SENATE BILL REPORT
ESSB 5179

As Passed Senate, February 27, 2023

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

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

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Pedersen, King, Cleveland, Dhingra, Frame, Hunt, Keiser, Kuderer, Liias, Lovelett, Lovick, Mullet, Nobles, Robinson, Saldaña, Stanford, Valdez, Van De Wege, Wellman and Wilson, C.).

Brief History:

Committee Activity: Health & Long Term Care: 2/02/23, 2/09/23 [DPS, DNP].

Floor Activity: Passed Senate: 2/27/23, 28-20.

Brief Summary of Engrossed First Substitute Bill

- Expands the health care providers authorized to perform the duties of the Death with Dignity Act (act) to include advanced registered nurse practitioners and physician assistants.
- Reduces the required 15-day waiting period between the first and second oral requests for medications to seven days and eliminates the 48-hour waiting period for the written request.
- Prohibits health care providers from contractually prohibiting an employee from participating in the act while outside of the scope of employment and not on the employing health care provider's premises.
- Requires hospitals and agencies and facilities providing hospice services to submit their policies regarding access to end-of-life care and the act to the Department of Health.
- Permits medications dispensed under the act to be delivered or mailed.

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.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5179 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Conway, Dhingra, Randall and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Rivers, Ranking Member; Muzzall, Assistant Ranking Member; Holy and Padden.

Staff: Julie Tran (786-7283)

Background: Washington's Death with Dignity Act. In 2008, Washington State voters approved Initiative 1000, which established The Death with Dignity act (act). The act allows a qualified patient with a terminal illness with six months or less to live to request medication that the patient may self-administer to end their life. A qualified patient must meet the following requirements:

- be a competent adult and a resident of Washington;
- the attending physician and a consulting physician have determined that the patient suffers from a terminal disease and the patient has voluntarily expressed the wish to die;
- the patient has made a request for medication on a form provided in statute; and
- the form is signed and dated by the patient and at least two witnesses who attest to their belief that the patient is competent, acting voluntarily, and not being coerced to sign the request.

If the qualified patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses must be an individual designated by the facility, and meet the qualifications set by the Department of Health (DOH).

The health care providers authorized to perform the duties of the act are physicians or osteopathic physicians. The patient's attending physician is responsible for determining that the patient has a terminal condition, is competent, is making an informed decision, and is voluntarily making the request. These determinations 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 with a psychiatrist or psychologist.

Under the act, to receive the medication, the patient must make an oral request and a written request to an attending physician, followed by a subsequent second oral request. A 15-day waiting period 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 writing the prescription. The patient may rescind the request at any time. Once the request has been

processed and fulfilled, the medication may be self-administered.

The attending physician must deliver the prescription for the medication to a pharmacist either personally, or by mail or fax. A pharmacy is prohibited from dispensing medication by mail or courier.

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. Physicians and other health care providers who participate in good faith may not be subject to criminal or civil liability or professional disciplinary action.

DOH is required to collect and report certain information about participation in the act. According to the most recent report, 400 individuals received medication in 2021. Of those individuals, 291 died after taking the medication.

Access to Care Policies. Hospitals must submit to DOH their policies related to access to care regarding admissions, nondiscrimination, and reproductive health care, along with a form that provides the public with specific information about which reproductive health care services are and are not performed at each hospital. The submitted policies and the form must be posted on the hospital's website. If the hospital makes changes to any of the specified access to care policies, the hospital must submit a copy of the changed policy to DOH within 30 days after the hospital approves the changes.

Summary of Engrossed First Substitute Bill: The health care providers authorized to perform the duties of the act are expanded to include advanced registered nurse practitioners and physician assistants. Authorized healthcare providers are defined as qualified medical providers. Patients may select the attending or consulting health care provider of their choosing, as long as a physician or osteopathic physician serves in one of the roles. The attending and consulting qualified medical providers chosen by the patient may not have a direct supervisory relationship with each other.

In the event either an attending or consulting qualified medical provider refers the patient to counseling, 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 timeframe in which a qualified patient must wait to make a second oral request is reduced from 15 days to 7 days. The 48-hour waiting period between the written request and the writing of a prescription is removed. Transfer of care or medical records does not restart a waiting period.

A prescription from an attending qualified medical provider may be submitted to a

pharmacist electronically and 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 all required documentation with DOH electronically, or by fax no later than 30 days after the death of the patient.

