SENATE FILE 2051
BY BOLKCOM, TAYLOR, DEARDEN, and McCoy

A BILL FOR

1 An Act creating the Iowa death with dignity Act and providing
2 penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
Section 1. NEW SECTION. 142E.1 Short title.

This chapter shall be known and may be cited as the "Iowa Death with Dignity Act".

Sec. 2. NEW SECTION. 142E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Adult" means an individual who is eighteen years of age or older.

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

3. "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 health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

4. "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease.

5. "Counseling" means one or more consultations as necessary between a 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. "Department" means the department of public health.

7. "Health care facility" means a health care facility as defined in section 135C.1.

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

9. "Informed decision" means a decision by a qualified
patient to request and obtain a prescription to end the
patient's life that is based on an appreciation of the relevant
facts and after being fully informed by the attending physician
of all of the following:

a. The patient's medical diagnosis.
b. The 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.
e. The feasible alternatives, including but not limited to
comfort care, hospice care, and pain control.

10. "Long-term care facility" means a long-term care unit
of a hospital, a health care facility, an elder group home as
defined in section 231B.1, or an assisted living program as
defined in section 231C.2.

11. "Medically confirmed" means the medical opinion of
the attending physician has been confirmed by a consulting
physician who has examined the patient and the patient's
relevant medical records.

12. "Patient" means a person who is under the care of a
physician.

13. "Physician" means a person licensed to practice medicine
and surgery or osteopathic medicine and surgery under chapter
148.

14. "Qualified patient" means a competent adult who is a
resident of Iowa and has satisfied the requirements of this
chapter to obtain a prescription for medication to end the
individual's life.

15. "Self-administer" means a qualified patient's act of
ingesting medication to end the patient's life.

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

Sec. 3. NEW SECTION. 142E.3 Request for medication.
1. An adult patient who is competent, is a resident of this state, has been determined by the patient’s attending physician and consulting physician to be suffering from a terminal disease, and has voluntarily expressed a wish to die, may make a written request for medication that the patient may self-administer to end the patient’s life in accordance with this chapter.

2. A person shall not qualify to make a written request under this section solely because of age or disability.

Sec. 4. NEW SECTION. 142E.4 Oral and written requests — right to rescind.

1. To receive a prescription for medication that a qualified patient may self-administer to end the qualified patient’s life pursuant to this chapter, the qualified patient shall make an initial oral request, followed by a subsequent oral request at least fifteen days after the initial oral request, and a written request to the qualified patient’s attending physician.

2. At least fifteen days shall elapse between a qualified patient’s initial oral request and the writing of a prescription under this chapter.

3. At least forty-eight hours shall elapse between the submission of a qualified patient’s written request and the writing of a prescription under this chapter.

4. a. At the time the qualified patient makes the second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

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

Sec. 5. NEW SECTION. 142E.5 Procedure for request — witnesses.

1. A qualified patient who is unable to orally communicate
may make a valid oral request under this chapter by reducing the oral request to writing for submission to the qualified patient's attending physician. Such writing is not subject to the requirements otherwise applicable to a written request under this chapter.

2. a. A valid written request for medication under this chapter shall be in substantially the form described in section 142E.17, shall be signed and dated by the patient, and shall be 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.

b. One 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 patient upon death under any will or by operation of law.

(3) An owner, operator, or employee of a long-term care facility where the patient is receiving medical treatment or is a resident.

c. The patient's attending physician at the time the request is signed shall not be a witness.

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

Sec. 6. NEW SECTION. 142E.6 Attending physician responsibilities.

1. The attending physician shall do all of the following:

a. Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request for medication under this chapter voluntarily.

b. Request that the patient demonstrate residency in the
Factors demonstrating residency in this state include:

(1) Possession of an Iowa driver’s license.
(2) Registration to vote in Iowa.
(3) Evidence that the person owns or leases property in Iowa.
(4) Filing of an Iowa tax return for the most recent tax year.

c. Verify immediately prior to writing the prescription for medication, that the patient is making an informed decision.

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. Refer the patient for counseling if appropriate under section 142E.8.

f. Recommend that the patient notify next of kin. However, a qualified patient's request for medication shall not be denied based on the qualified patient's declination or inability to notify next of kin.

g. Counsel the patient about the importance of having another person present when the patient takes the medication prescribed and of not taking the medication in a public place.

h. Inform the patient that the patient 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 142E.4.

i. Fulfill the medical record documentation requirements under section 142E.9.

j. Ensure that all appropriate steps are carried out in accordance with this chapter prior to writing a prescription for medication to enable a qualified patient to end the patient's life.

k. Do either of the following:

(1) 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 law and rule to dispense such medication and has a current valid drug enforcement administration number, if required under chapter 124.

(2) With the patient's written consent:

(a) Contact a pharmacist and inform the pharmacist of the prescription.

(b) Deliver the written prescription personally, by mail, or by facsimile to the pharmacist who will dispense the medications to either the patient, the attending physician, or an expressly identified agent of the patient.

