and dignified manner in accordance with this chapter shall
23 not have an effect upon a life, health, or accident insurance or
24 annuity policy.

25 7197.7. Nothing in this chapter shall be construed to authorize
26 a physician or any other person to end a patient's life by lethal
27 injection, mercy killing, or active euthanasia. The patient must
28 self-administer the medication provided under this chapter. Actions
29 taken in accordance with this chapter shall not, for any purpose,
30 constitute suicide, assisted suicide, mercy killing, or homicide,
31 under the law. Every state agency, department, or office that
32 prepares or issues a document or report that describes or refers to
33 the medical practice described in this chapter shall use the phrase
34 "aid in dying" to describe or reference the medical practice in the
35 document or report.

36 7197.8. Nothing in this chapter shall affect the authority of a
37 coroner or medical examiner to investigate a death.

Article 3. Immunities and Liabilities

7198. Except as provided in Section 7198.5:

(a) Notwithstanding any other provision of law, no person shall be 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 prescribed medication to end his or her life in a humane and dignified manner.

(b) 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 this chapter.

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

(d) No health care provider shall be under any duty, whether by contract, by statute, or by any other legal requirement to participate in the provision to a qualified patient of medication. 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.

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

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

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

Article 4. Severability

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

Article 5. Form of the Request

7199. A request for a medication as authorized by this chapter 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 which will, within reasonable medical judgment, likely lead to my death within six months, 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 the 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 allow me to hasten the end of my life in a humane and dignified manner.

INITIAL ALL:

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

_____ *I understand that I will not receive a prescription for the medication until my physician verifies that my current prognosis is three months to live or less.*

_____ I understand the full import of this request, and I expect to die if I take the medication to be prescribed.

_____ I make this request voluntarily and without reservation. I made this request without any coercion or influence based on financial or other reasons from anyone else or any entity.

_____ I accept full moral responsibility for my actions.

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.

Print Name _____
Signed: _____
Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

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

_____ Witness 1/Date

Print Name _____

_____ Witness 2/Date

Print Name _____

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