

END OF LIFE OPTIONS ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Uniform Probate Code to enact the End of Life Options Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ designates when an individual may make a request for medication;
- ▶ establishes attending physician responsibilities;
- ▶ requires a consulting physician confirmation;
- ▶ provides for a counseling referral when needed;
- ▶ requires an informed decision;
- ▶ encourages family notification;
- ▶ requires written and oral requests and ability to rescind the request at any time;
- ▶ requires waiting periods;
- ▶ includes:
 - documentation and reporting requirements; and
 - a requirement that the patient be a resident of the state;
- ▶ establishes the effect of the decision to end an individual's life on wills, contracts, and insurance or annuity contracts;
- ▶ provides limited immunities and procedures for permissible sanctions;
- ▶ prohibits euthanasia or mercy killing;



- 28 ▶ establishes criminal penalties for certain actions; and
- 29 ▶ provides a uniform form for patient consent.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides a special effective date.

34 **Utah Code Sections Affected:**

35 ENACTS:

- 36 75-2c-101, Utah Code Annotated 1953
- 37 75-2c-102, Utah Code Annotated 1953
- 38 75-2c-103, Utah Code Annotated 1953
- 39 75-2c-104, Utah Code Annotated 1953
- 40 75-2c-105, Utah Code Annotated 1953
- 41 75-2c-106, Utah Code Annotated 1953
- 42 75-2c-107, Utah Code Annotated 1953
- 43 75-2c-108, Utah Code Annotated 1953
- 44 75-2c-109, Utah Code Annotated 1953
- 45 75-2c-110, Utah Code Annotated 1953
- 46 75-2c-111, Utah Code Annotated 1953
- 47 75-2c-112, Utah Code Annotated 1953
- 48 75-2c-113, Utah Code Annotated 1953
- 49 75-2c-114, Utah Code Annotated 1953
- 50 75-2c-115, Utah Code Annotated 1953
- 51 75-2c-116, Utah Code Annotated 1953
- 52 75-2c-117, Utah Code Annotated 1953
- 53 75-2c-118, Utah Code Annotated 1953
- 54 75-2c-119, Utah Code Annotated 1953
- 55 75-2c-120, Utah Code Annotated 1953
- 56 75-2c-121, Utah Code Annotated 1953
- 57 75-2c-122, Utah Code Annotated 1953

58

59 *Be it enacted by the Legislature of the state of Utah:*

60 Section 1. Section **75-2c-101** is enacted to read:

61 **CHAPTER 2c. END OF LIFE OPTIONS ACT**

62 **75-2c-101. Title.**

63 This chapter is known as the "End of Life Options Act."

64 Section 2. Section **75-2c-102** is enacted to read:

65 **75-2c-102. Definitions.**

66 As used in this chapter:

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

68 (2) "Attending physician" means the physician who has primary responsibility for the
69 care of the patient and treatment of the patient's terminal disease.

70 (3) "Capable" means that in the opinion of the patient's attending physician or
71 consulting physician, psychiatrist, or psychologist, a patient has the ability to make and
72 communicate health care decisions to health care providers, including communication through
73 individuals familiar with the patient's manner of communicating if those individuals are
74 available.

75 (4) "Consulting physician" means a physician who is qualified by specialty or
76 experience to make a professional diagnosis and prognosis regarding the patient's disease.

77 (5) "Counseling" means one or more consultations as necessary between a state
78 licensed psychiatrist or psychologist and a patient for the purpose of determining that the
79 patient is capable.

80 (6) "Health care provider" means a person licensed, certified, or otherwise authorized
81 or permitted by the law of this state to administer health care or dispense medication in the
82 ordinary course of business or practice of a profession and includes a health care facility.

83 (7) "Informed decision" means a decision by a qualified patient to request and obtain a
84 prescription to end the patient's life in a humane and dignified manner that is based on an
85 appreciation of the relevant facts and after being fully informed by the attending physician of:

86 (a) the patient's medical diagnosis;

87 (b) the patient's prognosis;

88 (c) the potential risks associated with taking the medication to be prescribed;

89 (d) the probable result of taking the medication to be prescribed; and

90 (e) the feasible alternatives, including palliative care, comfort care, hospice care,
91 disability resources available in the community, and pain control.

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

95 (9) "Patient" means an individual who is under the care of a physician.

96 (10) "Physician" means a doctor of medicine or osteopathy licensed to practice
97 medicine in the state.

98 (11) "Qualified patient" means a capable adult who is a resident of Utah and has
99 satisfied the requirements of this chapter to obtain a prescription for medication to end the
100 patient's life in a humane and dignified manner.

101 (12) "Self administer" means a qualified individual's affirmative, conscious act of using
102 the medication to bring about the individual's own peaceful and humane death.

103 (13) "Terminal disease" means an incurable and irreversible disease that has been
104 medically confirmed and will, within reasonable medical judgment, produce death within six
105 months.

106 Section 3. Section **75-2c-103** is enacted to read:

107 **75-2c-103. Initiation of written request for medication.**

108 (1) An individual may make a written request for medication for the purpose of ending
109 the individual's life in a humane and dignified manner in accordance with this chapter if the
110 individual:

111 (a) is an adult;

112 (b) is capable;

113 (c) is a resident of Utah;

114 (d) has been determined by the attending physician and consulting physician to be
115 suffering from a terminal disease; and

116 (e) has voluntarily expressed a wish to die.

117 (2) An individual may not qualify under the provisions of Subsection (1) solely
118 because of age or disability.

119 Section 4. Section **75-2c-104** is enacted to read:

120 **75-2c-104. Form of the written request.**

121 (1) A valid request for medication under this chapter shall be in substantially the form
122 described in Section 75-2c-122, signed and dated by the patient, and witnessed by at least two
123 individuals who, in the presence of the patient, attest that to the best of their knowledge and
124 belief the patient is capable, is acting voluntarily, and is not being coerced to sign the request.

125 (2) One of the witnesses shall be an individual who is not:

126 (a) a relative of the patient by blood, marriage, or adoption;

127 (b) an individual who at the time the request is signed would be entitled to any portion
128 of the estate of the qualified patient upon death under any will or by operation of law; or

129 (c) an owner, operator, or employee of a health care facility where the qualified patient
130 is receiving medical treatment or is a resident.

131 (3) The patient's attending physician at the time the request is signed shall not be a
132 witness.

133 Section 5. Section **75-2c-105** is enacted to read:

134 **75-2c-105. Attending physician responsibilities.**

135 (1) The attending physician shall:

136 (a) make the initial determination of whether a patient:

137 (i) has a terminal disease;

138 (ii) is capable; and

139 (iii) has made the request voluntarily;

140 (b) request that the patient attest to Utah residency pursuant to Section 75-2c-113;

141 (c) ensure that the patient is making an informed decision, by informing the patient of:

142 (i) the patient's medical diagnosis;

143 (ii) the patient's prognosis;

144 (iii) the potential risks associated with taking the medication to be prescribed;

145 (iv) the probable result of taking the medication to be prescribed; and

146 (v) the feasible alternatives, including palliative care, comfort care, hospice care,
147 disability resources available in the community, and pain control;

148 (d) refer the patient to a consulting physician for medical confirmation of the diagnosis
149 and for a determination that the patient is capable and acting voluntarily;

150 (e) refer the patient for counseling if appropriate pursuant to Section 75-2c-107;

151 (f) recommend that the patient notify next of kin;

152 (g) counsel the patient about the importance of having another individual present when
153 the patient takes the medication prescribed pursuant to this chapter and of not taking the
154 medication in a public place;

155 (h) inform the patient that the patient has an opportunity to rescind the request at any
156 time and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day
157 waiting period required by Section 75-2c-111;

158 (i) verify, immediately prior to writing the prescription for medication under this
159 chapter, that the patient is making an informed decision;

160 (j) fulfill the medical record documentation requirements of Section 75-2c-112;

161 (k) ensure that all appropriate steps are carried out in accordance with this chapter prior
162 to writing a prescription for medication to enable a qualified patient to end the patient's life in a
163 humane and dignified manner;

164 (l) with the patient's consent:

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

166 (ii) deliver the written prescription personally or electronically to the pharmacist, who
167 will dispense the medications to either the patient, the attending physician, or an expressly
168 identified agent of the patient; and

169 (m) inform the Department of Health of the prescription written for the patient,
170 including the name of any drugs prescribed.

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

173 Section 6. Section **75-2c-106** is enacted to read:

174 **75-2c-106. Consulting physician confirmation.**

175 Before a patient is qualified under this chapter, a consulting physician shall examine the
176 patient and the patient's relevant medical records and confirm, in writing, the attending
177 physician's diagnosis that the patient is suffering from a terminal disease and verify that the
178 patient is capable, is acting voluntarily, and has made an informed decision.

179 Section 7. Section **75-2c-107** is enacted to read:

180 **75-2c-107. Counseling referral.**

181 If in the opinion of the attending physician or the consulting physician a patient may be
182 suffering from a psychiatric or psychological disorder or depression causing impaired

183 judgment, either physician shall refer the patient for counseling. No medication to end a
184 patient's life in a humane and dignified manner shall be prescribed until the person performing
185 the counseling determines that the patient is capable, is acting voluntarily, and has made an
186 informed decision.

187 Section 8. Section **75-2c-108** is enacted to read:

188 **75-2c-108. Informed decision.**

189 A patient shall not receive a prescription for medication to end the patient's life in a
190 humane and dignified manner unless the patient has made an informed decision as defined in
191 Section **75-2c-102**. Immediately before writing a prescription for medication under this
192 chapter, the attending physician shall verify that the patient is making an informed decision.

193 Section 9. Section **75-2c-109** is enacted to read:

194 **75-2c-109. Family notification.**

195 The attending physician shall recommend that the patient notify the next of kin of the
196 patient's request for medication pursuant to this chapter. A patient who declines or is unable to
197 notify next of kin shall not have the patient's request denied for that reason.

198 Section 10. Section **75-2c-110** is enacted to read:

199 **75-2c-110. Written and oral requests -- Opportunity to rescind.**

200 (1) In order to receive a prescription for medication to end a patient's life in a humane
201 and dignified manner, a qualified patient shall:

202 (a) make an oral request for medication;

203 (b) make a written request for medication; and

204 (c) repeat the oral request to the patient's attending physician no less than 15 days after
205 making the initial oral request.

206 (2) At the time the qualified patient makes the second oral request, the attending
207 physician shall offer the patient an opportunity to rescind the request.

208 (3) A patient may rescind the patient's request at any time and in any manner without
209 regard to the patient's mental state. A prescription for medication under this chapter shall not
210 be written without the attending physician offering the qualified patient an opportunity to
211 rescind the request.

212 Section 11. Section **75-2c-111** is enacted to read:

213 **75-2c-111. Waiting periods.**

214 A physician shall not write a prescription under this chapter until:

215 (1) no less than 15 days have elapsed between the patient's initial oral request and the
216 writing of a prescription; and

217 (2) no less than 48 hours have elapsed between the patient's written request and the
218 writing of a prescription.

219 Section 12. Section **75-2c-112** is enacted to read:

220 **75-2c-112. Medical record documentation requirements.**

221 The following shall be documented or filed in the patient's medical record:

222 (1) all oral requests by the patient for medication to end the patient's life in a humane
223 and dignified manner;

224 (2) all written requests by the patient for medication to end the patient's life in a
225 humane and dignified manner;

226 (3) the attending physician's diagnosis, prognosis, and determination that the patient is
227 capable, is acting voluntarily, and has made an informed decision;

228 (4) the consulting physician's diagnosis, prognosis, and verification that the patient is
229 capable, is acting voluntarily, and has made an informed decision;

230 (5) a report of the outcome and determinations made during counseling, if performed;

231 (6) the attending physician's offer to the patient to rescind the patient's request at the
232 time of the patient's second oral request; and

233 (7) a note by the attending physician indicating that all requirements under this chapter
234 have been met and indicating the steps taken to carry out the request, including a notation of
235 the medication prescribed.

