HOUSE BILL REPORT
ESHB 1141

As Passed House:
January 12, 2022

Title: An act relating to increasing access to the provisions of the Washington death with dignity act.

Brief Description: Increasing access to the death with dignity act.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Rude, Macri, Stonier, Tharinger, Ormsby, Frame, Pollet, Goodman, Peterson, Thai, Ramel, Johnson, J., Bateman, Simmons, Fitzgibbon and Valdez).

Brief History:

Committee Activity:

Health Care & Wellness: 1/18/21, 1/20/21 [DPS].

Floor Activity:

Passed House: 2/25/21, 60-37.
Passed House: 1/12/22, 58-37.

Brief Summary of Engrossed Substitute Bill

- Allows advanced registered nurse practitioners, physician assistants, and osteopathic physician assistants to perform the duties of an attending or consulting medical provider under the Death with Dignity Act (Act).
- Reduces the 15-day waiting period between the first and second requests for medications under the Act to 72 hours.
- Prohibits employing health care providers from contractually prohibiting an employee health care provider from participating in the Act while outside of the scope of employment and not on the employing health care provider's premises.
- Requires hospitals to submit their policies regarding access to end-of-life care and the Act to the Department of Health.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Harris, Macri, Riccelli, Rude, Simmons, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Schmick, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 3 members: Representatives Caldier, Assistant Ranking Minority Member; Maycumber and Ybarra.

Staff: Christopher Blake (786-7392).

Background:

Death with Dignity.
The Death with Dignity Act (Act) allows adult residents of Washington who have a terminal illness with six months or less to live to request medication that the patient may self-administer to end the patient's life. The patient's attending physician is responsible for determining that the patient has a terminal condition. This determination must be confirmed by a consulting physician. If either physician determines that the patient may have a psychiatric or psychological disorder or depression that impairs the patient's judgment, the patient must be referred for counseling.

Under the Act, the patient must make an oral request to an attending physician for medication to end the person's life, followed by a written request, and a subsequent second oral request. A waiting period of 15 days is required between the time of the first oral request and the second request. At least 48 hours must pass between the patient's written request and the writing of the prescription. The patient has the option to rescind the request at any time. Once the request has been processed and fulfilled, the medication may be self-administered.

Health care providers are not required to participate in the provisions of the Act, and health care providers may prohibit others from participating on their premises. Health care providers may sanction other health care providers for participating, unless the participation occurs outside of the course of employment or involves a provider with independent contractor status. No person participating in good faith compliance with the Act may be subject to civil or criminal liability or professional disciplinary action.

Access to Care Policies.
Hospitals must submit to the Department of Health their policies related to access to care regarding admissions, nondiscrimination, and reproductive health care along with a form created by the Department of Health in consultation with the Washington State Hospital

Association and patient advocacy groups. The form must provide the public with specific information about which reproductive health care services are and are not performed at each hospital. Submitted policies and the form must be posted on the hospital's website.

Summary of Engrossed Substitute Bill:

The terms "attending physician" and "consulting physician," as used in the Death with Dignity Act (Act), are expanded to include advanced registered nurse practitioners, physician assistants, and osteopathic physician assistants. Accordingly, the terms "attending physician" and "consulting physician" are changed to "attending qualified medical provider" and "consulting qualified medical provider." Patients may select which type of attending or consulting qualified medical provider they prefer, as long as a physician or osteopathic physician serves in one of those roles. A patient's attending qualified medical provider and consulting qualified medical provider may not have a supervisory relationship with each other. The types of providers who may provide counseling to patients under the Act are expanded to include independent clinical social workers, advanced social workers, mental health counselors, and psychiatric advanced registered nurse practitioners.

The 15-day waiting period between the first and second oral request for a prescription for medications is reduced to 72 hours. The 72-hour waiting period may be further reduced if the attending qualified medical provider determines that the patient is not expected to survive for 72 hours. In addition, the 48-hour waiting period between the patient signing the written request and the writing of the prescription is eliminated.

The prohibition on dispensing medications by mail or courier is eliminated. Medications may be delivered by personal delivery, messenger service, or the United States Postal Service or a similar private parcel delivery entity. The addressee or an authorized person must sign for the medications upon receipt. In addition to filing by mail, the prescribing qualified medical provider may file prescribing information with the Department of Health (Department) by fax or email.