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 or on property that is owned by, leased by, or under the direct control of the employing health care provider. A health care provider who does participate in the act outside the course and scope of an employment relationship with a health care provider who prohibits participation is required to be at a location not on the employer's premises or on property that is owned by, leased by, or under the direct control of the employing health care provider.

The requirement that one of the witnesses must be a qualified individual designated by a long-term care facility if the qualified patient is a patient in the long-term care facility is removed.

Participating in the act does not include charting a patient's first request to services.

Access to Care Policies. Hospitals must submit to DOH their policies regarding access to end-of-life care and the act. DOH must post the policies on its website, and by November 1, 2023, DOH must develop an additional form for hospitals to use to provide the public with information about which end of life services are and are not available at each hospital. Hospitals must submit the completed form to DOH within 60 days of the form being provided.

Agencies and facilities providing hospice services must submit to DOH their policies regarding access to end-of-life care, and include information for the public about which end of life services are and are not available at each hospice. A copy of the policies must be posted to the hospice's website. A hospice must submit changes to any of the policies to DOH within 30 days of the hospice's approval of the change.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee*

recommended a different version of the bill than what was heard. PRO: There are deeply held beliefs on both sides of the issue and the voters made a judgement. The only people who qualify for this act are terminally ill. This is not assisted suicide; this is an end of life choice. Medical aid in dying is a part of the discussion. This will assist patients who are interested in this option at the end of their lives and allow people to not need to suffer needlessly at the end of their life. The necessary changes that are being asked for in this bill will ensure quality healthcare to Washington citizens and eliminate barriers established by the act. There are long waiting times and limited consultation options in the current law. There are significant difficulties to finding participating physicians and pharmacies. The exclusion of advanced registered nurse practitioners from participating in the act is a big challenge especially in rural areas. Nurse practitioners might have been the only healthcare provider people they have had for years. After supporting patients for their whole life, the nurse practitioners now can't support them in the end. This bill considers the concerns that people have raised as people can't access this law due to who and where they receive care. Also, there is no way to access the information to move forward and it is important to have language requiring for the policies to be available. Currently, it is just many phone calls and phone trees with little access to information even though information is most critical to making this decision. This policy should be available to those who need and want it.

CON: This bill does more harm than good. It normalizes suicides, removes the safeguards that were put in by the original law to protect critical patients, and relabels the safeguards against abuse as barriers. The waiting period allows people the time to change their mind and this bill cuts the time in half. The terminally ill have declining decision capacity, which gives them impaired capacity to make the decision to end their life. Vulnerable patients might make rash decisions and a bad day could be their last day. The expansion in this bill puts veterans, those in the military, and first responders at additional risk. We should be providing more hospice and palliative care, focusing on having more adequately trained people, and expanding access to our rural and Spanish-speaking areas. Currently, medical professionals with less training are not adequately equipped to care for certain patients. Let alone, they should not be making determinations about a patient's life expectancies. This bill will increase assisted suicides and worsen the existing law. Access to lethal drugs have already expanded dramatically. Allowing these drugs to be delivered by mail and messenger makes it more likely to be given to someone without their consent, to be taken by another person, or to be a part of the drug trafficking problem that currently exists. It is more likely that the caregiver and not the patient, who claims there are barriers to accessing end of life care. This act is supposed to protect patients from coercion and abuse from their caregivers.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Jody Disney, LWVWA; Karen Tvedt; Nat Dean; Cassa Sutherland, End of Life Washington; George Hendrickson; Heather Jespersen; Darrell Owens; Dick Gibson; Deborah North; Alison Riffer; Dr. Jess Kaan; Cody Solders; Marie Eaton.

CON: Conrad Reynoldson, Washington Civil & Disability Advocate; David Lucas, Veteran; Richard Doerflinger; Dr. Sharon Quick; Shane Macaulay, MD, Physicians for

Compassionate Care Education Foundation - Washington; Theresa Schrempp; Alfonso Oliva, MD, Alliance for Hippocratic Medicine; Bishop Joseph Tyson, Washington State Catholic Conference; Dave Olwell; Mary Long, Conservative Ladies of Washington; Joseph Havens; Jonathan Clemens, ErgoCare Clinic; Richard Grunewald.

Persons Signed In To Testify But Not Testifying: CON: Robin Bernhoft, MD.