236 Section 13. Section **75-2c-113** is enacted to read:

237 **75-2c-113. Residency requirement.**

238 (1) An attending physician may rely on a patient's attestation of meeting the
239 requirements for being a resident of Utah if the attestation complies with Subsections (2) and
240 (3).

241 (2) A patient shall attest to the attending physician that the patient is a resident of the
242 state, and that the patient:

243 (a) possesses a Utah driver license or Utah identification card;

244 (b) is registered to vote in Utah;

245 (c) owns or leases property in Utah;

246 (d) filed a Utah tax return for the most recent tax year; or

247 (e) has some other indication of residency that is recognized by state law.

248 (3) A patient who relies on Subsection (2)(e) to attest to residency in Utah shall
249 specifically describe the factors that the patient is relying upon in the attestation to the
250 attending physician.

251 Section 14. Section **75-2c-114** is enacted to read:

252 **75-2c-114. Reporting requirements.**

253 (1) A health care provider who dispenses a medication pursuant to this chapter shall
254 file a copy of the dispensing record with the Department of Health in the manner required by
255 the department.

256 (2) (a) The Department of Health may review a sample of the medical records of
257 patients who receive a medication under this chapter.

258 (b) Except as otherwise required by law, the information collected under Subsections
259 (1) and (2)(a) shall not be a public record and may not be made available for inspection by the
260 public.

261 (3) The Department of Health shall:

262 (a) generate and make available to the public an annual statistical report of
263 de-identified information collected under this section;

264 (b) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
265 facilitate the collection of information regarding compliance with this chapter; and

266 (c) provide an annual report to the Legislature's Health and Human Services Interim
267 Committee regarding the statistical report in Subsection (3)(a).

268 Section 15. Section **75-2c-115** is enacted to read:

269 **75-2c-115. Effect on construction of wills, contracts, and statutes.**

270 (1) No provision in a contract, will, or other agreement, whether written or oral, to the
271 extent the provision would affect whether an individual may make or rescind a request for
272 medication to end the individual's life in a humane and dignified manner, shall be valid.

273 (2) No obligation owing under any currently existing contract shall be conditioned or
274 affected by the making or rescinding of a request, by an individual, for medication to end the
275 individual's life in a humane and dignified manner.

276 Section 16. Section **75-2c-116** is enacted to read:

277 **75-2c-116. Insurance or annuity policies.**

278 A qualified patient's act of ingesting medication to end the patient's life in a humane
279 and dignified manner does not affect a life, health, or accident insurance or annuity policy.

280 Section 17. Section **75-2c-117** is enacted to read:

281 **75-2c-117. Construction of chapter.**

282 Nothing in this chapter shall be construed to authorize a physician or any other person
283 to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in
284 accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide,
285 mercy killing, or homicide, under the law.

286 Section 18. Section **75-2c-118** is enacted to read:

287 **75-2c-118. Immunities -- Basis for prohibiting health care provider from**
288 **participation -- Notification -- Permissible sanctions.**

289 (1) Except as provided in Section [75-2c-119](#), the provisions of this section apply to this
290 chapter.

291 (2) A person shall not be subject to civil or criminal liability or professional
292 disciplinary action for participating in good faith compliance with this chapter, including being
293 present when a qualified patient takes the prescribed medication to end the qualified patient's
294 life in a humane and dignified manner.

