SENATE BILL No. 128

Introduced by Senators Wolk and Monning
(Principal coauthors: Senators Jackson and Leno)
(Principal coauthor: Assembly Member Eggman)
(Coauthors: Senators Block, Hall, Hancock, Hernandez, Hill, McGuire, and Wieckowski)
(Coauthors: Assembly Members Cristina Garcia, Quirk, and Mark Stone)

January 20, 2015

An act to add Part 1.85 (commencing with Section 443) to Division 1 of the Health and Safety Code, relating to end of life.

LEGISLATIVE COUNSEL’S DIGEST

SB 128, as introduced, Wolk. End of life.

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 End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal illness, as defined, to make a request for medication prescribed pursuant to these provisions for the purpose of ending his or her life. The bill would establish the procedures for making these requests. The bill would also establish the forms to request aid-in-dying medication and under specified circumstances an interpreter declaration to be signed subject to penalty of perjury, thereby imposing a crime and state-mandated local program.

This bill would prohibit a provision in a contract, will, or other agreement, or in a health care service plan contract, or health benefit
plan contract, from being conditioned upon or affected by a person making or rescinding 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.

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 participation in activities authorized pursuant to this bill shall be voluntary.

This bill would make it a felony to knowingly alter or forge a request for medication to end an individual’s life without his or her authorization or to conceal or destroy a rescission of a request for medication, if it is done with the intent or effect of causing the individual’s death. The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request medication for the purpose of ending his or her life or to destroy a rescission of a request. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide 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, among others, suicide or homicide.

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.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Part 1.85 (commencing with Section 443) is added to Division 1 of the Health and Safety Code, to read:

PART 1.85. END OF LIFE OPTION ACT

443. This part shall be known and may be cited as the End of Life Option Act.

443.1. As used in this part, the following definitions shall apply:

(a) “Adult” means an individual 18 years of age or older.
(b) “Aid-in-dying medication” means medication determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal illness.
(c) “Attending physician” means the physician who has primary responsibility for the health care of an individual and treatment of the individual’s terminal illness.
(d) “Competent” means that, in the opinion of a court or in the opinion of an individual’s attending physician, consulting physician, psychiatrist, or psychologist, the individual has the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the individual’s manner of communicating, if that person is available.
(e) “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual’s illness.
(f) “Counseling” means one or more consultations, as necessary, between an individual and a psychiatrist or psychologist licensed in this state for the purpose of determining that the individual is competent and is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.
(g) “Department” means the State Department of Public Health.
(h) “Health care provider” or “provider” means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, including, but not limited to, physicians, doctors of osteopathy, and pharmacists.
“Health care provider” or “provider” includes a health care facility as identified in Section 1250.

(i) “Informed decision” means a decision by a terminally ill individual to request and obtain a prescription for medication that the individual may self-administer to end the individual’s life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:

1. The individual’s medical diagnosis and prognosis.
2. The potential risks associated with taking the medication to be prescribed.
3. The probable result of taking the medication to be prescribed.
4. The possibility that the individual may choose not to obtain the medication or may obtain the medication but may decide not to take it.
5. The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(j) “Medically confirmed” means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual’s relevant medical records.

(k) “Physician” means a doctor of medicine or osteopathy licensed to practice medicine in this state.

(l) “Public place” means any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access.

(m) “Qualified individual” means a competent adult who is a resident of California and has satisfied the requirements of this part in order to obtain a prescription for medication to end his or her life.

(n) “Self-administer” means a qualified individual’s affirmative, conscious, and physical act of using the medication to bring about his or her own death.

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

443.2. (a) A competent, qualified individual who is a terminally ill adult may make a request to receive a prescription
for aid-in-dying medication if all of the following conditions are satisfied:

1. The qualified individual’s attending physician has determined the individual to be suffering from a terminal illness.
2. The qualified individual has voluntarily expressed the wish to receive a prescription for aid-in-dying medication.
3. The qualified individual is a resident of California and is able to establish residency through any of the following means:
   A. Possession of a California driver license.
   B. Registration to vote in California.
   C. Evidence that the person owns or leases property in California.
   D. Filing of a California tax return for the most recent tax year.
4. The qualified individual documents his or her request pursuant to the requirements set forth in Section 443.3.

