

By Senator Rader

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1 A bill to be entitled
2 An act relating to death with dignity; creating ch.
3 764, F.S., relating to personal autonomy; creating s.
4 764.101, F.S.; providing a short title; creating s.
5 764.102, F.S.; defining terms; creating s. 764.103,
6 F.S.; providing legislative findings and intent;
7 creating s. 764.104, F.S.; providing criteria for
8 qualified patients; providing factors to demonstrate
9 residency; requiring qualified patients to make oral
10 and written requests for medication; requiring waiting
11 periods before such requests may be made and such
12 medication may be prescribed; providing a form for
13 written requests; specifying requirements for the
14 valid execution of such form; authorizing a qualified
15 patient to rescind a request at any time and in any
16 manner; creating s. 764.105, F.S.; specifying
17 requirements for attending physicians; authorizing the
18 attending physician to sign the qualified patient's
19 death certificate; specifying requirements for
20 consulting physicians; specifying recordkeeping
21 requirements; requiring certain health care providers
22 to report certain information to the Department of
23 Health; requiring the department to annually review
24 certain records for compliance and publish a report on
25 activities and compliance; providing the department
26 rulemaking authority for a specified purpose; creating
27 s. 764.106, F.S.; making certain provisions of legal
28 instruments void and unenforceable under certain
29 circumstances; prohibiting an individual's

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30 participation in certain provisions from affecting the
31 sale, procurement, or issuance of certain insurance
32 policies or the rates charged for such policies;
33 creating s. 764.107, F.S.; providing criminal
34 penalties and immunities; defining terms; providing
35 grounds for prohibiting certain providers from
36 participating in certain provisions; providing
37 permissible sanctions; requiring certain providers to
38 use due process procedures when imposing certain
39 sanctions; providing that certain sanctions may not be
40 the sole basis for certain disciplinary action against
41 a health care provider's license; providing
42 construction; creating s. 764.108, F.S.; authorizing
43 claims for costs and attorney fees in certain
44 circumstances; creating s. 764.109, F.S.; providing
45 construction and severability; providing an effective
46 date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Chapter 764, Florida Statutes, consisting of
51 sections 764.101-764.109, Florida Statutes, entitled "Personal
52 Autonomy," is created.

53 Section 2. Section 764.101, Florida Statutes, is created to
54 read:

55 764.101 Short title.—Sections 764.101-764.109 may be cited
56 as the "Death with Dignity Act."

57 Section 3. Section 764.102, Florida Statutes, is created to
58 read:

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59 764.102 Definitions.—As used in this chapter, the term:

60 (1) "Attending physician" means the physician who has
61 primary responsibility for the care of the patient and treatment
62 of the patient's terminal condition.

63 (2) "Competent" means that in the opinion of a court or in
64 the opinion of the patient's attending physician, consulting
65 physician, psychiatrist, or psychologist, a patient has the
66 ability to make and communicate health care decisions to health
67 care providers, including communication through individuals
68 familiar with the patient's manner of communicating if those
69 individuals are available.

70 (3) "Consulting physician" means a physician who is
71 qualified by specialty or experience to make a professional
72 diagnosis and prognosis regarding the patient's medical
73 condition.

74 (4) "Counseling" means one or more consultations as
75 necessary between a psychiatrist or psychologist and a patient
76 for the purpose of determining whether the patient is competent
77 and whether the patient is suffering from a psychiatric or
78 psychological disorder or depression causing impaired judgment.

79 (5) "Department" means the Department of Health.

80 (6) "Health care provider" means a health care
81 practitioner, health care facility, or entity licensed or
82 certified to provide health services in this state.

83 (7) "Informed decision" means a decision voluntarily made
84 by a qualified patient to request and obtain a prescription to
85 end his or her life after a sufficient explanation and
86 disclosure of the subject matter to enable the qualified patient
87 to appreciate the relevant facts, including the qualified

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88 patient's medical diagnosis and prognosis, the potential risks
89 associated with taking the medication to be prescribed, the
90 probable results of taking the medication, and the feasible
91 alternatives to taking the medication, and to make a knowing
92 health care decision without coercion or undue influence.

93 (8) "Medically confirmed" means the medical opinion of the
94 attending physician has been confirmed by a consulting physician
95 who has examined the patient and the patient's relevant medical
96 records.

97 (9) "Medication" means a drug as defined in s. 465.003
98 which an attending physician prescribes to a qualified patient
99 under this chapter to end his or her life in a humane and
100 dignified manner.

101 (10) "Physician" means a person who is licensed to practice
102 medicine under chapter 458 or osteopathic medicine under chapter
103 459.

104 (11) "Psychiatrist" means a physician who has primarily
105 diagnosed and treated nervous and mental disorders for a period
106 of at least 3 years inclusive of a psychiatric residency.

107 (12) "Psychologist" means a person who is licensed to
108 practice psychology under chapter 490.

109 (13) "Qualified patient" means an individual who has
110 satisfied the requirements of this chapter to obtain a
111 prescription for medication to end his or her life in a humane
112 and dignified manner.

113 (14) "Terminal condition" means a medically confirmed
114 condition caused by an injury, illness, or disease which is
115 incurable and irreversible and which will, within reasonable
116 medical judgment, cause the patient's death within 6 months.

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117 Section 4. Section 764.103, Florida Statutes, is created to
118 read:

119 764.103 Legislative findings and intent.—The Legislature
120 finds that every competent adult has the fundamental right of
121 self-determination regarding decisions pertaining to his or her
122 own health, and recognizes that for some faced with a terminal
123 condition, prolonging life may result in a painful or burdensome
124 existence. It is the intent of the Legislature to establish a
125 procedure to allow a competent individual who has a terminal
126 condition, and who makes a fully informed decision that he or
127 she no longer wants to live, to obtain medication to end his or
128 her life in a humane and dignified manner.

129 Section 5. Section 764.104, Florida Statutes, is created to
130 read:

131 764.104 Qualified patients; residency requirements; written
132 and oral requests for medication; waiting periods; form
133 requirements; right to rescind requests.—

134 (1) (a) An individual may request medication for the purpose
135 of ending his or her life in a humane and dignified manner if
136 the individual:

137 1. Is 18 years of age or older;

138 2. Is a resident of Florida;

139 3. Has been clinically diagnosed with a terminal condition
140 by his or her attending physician which has been medically
141 confirmed by a consulting physician;

142 4. Is competent;

143 5. Is making an informed decision; and

144 6. Has voluntarily expressed his or her wish to die.

145 (b) An individual may not qualify for medication under this

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146 chapter solely because of age or disability.

147 (2) Factors demonstrating Florida residency include, but
148 are not limited to:

149 (a) Possession of a Florida driver license;

150 (b) Registration to vote in Florida; or

151 (c) Evidence that the individual owns or leases property in
152 Florida.

153 (3) To obtain medication under this chapter, a qualified
154 patient must first make two oral requests and then one written
155 request for the medication.

156 (a) A qualified patient may not make the second oral
157 request until at least 15 days after making the first oral
158 request. However, if the qualified patient's attending physician
159 has medically confirmed that the qualified patient will, within
160 reasonable medical judgment, die within 15 days after making the
161 first oral request, the qualified patient may make the oral
162 request to his or her attending physician at any time after
163 making the first oral request.

164 (b) After a qualified patient makes a second oral request,
165 the attending physician must give the qualified patient an
166 opportunity to rescind the request.

167 (c) A qualified patient may make a written request for
168 medication under this chapter after he or she has made a second
169 oral request for the medication and has been offered the
170 opportunity to rescind the request.

171 (d) An attending physician may not prescribe medication to
172 a qualified patient under this chapter until at least 48 hours
173 after the qualified patient makes a written request for the
174 medication.

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175 (4) (a) A written request for medication under this chapter
 176 must be in a form substantially similar to the following:

177 REQUEST FOR MEDICATION
 178 TO END MY LIFE IN A HUMANE
 179 AND DIGNIFIED MANNER

180 I, ...(name of qualified patient)..., am an adult of sound mind.

181
 182 I am suffering from ...(medical condition)..., which my
 183 attending physician has determined is a terminal condition and
 184 which has been medically confirmed by a consulting physician.

185
 186 I have been fully informed of my diagnosis, prognosis, the
 187 nature of the medication to be prescribed and potential
 188 associated risks, the expected result of taking the medication,
 189 and the feasible alternatives, including comfort care, hospice
 190 care, and pain control.

191
 192 Pursuant to chapter 764, Florida Statutes, I request that my
 193 attending physician prescribe medication that will end my life
 194 in a humane and dignified manner.

195
 196 INITIAL ONE:

197 [...] I have informed my family members of my decision and
 198 taken their opinions into consideration.

199 [...] I have decided not to inform my family members of my
 200 decision.

201 [...] I have no family members to inform of my decision.

202
 203 PURSUANT TO SECTION 764.104, FLORIDA STATUTES, I UNDERSTAND THAT

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204 I HAVE THE RIGHT TO RESCIND THIS REQUEST AT ANY TIME AND IN ANY
205 MANNER, REGARDLESS OF MY MENTAL STATE.

207 I understand the full import of this request and I expect to die
208 when I take the medication to be prescribed. I further
209 understand that although most deaths occur within 3 hours, my
210 death may take longer and my physician has counseled me about
211 this possibility.

213 I make this request voluntarily and without reservation, and I
214 accept full moral responsibility for my actions.

216 Signed: ...(signature of qualified patient)...

217 Dated: ...(date)...

219 DECLARATION OF WITNESSES

220 We declare that the person signing this request:

221 1. Is personally known to us or has provided proof of
222 identity;

223 2. Signed this request in our presence;

224 3. Appears to be of sound mind and not under duress, fraud,
225 or undue influence; and

226 4. Is not a patient for whom either of us is the attending
227 physician.

229 First witness Second witness
230 ...(print name)... ...(print name)...
231 ...(signature)... ...(signature)...
232 ...(date)... ...(date)...

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NOTE: At least one witness may not be a relative (by blood, marriage, or adoption) of the person signing this request, may not be entitled to any portion of the person's estate upon death, and may not be an owner, operator, or employee of a health care facility where the person is a patient or resident.

(b) To be valid, the written request must be signed by the qualified patient and witnessed by at least two individuals who, in the presence of the qualified patient, attest that to the best of their knowledge and belief, the qualified patient is competent, is acting voluntarily, and is not being coerced to sign the request. At least one of the witnesses must be a person who is not:

1. A relative of the patient by blood, marriage, or adoption;

2. 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

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

(c) The qualified patient's attending physician at the time the request is signed may not serve as a witness.

(5) A qualified patient may rescind his or her request at any time and in any manner without regard to his or her mental state.

Section 6. Section 764.105, Florida Statutes, is created to read:

764.105 Attending physician responsibilities; consulting

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262 physician responsibilities; reporting requirements.-

263 (1) The attending physician shall do all of the following:

264 (a) Make the initial determination of whether a patient has
265 a terminal condition, is competent, and has voluntarily made the
266 request for medication to end his or her life.

267 (b) Refer the patient to a consulting physician for medical
268 confirmation of the diagnosis, and for a determination that the
269 patient is competent and acting voluntarily.

270 (c) Ensure that the patient is making an informed decision
271 by fully informing the patient of the facts relevant to all of
272 the following:

273 1. The patient's medical diagnosis.

274 2. The patient's prognosis.

275 3. The potential risks associated with taking the
276 medication to be prescribed.

277 4. The probable result of taking the medication to be
278 prescribed.

279 5. The feasible alternatives, including, but not limited
280 to, comfort care, hospice care, and pain control.

281 (d) Verify the patient's Florida residency.

282 (e) Refer the patient to a psychiatrist or psychologist for
283 counseling if the physician believes the patient may be
284 suffering from a psychiatric or psychological disorder or
285 depression causing impaired judgment. The physician may not
286 prescribe medication under this chapter until the psychiatrist
287 or psychologist counseling the patient determines that the
288 patient is not suffering from a psychiatric or psychological
289 disorder or depression causing impaired judgment.

290 (f) Recommend that a patient notify next of kin of the

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291 patient's decision. The physician may not refuse to prescribe
292 medication to a qualified patient because he or she declines or
293 is unable to notify next of kin.

294 (g) Inform the qualified patient that he or she has an
295 opportunity to rescind the request at any time and in any
296 manner, and offer the qualified patient an opportunity to
297 rescind the request after the qualified patient's second oral
298 request at the end of the 15-day waiting period pursuant to s.
299 764.104.

300 (h) Immediately before writing a prescription for
301 medication under this chapter, verify that the qualified patient
302 is making an informed decision.

303 (i) Counsel the patient about the importance of having
304 another person present when the patient takes the medication
305 prescribed under this chapter and of not taking the medication
306 in a public place.

307 (j) Comply with the medical record documentation
308 requirements of this section.

309 (k) Ensure that all appropriate steps are carried out in
310 accordance with this chapter before writing a prescription for
311 medication to enable a qualified patient to end his or her life
312 in a humane and dignified manner.

313 (l)1. Dispense medications directly, including ancillary
314 medications intended to minimize the patient's discomfort,
315 provided the attending physician is registered as a dispensing
316 practitioner under s. 465.0276, has a current Drug Enforcement
317 Administration number, and complies with applicable laws and
318 rules; or

319 2. With the patient's written consent:

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320 a. Contact a pharmacist and inform the pharmacist of the
321 prescription; and

322 b. Deliver the written prescription personally or by mail
323 to the pharmacist, who will dispense the medications to either
324 the patient, the attending physician, the patient's legal
325 representative, or an individual whom the patient designates in
326 writing.

327 (2) Notwithstanding any other law, the attending physician
328 may sign the patient's death certificate.

329 (3) A consulting physician shall examine the patient and
330 his or her relevant medical records to confirm, in writing,
331 whether the consulting physician agrees with the attending
332 physician's diagnosis that the patient is suffering from a
333 terminal condition, and verify whether the patient is competent,
334 is acting voluntarily, and has made an informed decision. A
335 consulting physician must refer the patient to a psychiatrist or
336 psychologist for counseling if the physician believes the
337 patient may be suffering from a psychiatric or psychological
338 disorder or depression causing impaired judgment.

339 (4) An attending physician is responsible for ensuring that
340 all of the following is documented or filed in the patient's
341 medical record:

342 (a) All oral requests by a patient for medication under
343 this chapter.

344 (b) All written requests by a patient for medication under
345 this chapter.

346 (c) The attending physician's diagnosis, prognosis, and
347 determination that the patient is competent, is acting
348 voluntarily, and has made an informed decision.

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349 (d) The consulting physician's diagnosis, prognosis, and
350 verification that the patient is competent, is acting
351 voluntarily, and has made an informed decision.

352 (e) A report of the outcome and determinations made during
353 counseling, if performed.

354 (f) The attending physician's offer to the patient to
355 rescind his or her request at the time of the patient's second
356 oral request.

357 (g) A note by the attending physician indicating that all
358 requirements under this chapter have been met and indicating the
359 steps taken to carry out the request, including a notation of
360 the medication prescribed.

361 (5) A health care provider who dispenses medication
362 prescribed under this chapter must file a copy of the dispensing
363 record with the department.

364 (6) The department shall annually review a sample of
365 records maintained under this chapter for compliance and
366 annually publish a statistical report on activities and
367 compliance pursuant to this chapter. The department shall adopt
368 rules to collect information for this purpose.

369 Section 7. Section 764.106, Florida Statutes, is created to
370 read:

371 764.106 Effect on construction of wills, contracts, and
372 statutes; insurance or annuity policies.-

373 (1) A provision in a contract, will, or other agreement,
374 whether written or oral, to the extent the provision would
375 affect whether a person may make or rescind a request for
376 medication under this chapter, is void and unenforceable.

377 (2) An obligation owed under any existing contract may not

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378 be conditioned or affected by a person making or rescinding a
379 request for medication under this chapter.

380 (3) The sale, procurement, or issuance of any life, health,
381 or accident insurance or annuity policy, or the rate charged for
382 any policy, may not be conditioned upon or affected by a person
383 making or rescinding a request for medication under this
384 chapter. A qualified patient's act of ingesting medication
385 prescribed under this chapter may not affect a life, health, or
386 accident insurance or annuity policy.

387 Section 8. Section 764.107, Florida Statutes, is created to
388 read:

389 764.107 Penalties; liabilities; immunities; grounds for
390 prohibiting health care provider participation; notification;
391 permissible sanctions.-

392 (1) A person who:

393 (a) Without authorization of the patient, willfully alters
394 or forges a request for medication under this chapter or
395 conceals or destroys a rescission of that request with the
396 intent or effect of causing the patient's death commits a felony
397 of the first degree, punishable as provided in s. 775.082, s.
398 775.083, or s. 775.084.

399 (b) Coerces or exerts undue influence on a patient to
400 request medication under this chapter for the purpose of ending
401 the patient's life or to destroy a rescission of a medication
402 request commits a felony of the first degree, punishable as
403 provided in s. 775.082, s. 775.083, or s. 775.084.

404 (2) This chapter does not limit further liability for civil
405 damages resulting from other negligent conduct or intentional
406 misconduct by any person.

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407 (3) The penalties in this chapter do not preclude criminal
408 penalties applicable under other law for conduct that is
409 inconsistent with this chapter.

410 (4) Except as provided in subsections (1) and (5):

411 (a) A person is not subject to civil or criminal liability
412 or professional disciplinary action for participating in good
413 faith compliance with this chapter. This includes being present
414 when a qualified patient takes the medication prescribed under
415 this chapter.

416 (b) A professional organization or association, or a health
417 care provider, may not subject a person to censure, discipline,
418 suspension, loss of license, loss of privileges, loss of
419 membership, or other penalty solely for refusing to participate
420 in this chapter or for participating in good faith compliance
421 with this chapter.

422 (c) A request by a patient for, or provision by an
423 attending physician of, medication in good faith compliance with
424 this chapter does not constitute neglect for any purpose of law
425 or provide the sole basis for the appointment of a guardian or
426 conservator.

427 (d) A health care provider is not under any duty, whether
428 by contract, by statute, or by any other legal requirement, to
429 participate in the provision of medication prescribed under this
430 chapter to a qualified patient. If a health care provider is
431 unable or unwilling to carry out a patient's request under this
432 chapter, and the patient transfers his or her care to a new
433 health care provider, the prior health care provider shall
434 transfer, upon request, a copy of the patient's relevant medical
435 records to the new health care provider.

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436 (5) (a) As used in this subsection, the term:

437 1. "Notify" means a separate statement in writing to the
438 health care provider specifically informing the health care
439 provider before the provider's participation in this chapter of
440 the sanctioning health care provider's policy about
441 participation in activities covered by this chapter.

442 2. "Participation in this chapter" means to perform the
443 duties of an attending physician, the consulting physician
444 function, or the counseling function pursuant to s.764.105. The
445 term does not include:

446 a. Making an initial determination that a patient has a
447 terminal disease and informing the patient of the medical
448 prognosis;

449 b. Providing information about the Death with Dignity Act
450 to a patient upon the request of the patient;

451 c. Providing a patient, upon the request of the patient,
452 with a referral to another physician; or

453 d. A patient contracting with his or her attending
454 physician and consulting physician to act outside of the course
455 and scope of the provider's capacity as an employee or
456 independent contractor of the sanctioning health care provider.

457 (b) Notwithstanding any other law, a health care provider
458 may prohibit participation in this chapter on the premises of
459 facilities that it owns or operates if it first notifies the
460 health care providers practicing in its facilities of its
461 policy. This paragraph does not prevent a health care provider
462 from providing health care services to a patient which do not
463 constitute participation in this chapter.

464 (c) Notwithstanding subsection (4), if a health care

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465 provider has a policy prohibiting its facilities, operators, or
466 employees from participation in this chapter and has notified
467 them of the policy, then the prohibiting health care provider
468 may subject its facilities, operators, or employees to the
469 following sanctions for participating in this chapter in
470 violation of that policy:

471 1. Loss of privileges, loss of membership, or other
472 sanction provided under the medical staff bylaws, policies, and
473 procedures of the sanctioning health care provider if the
474 sanctioned health care provider is a member of the sanctioning
475 health care provider's medical staff and participates in this
476 chapter while on the facility premises of the sanctioning health
477 care provider, but not including the private medical office of a
478 physician or other provider;

479 2. Termination of lease or other property contract or other
480 nonmonetary remedies provided by lease contract, not including
481 loss or restriction of medical staff privileges or exclusion
482 from a provider panel, if the sanctioned provider participates
483 in this chapter while on the premises of the sanctioning health
484 care provider or on property that is owned by or under the
485 direct control of the sanctioning health care provider; or

486 3. Termination of contract or other nonmonetary remedies
487 provided by contract if the sanctioned provider participates in
488 this chapter while acting in the course and scope of the
489 sanctioned health care provider's capacity as an employee or
490 independent contractor of the sanctioning health care provider.
491 This subparagraph may not be construed to prevent:

492 a. A health care provider from participating in carrying
493 out the provisions of this chapter while acting outside the

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494 course and scope of the provider's capacity as an employee or
495 independent contractor; or

496 b. A patient from contracting with his or her attending
497 physician and consulting physician to act outside the course and
498 scope of the provider's capacity as an employee or independent
499 contractor of the sanctioning health care provider.

500 (d) A health care provider that imposes sanctions under
501 paragraph (c) must follow all due process and other procedures
502 the sanctioning health care provider may have which are related
503 to the imposition of sanctions on another health care provider.

504 (6) Suspension or termination of staff membership or
505 privileges under subsection (5) may not be the sole basis for a
506 disciplinary complaint or investigation against a health care
507 provider's license.

508 (7) This chapter may not be construed to allow a lower
509 standard of care for patients.

510 Section 9. Section 764.108, Florida Statutes, is created to
511 read:

512 764.108 Claims by governmental entity for costs incurred.—
513 Any governmental entity that incurs costs resulting from a
514 person terminating his or her life pursuant to this chapter in a
515 public place shall have a claim against the estate of the person
516 to recover the costs and reasonable attorney fees related to
517 enforcing the claim.

518 Section 10. Section 764.109, Florida Statutes, is created
519 to read:

520 764.109 Construction; severability.—

521 (1) This chapter may not be construed to authorize a
522 physician or any other person to end a patient's life by lethal

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523 injection, mercy killing, or active euthanasia. Actions taken in
524 accordance with this chapter do not constitute suicide, assisted
525 suicide, mercy killing, or homicide for any purpose under the
526 law.

527 (2) Any section of this chapter being held invalid as to
528 any person or circumstance does not affect the application of
529 any other section of this chapter which can be given full effect
530 without the invalid section or application, and to this end the
531 provisions of this chapter are severable.

532 Section 11. This act shall take effect July 1, 2020.