295 (3) A professional organization or association, or health care provider, may not subject
296 a person to censure, discipline, suspension, loss of license, loss of privileges, loss of
297 membership, or other penalty for participating or refusing to participate in good faith
298 compliance with this chapter.

299 (4) A request by a patient for, or provision by an attending physician of, medication in
300 good faith compliance with the provisions of this chapter shall not constitute neglect for any
301 purpose of law or provide the sole basis for the appointment of a guardian or conservator.

302 (5) A health care provider shall not be under any duty, whether by contract, by statute,
303 or by any other legal requirement, to participate in the provision to a qualified patient of
304 medication to end the patient's life in a humane and dignified manner. If a health care provider
305 is unable or unwilling to carry out a patient's request under this chapter, and the patient
306 transfers the patient's care to a new health care provider, the prior health care provider shall

307 transfer, upon request, a copy of the patient's relevant medical records to the new health care
308 provider.

309 (6) (a) Notwithstanding any other provision of law, a health care provider may prohibit
310 another health care provider from participating in this chapter on the premises of the
311 prohibiting health care provider if the prohibiting health care provider notifies the health care
312 provider of the prohibiting provider's policy regarding participating in this chapter. Nothing in
313 this Subsection (6)(a) prevents a health care provider from providing health care services to a
314 patient that do not constitute participation in this chapter.

315 (b) Notwithstanding the provisions of Subsections (2) through (5), a health care
316 provider may subject another health care provider to the sanctions stated in this Subsection
317 (6)(b) if the sanctioning health care provider has notified the sanctioned provider before
318 participation in this chapter that the sanctioning health care provider prohibits participation in
319 this chapter. The sanctions may include:

320 (i) loss of privileges, loss of membership, or other sanction provided pursuant to the
321 medical staff bylaws, policies, and procedures of the sanctioning health care provider, if the
322 sanctioned provider is a member of the sanctioning provider's medical staff and participates in
323 this chapter while on the health care facility premises of the sanctioning health care provider,
324 but not including the private medical office of a physician or other provider;

325 (ii) termination of lease or other property contract or other nonmonetary remedies
326 provided by lease contract, not including loss or restriction of medical staff privileges or
327 exclusion from a provider panel, if the sanctioned provider participates in this chapter while on
328 the premises of the sanctioning health care provider or on property that is owned by or under
329 the direct control of the sanctioning health care provider; and

330 (iii) termination of contract or other nonmonetary remedies provided by contract if the
331 sanctioned provider participates in this chapter while acting in the course and scope of the
332 sanctioned provider's capacity as an employee or independent contractor of the sanctioning
333 health care provider.

334 (c) Nothing in Subsections (6)(a) and (b) shall be construed to prevent:

335 (i) a health care provider from participating in this chapter while acting outside the
336 course and scope of the provider's capacity as an employee or independent contractor of the
337 sanctioning health care provider; or

338 (ii) a patient from contracting with the patient's attending physician and consulting
339 physician to act outside the course and scope of the provider's capacity as an employee or
340 independent contractor of the sanctioning health care provider.

341 (7) A health care provider that imposes sanctions pursuant to Subsection (6)(b) shall
342 follow all due process and other procedures the sanctioning health care provider may have that
343 are related to the imposition of sanctions on another health care provider.

344 (8) For purposes of this section:

345 (a) "Notify" means a separate statement in writing to the health care provider
346 specifically informing the health care provider before the provider's participation in this chapter
347 of the sanctioning health care provider's policy about participation in activities covered by this
348 chapter.

349 (b) "Participate in this chapter":

350 (i) means to perform the duties of an attending physician pursuant to Section
351 75-2c-105, the consulting physician function pursuant to Section 75-2c-106, or the counseling
352 function pursuant to Section 75-2c-107; and

353 (ii) does not include:

354 (A) making an initial determination that a patient has a terminal disease and informing
355 the patient of the medical prognosis;

356 (B) providing information to a patient, upon the request of the patient, about the End of
357 Life Options Act;

358 (C) providing a patient, upon the request of the patient, with a referral to another
359 physician; or

360 (D) a patient contracting with the patient's attending physician and consulting physician
361 to act outside of the course and scope of the provider's capacity as an employee or independent
362 contractor of the sanctioning health care provider.