(b) A person may not qualify under the provisions of this part solely because of age or disability.

(c) A request for a prescription for aid-in-dying medication under this part shall not be made on behalf of the patient through a power of attorney, an advance health care directive, or a conservator.

443.3. (a) A qualified individual wishing to receive a prescription for aid-in-dying medication pursuant to this part shall submit two oral requests, a minimum of 15 days apart, and a written request to his or her attending physician.

(b) A valid written request for aid-in-dying medication under subdivision (a) shall meet all of the following conditions:

1. The request shall be in substantially the form described in Section 443.9.
2. The request shall be signed and dated by the qualified individual seeking the medication.
3. The request shall be witnessed by at least two other adult persons who, in the presence of the qualified individual, shall attest that to the best of their knowledge and belief the qualified individual is all of the following:
   A. Competent.
   B. Acting voluntarily.
   C. Not being coerced to sign the request.
4. At most, one of the two witnesses at the time the written request is signed may:
(1) Be related to the qualified individual by blood, marriage, or adoption or be entitled to a portion of the person's estate upon death, but not both.

(2) Own, operate, or be employed at a health care facility where the qualified individual is receiving medical treatment or resides.

(d) The attending physician of the qualified individual shall not be one of the witnesses required pursuant to paragraph (3) of subdivision (b).

443.4. (a) A qualified individual may at any time rescind his or her request for aid-in-dying medication without regard to the qualified individual's mental state.

(b) A prescription for aid-in-dying medication provided under this part may not be written without the attending physician offering the qualified individual an opportunity to rescind the request.

443.5. (a) Before prescribing aid-in-dying medication, the attending physician shall do all of the following:

(1) Make the initial determination of all of the following:

(A) Whether the requesting adult is competent.

(B) Whether the requesting adult has a terminal illness.

(C) Whether the requesting adult has voluntarily made the request for aid-in-dying medication pursuant to Sections 443.2 and 443.3.

(D) Whether the requesting adult is a qualified individual pursuant to subdivision (m) of Section 443.1.

(2) Ensure the qualified individual is making an informed decision by discussing with him or her all of the following:

(A) His or her medical diagnosis and prognosis.

(B) The potential risks associated with taking the aid-in-dying medication to be prescribed.

(C) The probable result of taking the aid-in-dying medication to be prescribed.

(D) The possibility that he or she may choose to obtain the medication but not take it.

(E) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(3) Refer the qualified individual to a consulting physician for medical confirmation of the diagnosis, prognosis, and for a
determination that the qualified individual is competent and has
cомplied with the provisions of this part.

(4) Refer the qualified individual for counseling if appropriate.

(5) Ensure that the qualified individual’s request does not arise
from coercion or undue influence by another person.

(6) Counsel the qualified individual about the importance of all
of the following:

(A) Having another person present when he or she takes the
aid-in-dying medication prescribed pursuant to this part.

(B) Not taking the aid-in-dying medication in a public place.

(7) Inform the qualified individual that he or she may rescind
the request for aid-in-dying medication at any time and in any
manner.

(8) Offer the qualified individual an opportunity to rescind the
request for medication before prescribing the aid-in-dying
medication.

(9) Verify, immediately prior to writing the prescription for
medication, that the qualified individual is making an informed
decision.

(10) Ensure that all appropriate steps are carried out in
accordance with this part before writing a prescription for
aid-in-dying medication.

(11) Fulfill the record documentation that may be required under
Section 443.16.

(b) If the conditions set forth in subdivision (a) are satisfied,
the attending physician may deliver the aid-in-dying medication
in any of the following ways:

(1) Dispense aid-in-dying medications directly, including
ancillary medication intended to minimize the qualified individual’s
discomfort, if the attending physician meets all of the following
criteria:

(A) Is registered as a dispensing physician with the Medical
Board of California.

(B) Has a current United States Drug Enforcement
Administration (USDEA) certificate.

(C) Complies with any applicable administrative rule or
regulation.

(2) With the qualified individual’s written consent, the attending
physician may contact a pharmacist, inform the pharmacist of the
prescriptions, and deliver the written prescriptions personally, by
mail, or electronically to the pharmacist, who shall dispense the
medications to the qualified individual, the attending physician,
or a person expressly designated by the qualified individual and
with the designation delivered to the pharmacist in writing or
verbally.
(c) Delivery of the dispensed medication to the qualified
individual, the attending physician, or a person expressly
designated by the qualified individual may be made by: personal
delivery, United Parcel Service, United States Postal Service,
Federal Express, or by messenger service.
443.6. Prior to a qualified individual obtaining aid-in-dying
medication from the attending physician, the consulting physician
shall perform all of the following:
(a) Examine the qualified individual and his or her relevant
medical records.
(b) Confirm in writing the attending physician’s diagnosis and
prognosis.
(c) Verify, in the opinion of the consulting physician, that the
qualified individual is competent, acting voluntarily, and has made
an informed decision.
(d) Fulfill the record documentation that may be required under
Section 443.16.
443.7. (a) Unless otherwise prohibited by law, the attending
physician may sign the qualified individual’s death certificate.
(b) The cause of death listed on an individual’s death certificate
who uses aid-in-dying medication shall be the underlying terminal
illness.
443.8. A qualified individual may not receive a prescription
for aid-in-dying medication pursuant to this part, unless he or she
has made an informed decision. Immediately before writing a
prescription for aid-in-dying medication under this part, the
attending physician shall verify that the individual is making an
informed decision.
443.9. (a) A request for aid-in-dying medication as authorized
by this part 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 and a resident of the state of California.
I am suffering from ................, which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment opportunities, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:

......... I have informed one or more members of 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 if I take the aid-in-dying medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my attending physician has counseled me about this possibility.

I make this request voluntarily and without reservation.

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) is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and

(d) is not an individual for whom either of us is the attending physician.

..........................Witness 1/Date

..........................Witness 2/Date

NOTE: Only one of the two witnesses may be a relative (by blood, marriage, or adoption) of the person signing this request or be entitled to a portion of the person’s estate upon death. Only one of the two witnesses may own, operate or be employed at a health care facility where the person is a patient or resident.
The written language of the request shall be written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and his or her attending or consulting physicians.

(2) Notwithstanding paragraph (1), the written request may be prepared in English even where the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English if the English language form includes an attached interpreter’s declaration that is signed under penalty of perjury. The interpreter’s declaration shall state words to the effect that:

I (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT TARGET LANGUAGE).

On (insert date) at approximately (Insert time), I read the “Request for Medication to End My Life” to (insert name of individual/patient) in (insert target language).

Mr./Ms. (Insert name of patient/qualified individual) affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form followed consultations with an attending and consulting physician. I declare that I am fluent in English and (insert target language) and further declare under penalty of perjury that the foregoing is true and correct.

Executed at (insert city, county, and state) on this (insert day of month) of (insert month), (insert year).

X______Interpreter signature

X______Interpreter printed name

X______Interpreter address

(3) An interpreter provided by paragraph (2) shall not be related to the qualified individual by blood, marriage, or adoption or be entitled to a portion of the person’s estate upon death. An interpreter provided by paragraph (2) shall be qualified as described in subparagraph (H) of paragraph (2) of subdivision (c) of Section 1300.67.04 of Title 28 of the California Code of Regulations. 443.10. (a) A provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for aid-in-dying medication, is not valid.
(b) An obligation owing under any currently existing contract may not be conditioned or affected by a qualified individual making or rescinding a request for aid-in-dying medication.

443.11. (a) The sale, procurement, or issuance of a life, health, accident insurance or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for aid-in-dying medication.

(b) Notwithstanding any other law, a qualified individual’s act of self-administering aid-in-dying medication may not have an effect upon a life, health, or accident insurance or annuity policy other than that of a natural death from the underlying illness.

443.12. (a) Notwithstanding any other law, a person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this part, including an individual who is present when a qualified individual self-administers the prescribed aid-in-dying medication.

(b) A health care provider or professional organization or association may not subject an individual 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 part.

(c) A request by an individual to an attending physician or to a pharmacist to dispense aid-in-dying medication or provide aid-in-dying medication in good faith compliance with the provisions of this part does not constitute neglect or elder abuse for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(d) (1) Participation in activities authorized pursuant to this part shall be voluntary. A person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of a patient’s decision under this part, except as otherwise required by law.

(2) If a health care provider is unable or unwilling to carry out an individual’s request under this part and the individual transfers care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the individual’s relevant medical records to the new health care provider.
Nothing in this part shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

443.13. A health care provider may not be sanctioned for any of the following:
(a) Making an initial determination that an individual has a terminal illness and informing him or her of the medical prognosis.
(b) Providing information about the End of Life Option Act to a patient upon the request of the individual.
(c) Providing an individual, upon request, with a referral to another physician.
(d) Contracting with an individual to act outside the course and scope of the provider’s capacity as an employee or independent contractor of a health care provider that prohibits activities under this part.

443.14. (a) Knowingly altering or forging a request for medication to end an individual’s life without his or her authorization or concealing or destroying a rescission of a request for medication is punishable as a felony if the act is done with the intent or effect of causing the individual’s death.
(b) Knowingly coercing or exerting undue influence on an individual to request medication for the purpose of ending his or her life or to destroy a rescission of a request is punishable as a felony.
(c) For purposes of this section, “knowingly” has the meaning provided in Section 7 of the Penal Code.
(d) Nothing in this section limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.
(e) The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this part.

443.15. Nothing in this part may be construed to authorize a physician or any other person to end an individual’s life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purposes, constitute suicide, assisted suicide, mercy killing, homicide, or elder abuse under the law.

443.16. (a) The State Public Health Officer, in consultation with the State Department of Social Services, shall adopt
regulations establishing reporting requirements for physicians and
pharmacists pursuant to this part.

(b) The reporting requirements shall be designed to collect
information to determine utilization and compliance with this part.
The information collected shall be confidential and shall be
collected in a manner that protects the privacy of the patient, the
patient’s family, and any medical provider or pharmacist involved
with the patient under the provisions of this part.

(c) Based on the information collected, the department shall
provide an annual compliance and utilization statistical report
aggregated by age, gender, race, ethnicity, and primary language
spoken at home and other data the department may determine
relevant. The department shall make the report public within 30
days of completion of each annual report.

443.17. A person who has custody or control of any unused
aid-in-dying medication prescribed pursuant to this part after the
death of the patient shall personally deliver the unused aid-in-dying
medication for disposal by delivering it to the nearest qualified
facility that properly disposes of controlled substances, or if none
is available, shall dispose of it by lawful means.

443.18. Any governmental entity that incurs costs resulting
from a qualified individual terminating his or her life pursuant to
the provisions of this part in a public place shall have a claim
against the estate of the qualified individual to recover those costs
and reasonable attorney fees related to enforcing the claim.

SEC. 2. The Legislature finds and declares that Section 1 of
this act, which adds Section 443.16 to the Health and Safety Code,
imposes a limitation on the public’s right of access to the meetings
of public bodies or the writings of public officials and agencies
within the meaning of Section 3 of Article I of the California
Constitution. Pursuant to that constitutional provision, the
Legislature makes the following findings to demonstrate the interest
protected by this limitation and the need for protecting that interest:

(a) Any limitation to public access to personally identifiable
patient data collected pursuant to Section 443.16 of the Health and
Safety Code as proposed to be added by this act is necessary to
protect the privacy rights of the patient and his or her family.

(b) The interests in protecting the privacy rights of the patient
and his or her family in this situation strongly outweigh the public
interest in having access to personally identifiable data relating to
services.

(c) The statistical report to be made available to the public
pursuant to subdivision (c) of Section 443.16 of the Health and
Safety Code is sufficient to satisfy the public’s right to access.

SEC. 3. The provisions of this part are severable. If any
provision of this part or its application is held invalid, that
invalidity shall not affect other provisions or applications that can
be given effect without the invalid provision or application.

SEC. 4. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.