

HOUSE BILL NO. 1415

Introduced by

Representatives P. Anderson, Adams, Dobervich, Hager, Hanson, J. Nelson, Schneider

1 A BILL for an Act to create and enact chapter 23-06.7 of the North Dakota Century Code,
2 relating to end-of-life health care decisions; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 23-06.7 of the North Dakota Century Code is created and enacted as
5 follows:

6 **23-06.7-01. Definitions.**

7 In this chapter, unless the context or subject matter otherwise requires:

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

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

11 3. "Capable" means, in the opinion of a court or the patient's attending physician or
12 consulting physician, psychiatrist, or psychologist, a patient has the ability to make and
13 communicate a health care decision to a health care provider, including
14 communication through an individual familiar with the patient's manner of
15 communicating if the individual is available.

16 4. "Consulting physician" means a physician qualified by specialty or experience to make
17 a professional diagnosis and prognosis regarding the patient's disease.

18 5. "Counseling" means a consultation between a state-licensed psychiatrist or
19 psychologist and a patient to determine whether the patient is capable and not
20 suffering from a psychiatric or psychological disorder or depression causing impaired
21 judgment.

22 6. "Department" means the state department of health.

- 1 7. "Health care facility" means a hospital, long-term care facility, freestanding birthing
2 center, ambulatory surgical center, outpatient renal dialysis facility, or an extended stay
3 center.
- 4 8. "Health care provider" means:
- 5 a. A person licensed, certified, or otherwise authorized or permitted by the law of
6 this state to administer health care or dispense medication in the ordinary course
7 of business or practice of a profession; or
- 8 b. A health care facility.
- 9 9. "Informed decision" means a decision by a qualified patient to request and obtain a
10 prescription for medication to end the patient's life in a humane and dignified manner
11 which is based on an appreciation of the relevant facts and after being informed by the
12 attending physician of:
- 13 a. The patient's medical diagnosis;
- 14 b. The patient's prognosis;
- 15 c. Potential risks associated with taking the medication to be prescribed;
- 16 d. The probable result of taking the medication to be prescribed; and
- 17 e. Feasible alternatives, including comfort care, hospice care, and pain control.
- 18 10. "Medically confirmed" means the attending physician's medical opinion has been
19 confirmed by a consulting physician who has examined the patient and the patient's
20 relevant medical records.
- 21 11. "Patient" means an adult resident of the state under the care of a physician.
- 22 12. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine or
23 osteopathy by the North Dakota board of medicine.
- 24 13. "Qualified patient" means a patient determined to be capable and who has satisfied
25 the requirements to obtain a prescription for medication under this chapter.
- 26 14. "Terminal disease" means a medically confirmed incurable and irreversible disease
27 which, within reasonable medical judgment, will produce death within six months.
- 28 **23-06.7-02. Qualifications for written request for medication.**
- 29 1. A patient who is capable and has been determined by the attending physician and
30 consulting physician to have a terminal disease and who voluntarily expresses the
31 wish to die, may make a written request to the attending physician for medication

- 1 prescribed under this chapter to end the patient's life in a humane and dignified
2 manner in accordance with this chapter.
- 3 2. An individual does not qualify under this chapter solely because of the individual's age
4 or disability.
- 5 3. An individual may demonstrate North Dakota residency by offering:
- 6 a. The individual's North Dakota driver's license;
7 b. Evidence the individual owns or leases property in the state; or
8 c. The filing of a North Dakota individual tax return for the most recent tax year.

9 **23-06.7-03. Requirements for written and oral requests - Right to rescind.**

- 10 1. To request medication prescribed under this chapter, a patient shall:
- 11 a. Make an oral request to the attending physician;
12 b. Make a second oral request at least fifteen days after the patient's initial oral
13 request; and
14 c. Submit a written request, signed and dated by the patient, to the attending
15 physician at least forty-eight hours before medication may be prescribed or
16 dispensed.
- 17 2. A valid written request for medication prescribed under this chapter must be in
18 substantially the form described in section 23-06.7-16 and witnessed by at least two
19 individuals who, in the presence of the patient, attest to the best of each individual's
20 knowledge and belief, the patient is capable, acting voluntarily, and is not being
21 coerced to sign the request.
- 22 a. One of the witnesses must be an individual who is not:
- 23 (1) A relative of the patient by blood, marriage, or adoption;
24 (2) At the time the request is signed, entitled to any portion of the estate of the
25 patient upon death under any will or by operation of law; or
26 (3) An owner, operator, or employee of a health care facility at which the patient
27 is receiving medical treatment or is a resident.
- 28 b. If the patient is a resident of a long-term care facility at the time the written
29 request is made, one of the witnesses must be an individual designated by the
30 facility. The health council may adopt rules establishing qualifications for the
31 individual designated by the facility.

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

3 3. A patient may rescind the patient's request for medication under this chapter at any
4 time and in any manner without regard to the patient's mental state.

5 **23-06.7-04. Attending physician responsibilities.**

6 1. Upon receiving a written request for medication prescribed under this chapter and
7 before prescribing the medication, the attending physician shall:

8 a. Make the initial determination of whether the patient has a terminal disease, is
9 capable, and has made the request voluntarily;

10 b. Request the patient demonstrate state residency pursuant to section 23-06.7-02;

11 c. Inform the patient of:

12 (1) The patient's medical diagnosis;

13 (2) The patient's prognosis;

14 (3) Potential risks associated with taking the medication to be prescribed;

15 (4) The probable result of taking the medication to be prescribed; and

16 (5) Feasible alternatives, including comfort care, hospice care, and pain control;

17 d. Refer the patient to a consulting physician for medical confirmation of the
18 diagnosis and a determination the patient is capable and acting voluntarily;

19 e. Refer the patient for counseling, if appropriate, pursuant to section 23-06.7-06;

20 f. Recommend the patient notify next of kin of the patient's decision to request
21 medication prescribed under this chapter;

22 g. Counsel the patient about the importance of having another individual present if
23 the patient takes the medication prescribed under this chapter and of not taking
24 the medication in a public place;

25 h. Inform the patient the patient has an opportunity to rescind the request at any
26 time and in any manner, and offer the patient an opportunity to rescind if the
27 patient makes a second oral request;

28 i. Verify immediately before writing the prescription for medication pursuant to this
29 chapter, the patient is making an informed decision;

30 j. Verify the medical record documentation requirements of section 23-06.7-09 are
31 fulfilled; and

1 k. Ensure all appropriate steps are carried out in accordance with this chapter
2 before prescribing medication to enable a qualified patient to end the patient's life
3 in a humane and dignified manner.

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

6 **23-06.7-05. Consulting physician confirmation.**

7 Before the attending physician prescribes medication under this chapter, the consulting
8 physician shall:

9 1. Examine the patient and the patient's relevant medical records and confirm, in writing,
10 the consulting physician agrees with the attending physician's diagnosis that the
11 patient is suffering from a terminal disease;

12 2. Verify in writing the patient is capable, is acting voluntarily, and has made an informed
13 decision; and

14 3. Refer the patient to counseling, if appropriate, pursuant to section 23-06.7-06.

15 **23-06.7-06. Counseling referral.**

16 1. If, in the opinion of the attending physician or the consulting physician, a patient
17 requesting medication under this chapter may be suffering from a psychiatric or
18 psychological disorder or depression causing impaired judgment, the physician shall
19 refer the patient for counseling.

20 2. The attending physician may not prescribe medication under this chapter unless the
21 individual performing the counseling determines the patient is not suffering from a
22 psychiatric or psychological disorder or depression causing impaired judgment.

23 **23-06.7-07. Family notification.**

24 A patient who declines or is unable to notify the patient's next of kin may not have the
25 patient's request for medication prescribed under this chapter denied for that reason.

26 **23-06.7-08. Prescribing and dispensing of medication.**

27 1. An attending physician may not prescribe medication under this chapter unless:

28 a. The patient has satisfied the requirements of sections 23-06.7-02 and
29 23-06.7-03;

30 b. The attending physician has satisfied the requirements of section 23-06.7-04;
31 and

- 1 c. The consulting physician has satisfied the requirements of section 23-06.7-05.
- 2 2. If an attending physician ensures the requirements in subsection 1 are met, the
3 attending physician may:
- 4 a. Provide the medication directly to the patient, including ancillary medication
5 intended to facilitate the desired effect to minimize the patient's discomfort; or
- 6 b. With the patient's written consent:
- 7 (1) Contact a pharmacist and inform the pharmacist of the prescription; and
- 8 (2) Deliver the written prescription to the pharmacist to dispense the medication
9 to the patient, the attending physician, or an expressly identified agent of
10 the patient.
- 11 3. Upon dispensing medication under this chapter, a pharmacist shall file a copy of the
12 de-identified dispensing record with the department.

13 **23-06.7-09. Medical record documentation requirements.**

14 The patient's medical record must contain documentation of:

- 15 1. All oral and written requests made by the patient for medication prescribed under this
16 chapter;
- 17 2. The attending physician's diagnosis, prognosis, and determination the patient is
18 capable, acting voluntarily, and has made an informed decision;
- 19 3. The consulting physician's diagnosis, prognosis, and verification the patient is
20 capable, acting voluntarily, and has made an informed decision;
- 21 4. A report of the outcome and determination made during counseling, if performed;
- 22 5. The attending physician's offer to the patient to rescind the patient's request at the
23 time of the patient's second oral request pursuant to section 23-06.7-03; and
- 24 6. A note by the attending physician indicating all requirements of this chapter are met
25 and the steps taken to carry out the request, including a notation of the medication
26 prescribed.

27 **23-06.7-10. Reporting requirements.**

- 28 1. The department shall:
- 29 a. Review annually the dispensing records received under this chapter; and
- 30 b. Generate and publish a de-identified annual statistical report of information
31 collected under this chapter.

- 1 2. Except as required by law, the information collected by the department under this
2 chapter is confidential and not subject to the requirements of section 44-04-18.
3 3. The health council shall adopt rules to facilitate the collection of the dispensing records
4 in accordance with applicable privacy laws.

5 **23-06.7-11. Effect on construction of wills, contracts, and statutes.**

- 6 1. A provision in a contract, will, or other agreement, whether written or oral, is not valid if
7 the provision would affect whether an individual may make or rescind a request for
8 medication prescribed under this chapter.
9 2. An obligation owing under any existing contract may not be conditioned or affected by
10 an individual making or rescinding a request for medication prescribed under this
11 chapter.

12 **23-06.7-12. Insurance or annuity policies.**

- 13 1. The sale, procurement, or issuance of any life, health, or accident insurance or annuity
14 policy or the premium charged for any policy may not be conditioned upon or affected
15 by the making or rescinding of an individual's request for medication prescribed under
16 this chapter.
17 2. A qualified patient's act of taking medication prescribed under this chapter may not
18 have an effect upon a life, health, or accident insurance or annuity policy.

19 **23-06.7-13. Construction.**

20 Any action taken in accordance with this chapter does not constitute an offense under
21 chapters 12.1-16 or 12.1-17.

22 **23-06.7-14. Immunities - Basis for prohibiting health care provider from participation -**
23 **Notification - Permissible sanctions.**

24 Except as provided in section 23-06.7-17:

- 25 1. A person who acts in good faith compliance with this chapter is not subject to civil or
26 criminal liability or professional discipline for those acts. This immunity includes being
27 present if a qualified patient takes medication prescribed under this chapter.
28 2. A professional board or association or a health care provider may not subject a person
29 to censure, discipline, suspension, loss of license, loss of privileges, loss of
30 membership, or other penalty for acts done in good faith compliance with this chapter
31 or for the refusal to participate under this chapter.

- 1 3. A request by a patient for, or provision by an attending physician of, medication in
2 good faith compliance with this chapter does not constitute neglect for any purpose of
3 law or provide the sole basis for the appointment of a guardian or conservator.
- 4 4. A health care provider is not under any duty, whether by contract, statute, or any other
5 legal requirement, to participate in the provision to a qualified patient of medication
6 prescribed under this chapter. If a health care provider is unable or unwilling to carry
7 out a patient's request under this chapter, and the patient transfers the patient's care
8 to a new health care provider, the prior health care provider shall transfer, upon the
9 patient's request, a copy of the patient's relevant medical records to the new health
10 care provider.
- 11 5. Notwithstanding any other provision of law, a health care provider may prohibit another
12 health care provider from participation in this chapter on the premises of the
13 prohibiting provider if the prohibiting provider has notified the health care provider of
14 the prohibiting provider's policy regarding participation in this chapter. This section
15 does not prevent a health care provider from providing health care services to a
16 patient which do not constitute participation in this chapter.
- 17 a. Notwithstanding subsections 1 through 4, a health care provider may subject
18 another health care provider to the sanctions stated in this subsection if the
19 sanctioning health care provider has notified the sanctioned provider before
20 participation in this chapter that the sanctioning health care provider prohibits
21 participation in this chapter:
- 22 (1) Loss of privileges, loss of membership, or other sanction provided pursuant
23 to the medical staff bylaws, policies, and procedures of the sanctioning
24 health care provider if the sanctioned provider is a member of the
25 sanctioning provider's medical staff and the sanctioned provider's
26 participation in this chapter occurs while on the health care facility premises
27 of the sanctioning health care provider, but not including the private medical
28 office of a physician or other provider;
- 29 (2) Termination of lease or other property contract or other nonmonetary
30 remedies provided by lease or contract, not including loss or restriction of
31 medical staff privileges or exclusion from a provider panel, if the sanctioned

1 provider's participation in this chapter occurs while on the premises of the
2 sanctioning health care provider or on property owned by or under the direct
3 control of the sanctioning health care provider; or

4 (3) Termination of contract or other nonmonetary remedies provided by contract
5 if the sanctioned provider's participation in this chapter occurs while acting
6 in the course and scope of the sanctioned provider's capacity as an
7 employee or independent contractor of the sanctioning health care provider.

8 This subdivision may not be construed to prevent:

9 (a) A health care provider from participation in this chapter while acting
10 outside the course and scope of the provider's capacity as an
11 employee or independent contractor; or

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

16 b. A health care provider that imposes sanctions pursuant to this subsection shall
17 follow all due process and other procedures the sanctioning health care provider
18 may have which are related to the imposition of sanctions on another health care
19 provider.

20 c. For purposes of this subsection:

21 (1) "Notify" means a separate statement in writing to the health care provider
22 specifically informing the health care provider before the provider's
23 participation in this chapter of the sanctioning health care provider's policy
24 about participation in this chapter.

25 (2) "Participation in this chapter" means performing the duties of an attending
26 physician pursuant to section 23-06.7-04, the consulting physician function
27 pursuant to section 23-06.7-05, or the counseling function pursuant to
28 section 23-06.7-06. "Participation in this chapter" does not include:

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

1 (b) Providing information about this chapter to a patient upon the patient's
2 request;

3 (c) Providing a patient, upon the patient's request, with a referral to
4 another physician; or

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

9 6. Suspension or termination of staff membership or privileges under subsection 5 is not
10 reportable under subsection 5 of section 43-17-07.1 or section 43-17.1-05.1. Action
11 taken pursuant to sections 23-06.7-03, 23-06.7-04, 23-06.7-05, or 23-06.7-06 may not
12 be the sole basis for a report of conduct that may be grounds for disciplinary action
13 under chapters 43-17 and 43-17.1.

14 7. This chapter may not be construed to allow a lower standard of care for patients in the
15 community in which the patient is treated or a similar community.

16 **23-06.7-15. Claims by governmental entity for costs incurred.**

17 A governmental entity that incurs costs resulting from the death of a qualified patient taking
18 medication prescribed under this chapter in a public place may bring a claim against the estate
19 of the qualified patient to recover the costs and reasonable attorney fees related to enforcing
20 the claim.

21 **23-06.7-16. Form of written request.**

22 A request for medication prescribed under this chapter must be in substantially the following
23 form:

24 REQUEST FOR MEDICATION TO END MY LIFE

25 IN A HUMANE AND DIGNIFIED MANNER

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

27 I am suffering from _____, which my attending physician has determined is a
28 terminal disease and which has been medically confirmed by a consulting physician.

29 I have been fully informed of my diagnosis, prognosis, the nature of medication to be
30 prescribed and potential associated risks, the expected result, and the feasible alternatives,
31 including comfort care, hospice care, and pain control.

1 **23-06.7-17. Liabilities - Penalties.**

2 1. It is a class A felony for a person:

3 a. Without the authorization of the patient, to willfully alter or forge a request for
4 medication under this chapter or to conceal or destroy a rescission of that
5 request with the intent or effect of causing the patient's death.

6 b. To coerce or exert undue influence on a patient to request medication under this
7 chapter, or to destroy a rescission of such a request.

8 c. Without authorization of the principal, to willfully alter, forge, conceal, or destroy
9 an instrument, the reinstatement or revocation of an instrument, or any other
10 evidence or document reflecting the principal's desires and interests with the
11 intent and effect of causing a withholding or withdrawal of life-sustaining
12 procedures or of artificially administered nutrition and hydration that hastens the
13 death of the principal.

14 2. Except as provided in subdivision c of subsection 1, it is a class A misdemeanor for a
15 person, without authorization of the principal, to willfully alter, forge, conceal, or
16 destroy an instrument, the reinstatement or revocation of an instrument, or any other
17 evidence or document reflecting the principal's desires and interests with the intent or
18 effect of affecting a health care decision.

19 3. This chapter does not limit further liability for civil damages resulting from other
20 negligent conduct or intentional misconduct by any person.

21 4. The penalties in this chapter do not preclude criminal penalties applicable under other
22 law for conduct inconsistent with this chapter.