

The Illinois Patient Choices At End of Life Act

<< a draft bill – September 5, 2014 >>

WHEREAS federal law has recognized since at least 1991 the right of U.S. citizens to make health care decisions for themselves, including the right to refuse or withdraw any and all medical treatment, Patient Self-Determination Act, P.L. 101-508 (1990), 42 U.S.C. Sections 1395 and 1396;

WHEREAS Illinois law provides a framework for written instructions that specify the type and extent of medical care that a person would want to receive depending on their health condition and prognosis, even though withholding or withdrawing such treatment may hasten death, Illinois Power of Attorney Act, 755 ILCS 45;

WHEREAS Illinois law provides that patients may declare that in case of a terminal illness, they do not want medical treatment designed to prolong their lives, including feeding and hydration, and wish only palliative care for comfort and control of pain. Patients are further empowered to designate an agent to advocate for their declared intention if the patient himself is unable to communicate with his physician. An agent can also be assigned by operation of law if the patient has not previously designated an agent; Illinois Power of Attorney Act, 755 ILCS 45 and Illinois Health Care Surrogate Act, 755 ILCS 40/25;

WHEREAS Illinois law provides that its citizens may work with their physicians to create written instructions designating the type and extent of medical care that they wish to receive depending on their health condition and prognosis, even though withholding or withdrawing treatment may hasten death, Illinois Department of Public Health “Physician Orders for Life-Sustaining Treatment” (POLST) Form;

WHEREAS, despite all of these protections for Illinois citizens to make decisions for themselves at the end of life, there continue to be patients whose terminal illness causes uncontrollable pain and suffering and who would choose to take medications to hasten their death.

WHEREAS, legislation substantially similar to the Illinois Patient Choices at End of Life Act has been enacted in the states of Oregon (1994), Washington (2008) and Vermont (2012), and has amassed a solid record of providing the suffering terminally ill with a compassionate choice.

THEREFORE, be it enacted by the People of the State of Illinois, presented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Patient Choices At End of Life Act

Section 2. Definitions. For the purpose of this Act:

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

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

"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 an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

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

"Counseling" means one or more consultations as necessary between a state-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.

"Department of health" means the Illinois Department of Public Health, or other state agency as may be responsible for maintenance of the public health and regulation of health care providers.

"Health care 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.

"Health care facility" means a building or institution as described at 20 ILCS 3960/3 subsections 1-8.

"Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to hasten his or her death in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

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

(e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

"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.

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

"Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state of Illinois.

"Qualified patient" means a competent adult who is a resident of the state of Illinois and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to hasten his or her death in a humane and dignified manner.

"Self-administer" means a qualified patient's act of ingesting medication to hasten his or her death in a humane and dignified manner.

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

Section 3. Written request for medication.

(1) An adult who is competent, is a resident of the state of Illinois, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to hasten his or her death in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability.

Section 4. Form of the written request.

(1) A valid request for medication under this chapter shall be in substantially the form described in Section 23 of this Act, signed and dated by the patient and witnessed by 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.

(2) At least one of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage, or adoption;

(b) 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; or

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

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

Section 5. Attending physician responsibilities.

(1) The attending physician shall:

- (a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;
- (b) Request that the patient demonstrate Illinois state residency as specified in Section 14 of this Act;
- (c) To ensure that the patient is making an informed decision, inform the patient of:
 - (i) His or her medical diagnosis;
 - (ii) His or her prognosis;
 - (iii) The potential risks associated with taking the medication to be prescribed;
 - (iv) The probable result of taking the medication to be prescribed; and
 - (v) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;
- (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 required under Section 7 of this Act;
- (f) Recommend that the patient notify next of kin;
- (g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;
- (h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period as specified in Section 12 of this Act;

(i) Verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements as specified in Section 13 of this Act;

(k) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to hasten his or her death in a humane and dignified manner; and

(l)(i) If the medication to be dispensed may only be provided by a licensed pharmacist or physician, then either dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort; or

(ii) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription; and

(B) Deliver the written prescription personally, by mail or facsimile to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this subsection shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate, which shall list the underlying terminal disease as the cause of death.

Section 6. Consulting physician confirmation.

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

Section 7. Counseling referral.

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. Medication to hasten a patient's death in a humane and dignified manner shall not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Section 8. Informed decision.

A person shall not receive a prescription for medication to hasten his or her death in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the qualified patient is making an informed decision.

Section 9. Notification of next of kin.

The attending physician shall recommend that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

Section 10. Written and oral requests.

To receive a prescription for medication that the qualified patient may self-administer to hasten his or her death in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

Section 11. Right to rescind request.

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

Section 12. Waiting periods.