363 (9) Suspension or termination of staff membership or privileges under Subsection (6) is
364 not reportable under Title 58, Occupations and Professions. Action taken pursuant to Section
365 75-2c-118 shall not be the sole basis for a report of unprofessional conduct to a licensing board
366 under Title 58, Occupations and Professions.

367 (10) This chapter shall not be construed to allow a lower standard of care for patients
368 in the community where the patient is treated or a similar community.

369 Section 19. Section 75-2c-119 is enacted to read:

370 **75-2c-119. Liabilities.**

371 (1) A person who, without authorization of the patient, willfully alters or forges a
372 request for medication or conceals or destroys a rescission of that request with the intent or
373 effect of causing the patient's death shall be guilty of a first degree felony.

374 (2) A person who coerces or exerts undue influence on a patient to request medication
375 for the purpose of ending the patient's life, or to destroy a rescission of such a request, shall be
376 guilty of a first degree felony.

377 (3) Nothing in this chapter limits further liability for civil damages resulting from other
378 negligent conduct or intentional misconduct by any person.

379 (4) The penalties in this chapter do not preclude criminal penalties applicable under
380 other law for conduct that is inconsistent with the provisions of this chapter.

381 Section 20. Section 75-2c-120 is enacted to read:

382 **75-2c-120. Claims by governmental entity for costs incurred.**

383 A governmental entity that incurs costs resulting from an individual terminating the
384 individual's life pursuant to the provisions of this chapter in a public place shall have a claim
385 against the estate of the individual to recover the costs and reasonable attorney fees related to
386 enforcing the claim.

387 Section 21. Section 75-2c-121 is enacted to read:

388 **75-2c-121. Severability.**

389 Any section of this chapter that is held invalid as to any person or circumstance shall
390 not affect the application of any other section of this chapter that can be given full effect
391 without the invalid section or application.

392 Section 22. Section 75-2c-122 is enacted to read:

393 **75-2c-122. Form of the request.**

394 A request for a medication as authorized by this chapter shall be in substantially the
395 following form:

396 REQUEST FOR MEDICATION
397 TO END MY LIFE IN A HUMANE
398 AND DIGNIFIED MANNER

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

400 I am suffering from _____, which my attending physician has determined is a
401 terminal disease and which has been medically confirmed by a consulting physician.

402 I have been fully informed of my diagnosis, prognosis, the nature of medication to be
403 prescribed, and potential associated risks, the expected result, and the feasible alternatives,
404 including palliative care, comfort care, hospice care, disability resources available in the
405 community, and pain control.

406 I request that my attending physician prescribe medication that will end my life in a
407 humane and dignified manner.

408 INITIAL ONE:

409 _____ I have informed my family of my decision and taken their opinions into
410 consideration.

411 _____ I have decided not to inform my family of my decision.

412 _____ I have no family to inform of my decision.

413 I understand that I have the right to rescind this request at any time.

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

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

419 Signed: _____

420 Dated: _____

421 DECLARATION OF WITNESSES

422 We declare that the individual signing this request:

423 (a) is personally known to us or has provided proof of identity;

424 (b) signed this request in our presence;

425 (c) appears to be of sound mind and not under duress, fraud, or undue influence; and

426 (d) is not a patient for whom either of us is the attending physician.

427 _____ Witness 1/Date

428 _____ Witness 2/Date

429 NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the
430 person signing this request, shall not be entitled to any portion of the individual's estate upon

431 death, and shall not own, operate, or be employed at a health care facility where the individual
432 is a patient or resident. If the patient is an inpatient at a health care facility, one of the
433 witnesses shall be an individual designated by the facility.

434 Section 23. **Effective date.**

435 This bill takes effect on July 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel