

HOUSE BILL NO. 637

INTRODUCED BY J. DARLING, P. STRAND, A. GRIFFITH, M. CUNNINGHAM, E. TILLEMAN, B. CARTER, J. COHENOUR, S. HOWELL, G. NIKOLAKAKOS, M. THANE, M. MARLER, J. LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL AID IN DYING WHEN AN INDIVIDUAL HAS A TERMINAL ILLNESS AND CAPACITY TO MAKE END-OF-LIFE DECISIONS; PROVIDING REQUIREMENTS FOR PRESCRIBING MEDICAL AID IN DYING MEDICATION; REQUIRING A WAITING PERIOD BEFORE A PRESCRIPTION FOR MEDICAL AID IN DYING MEDICATION IS FILLED; PROVIDING IMMUNITIES AND CONSCIENCE-BASED PROTECTIONS FOR HEALTH CARE PROVIDERS; REQUIRING REPORTING TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ESTABLISHING CRIMINAL PENALTIES FOR ALTERING OR FORGING A REQUEST OR CONCEALING OR DESTROYING A RESCISSION OF A REQUEST FOR MEDICAL AID IN DYING; ESTABLISHING CRIMINAL PENALTIES FOR COERCING OR EXERTING UNDUE INFLUENCE ON AN INDIVIDUAL TO REQUEST MEDICAL AID IN DYING; PROVIDING A CLAIM FOR GOVERNMENT ENTITIES FOR CERTAIN COSTS INCURRED; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING DEFINITIONS."

WHEREAS, Montanans may currently seek medical aid in dying under the Montana Supreme Court decision in *Baxter v. State*, 2009 MT 449, 354 Mont. 234, 224 P.3d 1211; the Legislature seeks to provide protections for Montanans who seek and health care providers who provide medical aid in dying.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Patient and Physician Protections in Care Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 14], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Capacity" means an individual's ability to understand and appreciate health care options available to the individual, including significant benefits and risks, and to make and communicate an informed health care decision. A determination of capacity must be made only according to the professional standards of care and the provisions of 50-5-1302.

(3) "Health care entity" means an entity, other than an individual, that is licensed under Title 50 to provide any form of health care in the state, including but not limited to a hospital, clinic, hospice, home health agency, long-term care facility, pharmacy, group medical practice, medical home, or any similar entity.

(4) "Health care provider" means any of the following individuals authorized to prescribe a medication to be used in medical aid in dying:

(a) a physician licensed pursuant to Title 37, chapter 3;

(b) an advanced practice registered nurse who is licensed under Title 37, chapter 8, to practice professional nursing in this state, ~~and who~~ has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409, and is certified by the hospice and palliative credentialing center; or

(c) a physician assistant who is licensed pursuant to Title 37, chapter 20, and is certified in palliative and hospice care by the national commission on certification of physician assistants.

(5) "Medical aid in dying" means the medical practice in which a health care provider prescribes medication to a qualified individual who may self-administer that medication to bring about a peaceful death.

(6) "Mental health professional" means:

(a) a physician licensed under Title 37, chapter 3;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a psychologist licensed under Title 37, chapter 17;

(d) a social worker licensed under 37-39-308; or

(e) a professional counselor licensed under 37-39-309.

(7) "Prescribing health care provider" means a health care provider who prescribes medical aid in dying medication.

(8) "Qualified individual" means an individual who has met the requirements of [section 3].

(9) "Self-administer" means taking an affirmative, conscious, voluntary act to ingest a

1 pharmaceutical substance.

2 (10) "Terminal condition" means a disease, illness, or condition that is incurable and irreversible and
3 that, in accordance with reasonable medical judgment, will result in death within 6 months.

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5 **NEW SECTION. Section 3. Medical aid in dying -- prescribing health care provider**

6 **determination -- form.** A prescribing health care provider may provide a prescription for medical aid in dying
7 medication to an adult only after the prescribing health care provider has:

8 (1) determined that the individual has:

9 (a) capacity;

10 (b) a terminal illness;

11 (c) voluntarily made the request for medical aid in dying; and

12 (d) the ability to self-administer the medical aid in dying medication;

13 (2) provided medical care to the individual in accordance with accepted medical standards of care;

14 (3) determined that the individual is making an informed decision after discussing with the

15 individual the:

16 (a) individual's medical diagnosis and prognosis;

17 (b) potential risks associated with self-administering the medical aid in dying medication that the

18 individual has requested the health care provider to prescribe;

19 (c) probable result of self-administering the medical aid in dying medication to be prescribed;

20 (d) individual's option of choosing to obtain the medical aid in dying medication and then deciding

21 not to use it; and

22 (e) feasible alternative, concurrent, or additional treatment opportunities, including hospice care

23 and palliative care focused on relieving symptoms and reducing suffering;

24 (4) determined in good faith that the individual's request does not arise from coercion or undue

25 influence by another person;

26 (5) noted in the individual's health record the prescribing health care provider's determination that

27 the individual qualifies to receive medical aid in dying;

28 (6) affirmed that the individual is: