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H.274

Introduced by Representatives Sweaney of Windsor, Haas of Rochester,
Aswad of Burlington, Bartholomew of Hartland, Bohi of
Hartford, Cheney of Norwich, Christie of Hartford, Clarkson of
Woodstock, Davis of Washington, Deen of Westminster,
Edwards of Brattleboro, Fisher of Lincoln, Frank of Underhill,
French of Randolph, Grad of Moretown, Head of South
Burlington, Heath of Westford, Hooper of Montpelier, Johnson
of South Hero, Kitzmiller of Montpelier, Krebs of South Hero,
Larson of Burlington, Lenes of Shelburne, Lorber of
Burlington, Manwaring of Wilmington, Marek of Newfane,
McCullough of Williston, Mitchell of Barnard, Mook of
Bennington, Mrowicki of Putney, Nuovo of Middlebury,
Partridge of Windham, Pearson of Burlington, Peltz of
Woodbury, Ram of Burlington, Shand of Weathersfield, Sharpe
of Bristol, Spengler of Colchester, Stevens of Waterbury,
Townsend of Randolph, Waite-Simpson of Essex, Webb of
Shelburne, Weston of Burlington and Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Health; end of life; patient-directed dying

1 Statement of purpose: This bill proposes to allow, subject to appropriate
2 safeguards, a mentally competent person diagnosed as having less than six
3 months to live to request a prescription which, if taken, would hasten the dying
4 process.

5 An act relating to patient choice and control at end of life

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 Sec. 1. FINDINGS

8 The general assembly finds:

9 (1) The state of Oregon has been implementing its Death with Dignity
10 Act since 1998. In 12 years, Oregon has seen a total of 723 terminal patients
11 formally request medication to hasten death and, of those, 460 patients took the
12 medication and died pursuant to the act. Oregon's most recent annual report
13 on the act shows that in 2009, 95 prescriptions were written, and 53 patients
14 died after ingesting the medication. An additional six patients died after taking
15 medication pursuant to an earlier prescription, for a total of 59 deaths in 2009.

16 (2) Vermont has about one-sixth the population of Oregon. According
17 to the 2010 census, Oregon has a population of 3,831,074 and Vermont a
18 population of 625,741.

19 (3) In the past 17 years, Oregon has seen its hospice enrollment increase
20 significantly. In 1993, only 20 percent of all dying patients were enrolled in

1 hospice. By 2005, enrollment had increased to 54 percent. In 2009, 91.5
2 percent of the patients who used medication under the Death with Dignity Act
3 were in hospice care.

4 (4) According to a 2000 article in the New England Journal of Medicine,
5 Oregon health care professionals report that Oregon physicians grant
6 approximately one in six requests for lethal medication, and one in 10 requests
7 actually results in hastened death.

8 (5) Despite continuing improvements in techniques for palliative care,
9 most medical experts agree that not all pain can be relieved. Some terminal
10 diseases, such as bone cancer, inflict untreatable agony at the end of life.
11 Many cancer patients report that they would have greater comfort and courage
12 in facing their future if they were assured they could use a Death with Dignity
13 law if their suffering became unbearable.

14 Sec. 2. 18 V.S.A. chapter 113 is added to read:

15 CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A
16 TERMINAL CONDITION

17 § 5280. DEFINITIONS

18 For purposes of this chapter:

19 (1) "Attending physician" means the physician whom the patient has
20 designated to have primary responsibility for the care of the patient and who is

1 willing to participate in the provision to a qualified patient of medication to
2 hasten his or her death in accordance with this chapter.

3 (2) “Capacity” shall have the same meaning as in subdivision
4 9701(4)(B) of this title.

5 (3) “Consulting physician” means a physician who is qualified by
6 specialty or experience to make a professional diagnosis and prognosis
7 regarding the patient’s illness and who is willing to participate in the provision
8 of medication to a qualified patient to hasten his or her death in accordance
9 with this chapter.

10 (4) “Counseling” means a consultation between a psychiatrist,
11 psychologist, or clinical social worker licensed in Vermont and a patient for
12 the purpose of confirming that the patient:

13 (A) has capacity; and

14 (B) is not suffering from a mental disorder or disease, including
15 depression that causes the patient to have impaired judgment.

16 (5) “Good faith” shall mean objective good faith.

17 (6) “Health care provider” shall have the same meaning as in
18 subdivision 9432(8) of this title.

19 (7) “Informed decision” means a decision by a patient to request and
20 obtain a prescription to hasten his or her death based on the patient’s

1 understanding and appreciation of the relevant facts and that was made after
2 the patient was fully informed by the attending physician of all the following:

3 (A) The patient's medical diagnosis.

4 (B) The patient's prognosis.

5 (C) The range of possible results, including potential risks associated
6 with taking the medication to be prescribed.

7 (D) The probable result of taking the medication to be prescribed.

8 (E) All feasible end-of-life services, including comfort care, hospice
9 care, and pain control.

10 (8) "Palliative care" shall have the same meaning as in subdivision 2(6)
11 of this title.

12 (9) "Patient" means a person who is 18 years of age or older, a resident
13 of Vermont, and under the care of a physician.

14 (10) "Physician" means a physician licensed pursuant to chapters 23 and
15 33 of Title 26.

16 (11) "Qualified patient" means a patient with capacity who has satisfied
17 the requirements of this chapter in order to obtain a prescription for medication
18 to hasten his or her death. No individual shall qualify under the provisions of
19 this chapter solely because of age or disability.

1 (12) “Terminal condition” means an incurable and irreversible disease
2 which would, within reasonable medical judgment, result in death within six
3 months.

4 § 5281. REQUESTS FOR MEDICATION

5 (a) In order to qualify under this chapter:

6 (1) A patient with capacity who has been determined by the attending
7 physician and consulting physician to be suffering from a terminal condition
8 and who has voluntarily expressed a wish to hasten the dying process may
9 request medication to be self-administered for the purpose of hastening his or
10 her death in accordance with this chapter.

11 (2) A patient shall have made an oral request and a written request and
12 shall have reaffirmed the oral request to his or her attending physician not less
13 than 15 days after the initial oral request. At the time the patient makes the
14 second oral request, the attending physician shall offer the patient an
15 opportunity to rescind the request.

16 (b) Oral requests for medication by the patient under this chapter shall be
17 made in the presence of the attending physician.

18 (c) A written request for medication shall be signed and dated by the
19 patient and witnessed by at least two persons, at least 18 years of age, who, in
20 the presence of the patient, sign and affirm that the principal appeared to
21 understand the nature of the document and to be free from duress or undue

1 influence at the time the request was signed. Neither witness shall be any of
2 the following persons:

3 (1) The patient's attending physician, consulting physician, or any
4 person who has provided counseling for the patient pursuant to section 5284 of
5 this title.

6 (2) A person who knows that he or she is a relative of the patient by
7 blood, marriage, civil union, or adoption.

8 (3) A person who at the time the request is signed knows that he or she
9 would be entitled upon the patient's death to any portion of the estate or assets
10 of the patient under any will or trust, by operation of law, or by contract.

11 (4) An owner, operator, or employee of a health care facility, nursing
12 home, or residential care facility where the patient is receiving medical
13 treatment or is a resident.

14 (d) A person who knowingly fails to comply with the requirements in
15 subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

16 (e) The written request shall be completed after the patient has been
17 examined by a consulting physician as required under section 5283 of this title.

18 (f)(1) Under no circumstances shall a guardian or conservator be permitted
19 to act on behalf of a ward for purposes of this chapter.

20 (2) Under no circumstances shall an agent under an advance directive be
21 permitted to act on behalf of a principal for purposes of this chapter.

1 § 5282. ATTENDING PHYSICIAN; DUTIES

2 The attending physician shall perform all the following:

3 (1) Make the initial determination of whether a patient:

4 (A) is suffering a terminal condition;

5 (B) has capacity; and

6 (C) has made a voluntary request for medication to hasten his or her
7 death.

8 (2) Request proof of Vermont residency, which may be shown by:

9 (A) a Vermont driver's license or photo identification card;

10 (B) proof of Vermont voter's registration;

11 (C) evidence of property ownership or a lease of residential premises
12 in Vermont; or

13 (D) a Vermont personal income tax return for the most recent tax
14 year.

15 (3) Inform the patient in person and in writing of all the following:

16 (A) The patient's medical diagnosis.

17 (B) The patient's prognosis.

18 (C) The range of possible results, including potential risks associated
19 with taking the medication to be prescribed.

20 (D) The probable result of taking the medication to be prescribed.

1 (E) All feasible end-of-life services, including comfort care, hospice
2 care, and pain control.

3 (4) Refer the patient to a consulting physician for medical confirmation
4 of the diagnosis, prognosis, and a determination that the patient has capacity
5 and is acting voluntarily.

6 (5) Refer the patient for counseling under section 5284 of this chapter.

7 (6) Refer the patient for a palliative care consultation under section 5285
8 of this chapter.

9 (7) Recommend that the patient notify the next of kin or someone with
10 whom the patient has a significant relationship.

11 (8) Counsel the patient about the importance of ensuring that another
12 individual is present when the patient takes the medication prescribed pursuant
13 to this chapter and the importance of not taking the medication in a public
14 place.

15 (9) Inform the patient that the patient has an opportunity to rescind the
16 request at any time and in any manner and offer the patient an opportunity to
17 rescind at the end of the 15-day waiting period.

18 (10) Verify, immediately prior to writing the prescription for medication
19 under this chapter, that the patient is making an informed decision.

20 (11) Fulfill the medical record documentation requirements of section
21 5290 of this title.

1 (12) Ensure that all required steps are carried out in accordance with this
2 chapter prior to writing a prescription for medication to hasten death.

3 (13)(A) Dispense medication directly, including ancillary medication
4 intended to facilitate the desired effect to minimize the patient's discomfort,
5 provided the attending physician is licensed to dispense medication in
6 Vermont, has a current Drug Enforcement Administration certificate, and
7 complies with any applicable administrative rules; or

8 (B) With the patient's written consent:

9 (i) contact a pharmacist and inform the pharmacist of the
10 prescription; and

11 (ii) deliver the written prescription to the pharmacist, who will
12 dispense the medication to the patient, the attending physician, or an expressly
13 identified agent of the patient.

14 (14) Notwithstanding any other provision of law, the attending
15 physician may sign the patient's death certificate.

16 § 5283. MEDICAL CONSULTATION REQUIRED

17 Before a patient is qualified in accordance with this chapter, a consulting
18 physician shall physically examine the patient, review the patient's relevant
19 medical records, and confirm in writing the attending physician's diagnosis
20 that the patient is suffering from a terminal condition and verification that the
21 patient has capacity, is acting voluntarily, and has made an informed decision.

1 § 5284. COUNSELING REFERRAL

2 If, in the opinion of the attending physician or the consulting physician, a
3 patient may be suffering from a mental disorder or disease, including
4 depression, causing impaired judgment, either physician shall refer the patient
5 for counseling. No medication to end the patient's life shall be prescribed until
6 the person performing the counseling determines that the patient is not
7 suffering from a mental disorder or disease, including depression, that causes
8 the patient to have impaired judgment.

9 § 5285. PALLIATIVE CARE CONSULTATION

10 If a patient is not receiving hospice services at the time the written request
11 for medication is made pursuant to this chapter, his or her attending physician
12 shall refer the patient for a palliative care consultation and shall attest to its
13 completion pursuant to subdivision 5290(a)(5) of this title.

14 § 5286. INFORMED DECISION

15 No person shall receive a prescription for medication to hasten his or her
16 death unless the patient has made an informed decision. Immediately prior to
17 writing a prescription for medication in accordance with this chapter, the
18 attending physician shall verify that the patient is making an informed
19 decision.

1 § 5287. RECOMMENDED NOTIFICATION

2 The attending physician shall recommend that the patient notify the
3 patient's next of kin or someone with whom the patient has a significant
4 relationship of the patient's request for medication in accordance with this
5 chapter. A patient who declines or is unable to notify the next of kin or the
6 person with whom the patient has a significant relationship shall not be refused
7 medication in accordance with this chapter.

8 § 5288. RIGHT TO RESCIND

9 A patient may rescind the request for medication in accordance with this
10 chapter at any time and in any manner regardless of the patient's mental state.
11 No prescription for medication under this chapter may be written without the
12 attending physician's offering the patient an opportunity to rescind the request.

13 § 5289. WAITING PERIOD

14 The attending physician shall write a prescription no less than 48 hours after
15 the last to occur of the following events:

16 (1) the patient's written request for medication to hasten his or her
17 death;

18 (2) the patient's second oral request; and

19 (3) the attending physician's offering the patient an opportunity to
20 rescind the request.

1 § 5290. MEDICAL RECORD DOCUMENTATION

2 (a) The following shall be documented and filed in the patient's medical
3 record:

4 (1) The date, time, and wording of all oral requests of the patient for
5 medication to hasten his or her death.

6 (2) All written requests by a patient for medication to hasten his or her
7 death.

8 (3) The attending physician's diagnosis, prognosis, and basis for the
9 determination that the patient has capacity, is acting voluntarily, and has made
10 an informed decision.

11 (4) The consulting physician's diagnosis, prognosis, and verification,
12 pursuant to section 5283 of this title, that the patient has capacity, is acting
13 voluntarily, and has made an informed decision.

14 (5) If the patient was not receiving hospice services at the time of the
15 written request for medication, the attending physician's attestation that the
16 patient received a palliative care consultation.

17 (6) A report of the outcome and determinations made during any
18 counseling which the patient may have received.

19 (7) The date, time, and wording of the attending physician's offer to the
20 patient to rescind the request for medication at the time of the patient's second
21 oral request.

1 (8) A note by the attending physician indicating that all requirements
2 under this chapter have been satisfied and describing all of the steps taken to
3 carry out the request, including a notation of the medication prescribed.

4 (b) Medical records compiled pursuant to this chapter shall be subject to
5 discovery only if the court finds that the records are necessary to resolve issues
6 of compliance with or immunity under this chapter.

7 § 5291. REPORTING REQUIREMENT

8 (a) The department of health shall require that any physician who writes a
9 prescription pursuant to this chapter file a report with the department covering
10 all the prerequisites for writing a prescription under this chapter. In addition,
11 physicians shall report the number of written requests for medication that were
12 received, regardless of whether a prescription was actually written in each
13 instance.

14 (b) The department of health shall review annually the medical records of
15 qualified patients who have hastened their deaths in accordance with this
16 chapter.

17 (c) The department of health shall adopt rules pursuant to chapter 25 of
18 Title 3 to facilitate the collection of information regarding compliance with this
19 chapter. Individual medical information collected and reports filed pursuant to
20 subsection (a) of this section shall not be public record and shall not be made
21 available for inspection by the public.

1 (d) The department of health shall generate and make available to the
2 public an annual statistical report of information collected under subsections
3 (a) and (b) of this section. The report shall include the number of instances in
4 which medication was taken by a qualified patient to hasten death but failed to
5 have the intended effect.

6 § 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

7 (a) The department of health shall adopt rules providing for the safe
8 disposal of unused medications prescribed under this chapter.

9 (b) Expedited rulemaking. Notwithstanding the provisions of chapter 25 of
10 Title 3, the department of health may adopt rules under this section pursuant to
11 the following expedited rulemaking process:

12 (1) Within 90 days after the date this act is passed, the department shall
13 file proposed rules with the secretary of state and the legislative committee on
14 administrative rules under 3 V.S.A. § 841 after publication in three daily
15 newspapers with the highest average circulation in the state of a notice that
16 lists the rules to be adopted pursuant to this process and a seven-day public
17 comment period following publication.

18 (2) The department shall file final proposed rules with the legislative
19 committee on administrative rules 14 days after the public comment period.

20 (3) The legislative committee on administrative rules shall review and
21 may approve or object to the final proposed rules under 3 V.S.A. § 842, except

1 that its action shall be completed no later than 14 days after the final proposed
2 rules are filed with the committee.

3 (4) The department may adopt a properly filed final proposed rule after
4 the passage of 14 days from the date of filing final proposed rules with the
5 legislative committee on administrative rules or after receiving notice of
6 approval from the committee, provided the department:

7 (A) has not received a notice of objection from the legislative
8 committee on administrative rules; or

9 (B) after having received a notice of objection from the committee,
10 has responded pursuant to 3 V.S.A. § 842.

11 (5) Rules adopted under this section shall be effective upon being filed
12 with the secretary of state and shall have the full force and effect of rules
13 adopted pursuant to chapter 25 of Title 3. Rules filed with the secretary of
14 state pursuant to this section shall be deemed to be in full compliance with
15 3 V.S.A. § 843 and shall be accepted by the secretary of state if filed with a
16 certification by the secretary of human services that a rule is required to meet
17 the purposes of this section.

18 § 5293. PROHIBITIONS; CONTRACT CONSTRUCTION

19 (a) No provision in a contract, will, trust, or other agreement, whether
20 written or oral, shall be valid to the extent the provision would affect whether a

1 person may make or rescind a request for medication to hasten his or her death
2 in accordance with this chapter.

3 (b) The sale, procurement, or issue of any life, health, or accident insurance
4 or annuity policy or the rate charged for any policy shall not be conditioned
5 upon or affected by the making or rescinding of a request by a person for
6 medication to hasten his or her death in accordance with this chapter or the act
7 by a qualified patient to hasten his or her death pursuant to this chapter.

8 Neither shall a qualified patient's act of ingesting medication to hasten his or
9 her death have an effect on a life, health, or accident insurance or annuity
10 policy.

11 § 5294. IMMUNITIES

12 (a) No person shall be subject to civil or criminal liability or professional
13 disciplinary action for actions taken in good faith reliance on the provisions of
14 this chapter. This includes being present when a qualified patient takes the
15 prescribed medication to hasten his or her death in accordance with this
16 chapter.

17 (b) No professional organization or association or health care provider shall
18 subject a person to censure, discipline, suspension, loss of license, loss of
19 privileges, loss of membership, or other penalty for actions taken in good faith
20 reliance on the provisions of this chapter or refusals to act under this chapter.

1 (c) No provision by an attending physician of medication in good faith
2 reliance on the provisions of this chapter shall constitute patient neglect for any
3 purpose of law.

4 (d) No request by a patient for medication under this chapter shall provide
5 the sole basis for the appointment of a guardian or conservator.

6 (e) No health care provider shall be under any duty, whether by contract, by
7 statute, or by any other legal requirement, to participate in the provision to a
8 qualified patient of medication to hasten his or her death in accordance with
9 this chapter. If a health care provider is unable or unwilling to carry out a
10 patient's request in accordance with this chapter and the patient transfers his or
11 her care to a new health care provider, the previous health care provider, upon
12 request, shall transfer a copy of the patient's relevant medical records to the
13 new health care provider. A decision by a health care provider not to
14 participate in the provision of medication to a qualified patient shall not
15 constitute the abandonment of the patient or unprofessional conduct under
16 26 V.S.A. § 1354.

17 § 5295. HEALTH CARE FACILITY EXCEPTION

18 Notwithstanding any other provision of law, a health care facility may
19 prohibit an attending physician from writing a prescription for medication
20 under this chapter for a patient who is a resident in its facility and intends to
21 use the medication on the facility's premises, provided the facility has notified

1 the attending physician in writing of its policy with regard to such
2 prescriptions. Notwithstanding subsection 5294(b) of this title, any health care
3 provider who violates a policy established by a health care facility under this
4 section may be subject to sanctions otherwise allowable under law or contract.

5 § 5296. LIABILITIES AND PENALTIES

6 (a) With the exception of the immunities established by section 5294 of this
7 title and with the exception of the provisions of section 5298 of this title,
8 nothing in this chapter shall be construed to limit liability for civil damages
9 resulting from negligent conduct or intentional misconduct by any person.

10 (b) With the exception of the immunities established by section 5294 of
11 this title and with the exception of the provisions of section 5298 of this title,
12 nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to limit
13 criminal prosecution under any other provision of law.

14 (c) A health care provider is subject to review and disciplinary action by
15 the appropriate licensing entity for failing to act in accordance with this
16 chapter, provided such failure is not in good faith.

17 § 5297. FORM OF THE WRITTEN REQUEST

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

20 REQUEST FOR MEDICATION TO HASTEN MY DEATH

21 I, _____, am an adult of sound mind.

1 I am suffering from _____, which my attending physician has
2 determined is a terminal disease and which has been confirmed by a consulting
3 physician.

4 I have been fully informed of my diagnosis, prognosis, the nature of
5 medication to be prescribed and potential associated risks, the expected result,
6 and the feasible end-of-life services, including comfort care, hospice care, and
7 pain control.

8 I request that my attending physician prescribe medication that will hasten
9 my death.

10 INITIAL ONE:

11 _____ I have informed my family or others with whom I have a significant
12 relationship of my decision and taken their opinions into consideration.

13 _____ I have decided not to inform my family or others with whom I have a
14 significant relationship of my decision.

15 _____ I have no family or others with whom I have a significant relationship to
16 inform of my decision.

17 I understand that I have the right to change my mind at any time.

18 I understand the full import of this request, and I expect to die when I take
19 the medication to be prescribed. I further understand that although most deaths
20 occur within three hours, my death may take longer, and my physician has
21 counseled me about this possibility.

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

3 Signed: _____ Dated: _____

4 AFFIRMATION OF WITNESSES

5 We affirm that, to the best of our knowledge and belief:

6 (1) the person signing this request:

7 (A) is personally known to us or has provided proof of identity;

8 (B) signed this request in our presence;

9 (C) appears to understand the nature of the document and to be free

10 from duress or undue influence at the time the request was signed; and

11 (2) that neither of us:

12 (A) is under 18 years of age;

13 (B) is a relative (by blood, marriage, civil union, or adoption) of the
14 person signing this request;

15 (C) is the patient's attending physician, consulting physician, or a
16 person who has provided counseling for the patient pursuant to section 5284 of
17 this title;

18 (D) is entitled to any portion of the person's assets or estate upon
19 death; or

20 (E) owns, operates, or is employed at a health care facility where the
21 person is a patient or resident.

1 Witness 1/Date _____

2 Witness 2/Date _____

3 NOTE: A knowingly false affirmation by a witness may result in criminal
4 penalties.

5 § 5298. STATUTORY CONSTRUCTION

6 Nothing in this chapter shall be construed to authorize a physician or any
7 other person to end a patient's life by lethal injection, mercy killing, or active
8 euthanasia. Action taken in accordance with this chapter shall not be
9 considered tortious under law and shall not be construed for any purpose to
10 constitute suicide, assisted suicide, mercy killing, or homicide under the law.

11 Sec. 3. 13 V.S.A. § 2312 is added to read:

12 § 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF
13 LIFE ACT

14 A person who violates chapter 113 of Title 18 with the intent to cause the
15 death of a patient as defined in subdivision 5280(8) of that title shall be
16 prosecuted under chapter 53 of this title (homicide).

17 Sec. 4. 13 V.S.A. § 2004 is added to read:

18 § 2004. FALSE WITNESSING

19 A person who knowingly violates the requirements of 18 V.S.A. § 5281(c)
20 shall be imprisoned for not more than 10 years or fined not more than
21 \$2,000.00 or both.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on September 1, 2011.