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

Sec. 7. NEW SECTION. 142E.7 Consulting physician confirmation.

A consulting physician shall do all of the following in confirming that a patient is a qualified patient under this chapter:

1. 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.

2. Verify that the patient is competent, acting voluntarily, and has made an informed decision.

Sec. 8. NEW SECTION. 142E.8 Counseling referral.

1. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling.

2. An attending physician shall not prescribe medication to end a patient's life pursuant to this chapter until the person performing the counseling determines and verifies that the patient is not suffering from a psychiatric or psychological
disorder or depression causing impaired judgment.

Sec. 9. NEW SECTION. 142E.9 Medical record documentation requirements.

All of the following shall be documented or filed in a patient's medical record in regard to a request for medication under this chapter:

1. All oral requests by a patient for medication to end the patient's life pursuant to this chapter.
2. All written requests by a patient for medication to end the patient's life pursuant to this chapter.
3. The attending physician's diagnosis and prognosis and determinations that the patient is competent, is acting voluntarily, and has made an informed decision.
4. The consulting physician's diagnosis and prognosis and 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 performed.
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 pursuant to section 142E.4.
7. A note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

Sec. 10. NEW SECTION. 142E.10 Reporting requirements.

1. a. The department shall require any health care provider, upon dispensing medication pursuant to this chapter, to file a copy of the dispensing record with the department.
   b. The department shall annually review a sample of records maintained under this chapter.
2. The department shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected shall not be a public record and shall not be made
available for inspection by the public.

3. The department shall generate and make available to the public an annual statistical report of information collected under subsection 2.

Sec. 11. NEW SECTION. 142E.11 Effect on construction of wills, contracts, and other agreements.

1. 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 medication to end the person’s life pursuant to this chapter, shall not be valid.

2. An obligation owing under any contract shall not be conditioned or affected by the making or rescinding of a request by a person for medication to end the person’s life pursuant to this chapter.

Sec. 12. NEW SECTION. 142E.12 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 such policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication that may be self-administered to end the person’s life pursuant to this chapter. A qualified patient’s act of self-administering medication to end the qualified patient’s life pursuant to this chapter shall not have an effect upon a life, health, or accident insurance or annuity policy.

Sec. 13. NEW SECTION. 142E.13 Construction of chapter.

1. Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing, or active euthanasia. An action taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide under the law.

2. Nothing in this chapter shall be interpreted to lessen the applicable standard of care for an attending physician,
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1 consulting physician, psychiatrist, psychologist, or other
2 health care provider acting under this chapter.
3 Sec. 14. NEW SECTION. 142E.14 Immunities — basis
4 for prohibiting health care provider from participation —
5 notification — permissible sanctions.
6 Except as otherwise provided in this chapter:
7 1. A person shall not be subject to civil or criminal
8 liability or professional disciplinary action for acting
9 in good-faith compliance with this chapter, including
10 being present when a qualified patient self-administers the
11 prescribed medication to end the qualified patient's life
12 pursuant to this chapter.
13 2. A professional organization or association, or
14 health care provider, shall not subject a person to censure,
15 discipline, suspension, loss of license, loss of privileges,
16 loss of membership, or other penalty for acting or refusing to
17 act in good-faith compliance with this chapter.
18 3. A request by a patient for or provision by an attending
19 physician of medication in good-faith compliance with this
20 chapter shall not constitute neglect under the law or provide
21 the sole basis for the appointment of a guardian or conservator
22 for the patient.
23 4. A health care provider shall not be under any duty,
24 whether by contract, statute, or any other legal requirement,
25 to participate in the provision to a qualified patient of
26 medication to end the patient's life pursuant to this chapter.
27 If a health care provider is unable or unwilling to carry out a
28 patient's request under this chapter and the patient transfers
29 the patient's care to a new health care provider, the prior
30 health care provider shall transfer, upon request, a copy of
31 the patient's relevant medical records to the new health care
32 provider.
33 5. a. Notwithstanding any other provision of law to the
34 contrary, a health care provider may prohibit another health
35 care provider from acting under this chapter on the premises
of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider’s policy regarding actions under this chapter. Nothing in this paragraph shall prevent a health care provider from providing health care services to a patient that do not constitute action under this chapter.

b. Notwithstanding the provisions of this section to the contrary, a health care provider may subject another health care provider to the following sanctions if the sanctioning health care provider has notified the sanctioned provider prior to action under this chapter that the health care provider prohibits actions under this chapter:

(1) Loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, or procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider’s medical staff and acts under this chapter while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider.

(2) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease or contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider acts under this chapter 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.

(3) Termination of a contract or other nonmonetary remedies provided by a contract if the sanctioned provider acts under this chapter while acting in the course and scope of the sanctioned provider’s capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subparagraph shall be construed to prevent any of the following:
(a) A health care provider from acting under this chapter while acting outside the course and scope of the provider’s capacity as an employee or independent contractor.

(b) A patient from contracting with the patient’s attending physician and consulting physician to act outside the course and scope of the provider’s capacity as an employee or independent contractor of the sanctioning health care provider.

c. A health care provider that imposes sanctions pursuant to paragraph "b" shall follow all due process and other procedures the sanctioning health care provider uses for the imposition of sanctions on other health care providers under the authority of the sanctioning health care provider.

d. For the purposes of this subsection:

(1) "Action under this chapter" means to perform the duties of an attending physician, the consulting physician function, or the counseling function as specified under this chapter. "Action under this chapter" does not include any of the following:

(a) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis.

(b) Providing information about this chapter 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.

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

(2) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider prior to the provider’s action under this chapter of the sanctioning health care provider’s policy about actions under this chapter.

Sec. 15. NEW SECTION. 142E.15 Liabilities — penalties.
1. A person who without authorization of the patient willfully alters or forges a request for medication under this chapter or conceals or destroys a recision of a request for medication under this chapter with the intent or effect of causing the 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 for the purpose of ending the patient's life pursuant to this chapter, or to destroy a recision of such a request, is guilty of a class "A" felony.

3. Nothing in this chapter shall be construed to limit a person's liability for civil damages resulting from the person's negligent conduct or intentional misconduct applicable under other law for conduct which is inconsistent with the provisions of this chapter.

4. The penalties specified in this section shall not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of this chapter.

Sec. 16. NEW SECTION. 142E.16 Claims by governmental entity for costs incurred.

A governmental entity that incurs costs resulting from a person terminating the person's life pursuant to this chapter in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim.

Sec. 17. NEW SECTION. 142E.17 Form of written request.

A written request for 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 and which has been medically confirmed by a consulting physician.
I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control. I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE OF THE FOLLOWING:

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

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

_____ I have no family to inform of my decision.

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

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three 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:

(a) Is personally known to us or has provided proof of identity.

(b) Signed this request in our presence on the date of the person's signature.

(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.

Printed name of Witness 1 ________________
1 Signed name of Witness 1/Date __________________________
2 Printed name of Witness 2_______________________________
3 Signed name of Witness 2/Date __________________________
4 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.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

14 This bill provides for a competent adult patient, who is a resident of the state of Iowa, who is terminally ill with less than six months to live as verified by two physicians, to voluntarily request medication that will end the person's life. The bill provides that the patient must make an oral request, a subsequent oral request no less than 15 days after the initial request, and a written request for the medication. There is also a 48-hour waiting period between the submission of the written request and the writing of the prescription. The bill specifies the responsibilities of the attending physician and the consulting physician. The bill includes a provision for counseling if the attending physician deems it appropriate, the notification of next of kin, the right to rescind a request at any time, and documentation requirements. The bill provides for the effect of a request for medication to end the person's life on the construction of wills, contracts, and statutes as well as on insurance and annuity policies.

The bill provides that the provisions of the bill are not to be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia, and that actions taken in accordance with the bill shall not, for any purpose, constitute suicide,
assisted suicide, mercy killing, or homicide under the law. Additionally, the provisions of the bill are not to be interpreted to lessen the applicable standard of care for the attending physician, consulting physician, psychiatrist, or psychologist, or other health care provider acting under the bill.

The bill provides immunities for a person who acts in good-faith compliance with the bill, including being present when a patient takes the prescribed medication to end the patient’s life.

The bill provides that a professional organization or association, or health care provider, shall not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for acting or refusing to act in good-faith compliance with the bill, but does provide for prohibitions by a health care provider on the premises of the health care provider relative to the bill. The bill provides that a request by a patient for or provision by an attending physician of medication in good-faith compliance with the bill does not constitute neglect under the law or provide the sole basis for the appointment of a guardian or conservator for the patient. Under the bill, a health care provider is not to be under any duty, whether by contract, statute, or any other legal requirement to participate in the provision to a patient of medication to end the patient’s life. If a health care provider is unable or unwilling to carry out a patient’s request under the bill, however, and the patient transfers the patient’s care to a new health care provider, the prior health care provider is required to transfer, upon request, a copy of the patient’s relevant medical records to the new health care provider.

The bill provides that a person who without authorization of the patient willfully alters or forges a request for medication under the bill or conceals or destroys a recision of such a request with the intent or effect of causing the patient’s
death is guilty of a class "A" felony. Additionally, a person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient’s life under the bill, or to destroy a recision of such a request, is guilty of a class "A" felony. A class "A" felony is punishable by confinement for life without possibility of parole. The bill provides that the provisions of the bill are not to be construed to limit a person’s liability for civil damages resulting from other negligent conduct or intentional misconduct by the person and that the penalties specified in the bill shall not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of the bill. The bill provides that if a governmental entity incurs costs resulting from a person terminating the person’s life under the bill in a public place, the governmental entity has a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim. The bill also provides the form for the request for medication to end a person’s life.