An employing health care provider may not contractually prohibit an employee health care provider from participating in the Act while outside of the employment relationship and not on the employing health care provider's premises, including property owned, leased, or under the control of the employing health care provider. The authority for a health care provider to participate in the Act while outside of the scope of employment of an employing health care provider who prohibits participation in the Act also requires the employee to be at a location not on the employer's premises, including property owned, leased, or under the control of the employing health care provider.

In addition to other access to care policies, hospitals must submit to the Department their policies regarding access to end-of-life care and the Act. The Department must post the policies on its website. By November 1, 2021, the Department must develop a form for

hospitals to use to provide the public with specific information about which end-of-life services are and are not generally available at each hospital.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for section 2, relating to definitions, which takes effect July 1, 2022, and section 19, relating to the submission of policies related to access to end-of-life care and the Death with Dignity Act, which takes effect January 31, 2022.

Staff Summary of Public Testimony:

(In support) Some people have found that the Death with Dignity Act (Act) has too many restrictions to be used effectively. This bill does not expand the eligibility criteria for the Act, but assures that the original intent of the law is achieved. This bill maintains the safeguards that are important to the voters. These changes are modest, but they will have an impact on patients. The Coronavirus Disease 2019 pandemic has shown the need to modernize the Act to better reflect the current practice of medicine. These changes will facilitate access through better information. This bill maintains a balanced approach for facilities and providers to opt in or out of the Act.

The 15-day waiting period can be too much for some patients to endure. Three days is an adequate timeframe for patients to say goodbye to family and end one's life in a dignified manner. The additional 12 days only increase a patient's suffering and delay the process. Other states have always allowed electronic prescribing and mail delivery and Washington is merely catching up.

There are many people who have wanted to use the law, but have been frustrated by time delays and the inability to find participating physicians. Finding participating physicians is a barrier because many hospitals prohibit them from participating. Allowing physician assistants and advanced registered nurse practitioners to participate will greatly expand access to the law for people across the state, including communities of color. There are already too few physicians willing to participate in the Act and trying to find participating physicians causes emotional stress for patients and their families. Primary and hospice care are increasingly provided by advanced registered nurse practitioners and physician assistants, especially in rural areas, and they have ongoing relationships with their patients and are in the best position to make timely, appropriate medical decisions for their patients' comfort and dignity choices.

(Opposed) The bill removes the protections in the original law that were the only reason that the people passed Initiative 1000. This bill goes far beyond what the voters approved, which was for only physicians to authorize assisted suicide after a 15-day waiting period.

This bill significantly expands what the voters had authorized by adding over 1,000 advanced registered nurse practitioners and physician assistants to the list of those able to authorize assisted suicides and diminishes the role of the doctor. The average doctor is not qualified to make determinations about a person's decision to end their life, including life expectancy and quality of life, and it is irresponsible to allow even less qualified medical professionals make the determinations.

The state is struggling with a shortage of providers to care for those with a terminal illness, not a shortage of lethal drugs and assisted suicides. This is the wrong approach to a patient's needs at the end of life, which include hospice care and pain control. This bill devalues human life by allowing people to take their lives by mail. There has been an increase in depression and suicide related to recent lockdowns and those with a terminal illness who are cut-off from social supports are at high risk for suicide. There are not enough mental health professionals that are available for counseling. These laws put vulnerable populations at risk of being coerced or pressured into making these life-ending decisions.

This bill reduces the waiting periods, which may rush patients into an unalterable decision to end their lives. People should not make this permanent decision for a temporary crisis when they are in a panic.

Persons Testifying: (In support) Representative Rude, prime sponsor; Bob Free, End of Life Washington; Joe Levy; Roy Graves; Zosia Stanley, Washington State Hospital Association; Darrell Owens, Advanced Registered Nurse Practitioners United of Washington State; and Kimberly Callinan, Compassion and Choices.

(Opposed) Daniel Mueggenborg, Archdiocese of Seattle and Washington State Catholic Conference; Mario Villanueva, Washington State Catholic Conference; Conrad Reynoldson, Washington Civil & Disability Advocate; Richard Doerflinger, de Nicola Center for Ethics and Culture; Shane Macaulay; and Kenneth R Stevens, Jr., Physicians for Compassionate Care Education Foundation.

Persons Signed In To Testify But Not Testifying: Linda Seaman; Karlie Lodjic; Sarah Davenport-Smith, Family Policy Institute of Washington and Human Life of Washington; and Miles Wiley, Students For Life of America.