(1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the time the patient signs the written request and the writing of a prescription under this chapter.

Section 13. Medical record documentation requirements.

The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to hasten his or her death in a humane and dignified manner;

(2) All written requests by a patient for medication to hasten his or her death in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, and determination 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 his or her request at the time of the patient's second oral request as specified in Section 10 of this Act; and

(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.

Section 14. Residency requirement.

Only requests made by Illinois state residents under this chapter may be granted. Factors demonstrating Illinois state residency include but are not limited to:

(1) Possession of an Illinois state driver's license or identification card; or

(2) Registration to vote in the state of Illinois; or

(3) Evidence that the person owns or leases property in the state of Illinois;

or

(4) Filing an Illinois tax return in the most recent tax year.

Section 15. Disposal of unused medications.

Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means. The Department of Health

shall adopt rules providing for the safe disposal of unused medications provided under this Chapter.

Section 16. Reporting of information to the department of health — Adoption of rules — Information collected not a public record — Annual statistical report.

(1) The department of health shall require any health care provider upon writing a prescription or dispensing medication under this chapter to file a copy of the dispensing record and such other administratively required documentation with the department. All administratively required documentation shall be mailed or otherwise transmitted as allowed by department of health rule to the department no later than thirty calendar days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty calendar days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department of health provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) The department of health shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected is not a public record and may not be made available for inspection by the public.

(3) The department of health shall annually review all records maintained under this Chapter and shall generate and make available to the public an annual statistical report of information collected under subsection (1) of this section.

Section 17. Effect on construction of wills, contracts, and statutes.

(1) The right to make or rescind a request for medication under this Chapter shall not be limited by a contract, will or other agreements, whether written or oral.

(2) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request, by a person, for medication under this Chapter.

Section 18. Insurance or annuity policies.

A person and his or her beneficiaries shall not be denied benefits under a life, health or accident insurance or annuity policy as a result of any actions taken in accordance with this Chapter. Nor shall the cost, sale, procurement or issuance of any life, health or accident insurance or annuity policy be conditioned upon or affected by the making or rescinding of a request by a person for medication under this Chapter.

Section 19. Authority of chapter — References to practices under this chapter — Applicable standard of care.

(1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, inducement to suicide under 720 ILCS 5/12-34.5, assistance in suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this chapter as "suicide" or "assisted suicide." Consistent with Section 5 of this Act, state reports shall refer to practice under this chapter as obtaining and self-administering death-hastening medication.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter.

Section 20. Immunities — Participation of health care providers.

(1) Except as provided in subsection (2) of this section:

(a) 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 and/or assisting when a qualified patient takes medication prescribed under this Chapter;

(b) A professional organization or association, or State of Illinois or local government department or agency, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for either participating or refusing to participate in good faith compliance with this chapter;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide a basis for the appointment of a guardian of the person or of the estate; and

(d) If a health care provider is unable or unwilling to carry out a patient's request under this chapter, the provider shall promptly inform the patient. If the patient transfers his or her care to a new health care provider, the prior health care provider shall promptly transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2) A health care facility may prohibit health care providers employed by or working at the facility from participating in activities authorized by this Act on that facility's premises. Any health care facility that intends to prohibit participation in the activities authorized by this Act must give prior written notice to all health care providers with privileges to practice on the premises and to the general public of the its policy regarding participation in activities authorized by this Act.

(3) A health care facility that has given notice to health care providers employed by it or working on its premises that it prohibits participation in the activities authorized by this Act may impose reasonable sanctions against a health care provider who violates its policy. If such sanctions include suspension or termination of staff membership or privileges, that sanction is not reportable to any professional or regulatory agency. Moreover, any action taken under this section may not be the basis for a report of unprofessional conduct to any professional or regulatory agency.

Section 21. Willful alteration/forgery — Coercion or undue influence — Penalties — Civil damages — Other penalties not precluded.

(1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request 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 to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony.

Section 22. Form of the request.

A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO HASTEN MY DEATH 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 I may self-administer to hasten my death in a humane and dignified manner and to contact any pharmacist to fill the prescription.

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 take full 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:

Witness 1 Witness 2
Initials Initials

- | | | |
|-------|----------|---|
| | | 1. Is personally known to us or has provided proof of identity; |
| | | 2. Signed this request in our presence on the date of the person's signature; |
| | | 3. Appears to be of sound mind and not under duress, fraud, or undue influence; |
| | | 4. Is not a patient for whom either of us is the attending physician. |

Printed Name of Witness 1:
Signature of Witness 1/Date:

Printed Name of Witness 2:
Signature of Witness 2/Date:

NOTE: At least 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.

Section 23. Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 24. Effective date

This act takes effect ninety (90) days following its adoption as law.