END OF LIFE OPTIONS ACT

2018 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;
- establishes a procedure for an individual with a terminal disease to obtain a prescription to end the individual's life;
- designates when an individual may make a request for aid-in-dying 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 the 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 utilize medical aid-in-dying on an individual's wills, contracts, and insurance or annuity contracts;
provides limited immunities and procedures for permissible sanctions;
prohibits euthanasia or mercy killing;
establishes criminal penalties for certain actions; and
provides a uniform form for a patient's written request.

Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides a special effective date.

Utah Code Sections Affected:
ENACTS:

75-2c-101, Utah Code Annotated 1953
75-2c-102, Utah Code Annotated 1953
75-2c-103, Utah Code Annotated 1953
75-2c-104, Utah Code Annotated 1953
75-2c-105, Utah Code Annotated 1953
75-2c-106, Utah Code Annotated 1953
75-2c-107, Utah Code Annotated 1953
75-2c-108, Utah Code Annotated 1953
75-2c-109, Utah Code Annotated 1953
75-2c-110, Utah Code Annotated 1953
75-2c-111, Utah Code Annotated 1953
75-2c-112, Utah Code Annotated 1953
75-2c-113, Utah Code Annotated 1953
75-2c-114, Utah Code Annotated 1953
75-2c-115, Utah Code Annotated 1953
75-2c-116, Utah Code Annotated 1953
75-2c-117, Utah Code Annotated 1953
75-2c-118, Utah Code Annotated 1953
75-2c-119, Utah Code Annotated 1953
75-2c-120, Utah Code Annotated 1953
75-2c-121, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

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

CHAPTER 2c. END OF LIFE OPTIONS ACT

75-2c-101. Title.

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

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

75-2c-102. Definitions.

As used in this chapter:

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

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

(3) "Capable" means that in the opinion of the patient's attending physician, consulting physician, and licensed mental health professional, if any, the patient has the ability to make and communicate health care decisions to health care providers, including communication through individuals familiar with the patient's manner of communicating if those individuals are available.

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

(5) "Counseling" means one or more consultations as necessary between a licensed mental health professional and a patient for the purpose of determining whether the patient is capable.

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

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

(a) the patient's medical diagnosis;
(b) the patient's prognosis;
(c) the potential risks associated with taking the medication to be prescribed;
(d) the probable result of taking the medication to be prescribed; and
(e) the feasible alternatives, including concurrent or additional treatment alternatives, palliative care, comfort care, hospice care, disability resources available in the community, and pain control.

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

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

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

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

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

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

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

75-2c-103. Written and oral requests -- Opportunity to rescind.

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

(a) make an oral request for medication;
(b) make a written request for medication; and
(c) repeat the oral request to the patient's attending physician no less than 15 days after making the initial oral request.
(2) At the time the patient makes the second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

(3) A patient may rescind the patient's request at any time and in any manner without regard to the patient's mental state. An individual may not write a prescription for medication under this chapter without the attending physician offering the patient an opportunity to rescind the request.

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

75-2c-104. Initiation of written request for medication.

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

(a) is an adult;

(b) is capable;

(c) is a resident of Utah;

(d) is suffering from a terminal disease; and

(e) has voluntarily expressed a wish to receive aid-in-dying medication.

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

(3) A request for a medical aid-in-dying prescription shall be made by the terminally ill individual and may not be made by any other means, including the terminally ill individual's qualified power of attorney, durable medical power of attorney, or advanced health care directive.

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

75-2c-105. Form of the written request.

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

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

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

(b) an individual 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

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

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

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

75-2c-106. Attending physician responsibilities.

(1) The attending physician shall:

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

(i) has a terminal disease;

(ii) is capable; and

(iii) has made the request voluntarily;

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

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

(i) the patient's medical diagnosis;

(ii) the patient's prognosis;

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

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

(v) the feasible alternatives, including concurrent or additional treatments, palliative care, comfort care, hospice care, disability resources available in the community, and pain control;

(d) refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is capable and making an informed, voluntary decision;

(e) refer the patient for counseling if appropriate pursuant to Section 75-2c-108;

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

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

(h) inform the patient that the patient has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day waiting period required by Section 75-2c-111;
(i) verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

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

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

(l) with the patient's consent:

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

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

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

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

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

75-2c-107. Consulting physician confirmation.

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

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

75-2c-108. Counseling referral.

If in the opinion of the attending physician or the consulting physician a patient may be suffering from impaired judgment, either physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the counselor determines that the patient is capable, is acting voluntarily, and has made an informed decision.

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

75-2c-109. Informed decision.

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

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

**75-2c-110. Family notification.**

The attending physician shall recommend that the patient notify the next of kin of the patient's request for medication under this chapter. The attending physician may not deny a patient's request on the basis of a patient declining or being unable to notify the patient's next of kin.

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

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

A physician may not write a prescription under this chapter until:

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

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

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

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

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

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

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

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

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

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

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

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

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

75-2c-113. Residency requirement.

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

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

(a) possesses a Utah driver license or Utah identification card;
(b) is registered to vote in Utah;
(c) owns or leases property in Utah;
(d) filed a Utah tax return for the most recent tax year, and did not file a Non and
Part-year Resident Schedule; or
(e) has some other indication of residency that is recognized by state law.

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

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

75-2c-114. Reporting requirements.

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

(2) (a) The Department of Health may review a sample of the medical records of
patients who receive medication under this chapter.
(b) Except as otherwise required by law, the information collected under Subsections
(1) and (2)(a) are not public records and are not available for inspection by the public.

(3) The Department of Health shall:
(a) generate and make available to the public an annual statistical report of
de-identified information collected under this section;
(b) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
facilitate the collection of information regarding compliance with this chapter; and

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

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

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

(1) No provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether an individual may make or rescind a request for aid-in-dying medication or self-administer aid-in-dying medication, is valid.

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

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

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

(1) A qualified patient's act of ingesting medication to end the patient's life in a humane and dignified manner, in accordance with the provisions of this chapter, does not affect a life, health, or accident insurance or annuity policy.

(2) An insurer may not deny or alter health care benefits otherwise available to an individual with a terminal illness based on the availability of aid-in-dying medication or otherwise attempt to coerce an individual to make a request for aid-in-dying medication.

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

75-2c-117. Construction of chapter.

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

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

75-2c-118. Immunity for action in good faith -- Prohibition against reprisal -- Acceptable prohibitions.

(1) A person is not subject to civil or criminal liability or professional disciplinary action for actions resulting from good faith compliance with this chapter, including being present when a qualified patient takes the prescribed medication to end the qualified patient's
life in a humane and dignified manner.

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

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

(4) A health care facility may not prohibit a health care provider from providing medical aid-in-dying care, except that the health care facility may prohibit the patient from self-administration of the aid-in-dying medication on the premises of the facility.

(5) A health care facility may not prohibit the lawful self-administration of aid-in-dying medication on the premises of the facility unless the health care facility provides written notification of the prohibition to the attending physician and any qualified patient.

(6) If a health care facility prohibits the self-administration of aid-in-dying medication under Subsection (5), the facility shall refer a qualified patient to a health care facility that does not have a prohibition against the self-administration of aid-in-dying medication on the premises.

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

75-2c-119. Liabilities.

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

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

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

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

Section 20. Section 75-2c-120 is enacted to read:
75-2c-120. Claims by governmental entity for costs incurred.

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

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

75-2c-121. No duty to provide medical aid-in-dying care.

(1) A health care provider may choose whether to provide medical aid-in-dying care in accordance with this chapter.

(2) If a health care provider is unwilling to provide medical aid-in-dying care to a requesting, capable patient, the health care provider shall make reasonable efforts to transfer the care of the patient to a health care provider who willingly provides medical aid-in-dying care.

(3) When a health care provider transfers the care of a patient under Subsection (2), the health care provider shall coordinate the transfer of the patient's medical records to the new health care provider.

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

75-2c-122. Death certificate.

(1) Unless otherwise prohibited, the attending physician or the hospice medical director shall sign the death certificate of a qualified individual who obtained and self-administered aid-in-dying medication.

(2) When a death has occurred in accordance with this chapter:

(a) the cause of death shall be listed on the death certificate as the underlying terminal illness for which the individual qualified to obtain the aid-in-dying medication; and

(b) the manner of death may not be listed as suicide or homicide.

(3) Notwithstanding Section 26-4-7, a death that results in accordance with this chapter may not form the sole basis for a postmortem investigation.

Section 23. Section 75-2c-123 is enacted to read:

75-2c-123. Safe disposal of unused aid-in-dying medication.

A person who has custody or control of aid-in-dying medication that is dispensed under this chapter and that is unused after the qualified patient who obtained the aid-in-dying
medication has died shall dispose of the aid-in-dying medication by any lawful means, including taking the unused aid-in-dying medication to:

(1) the attending physician who wrote the prescription for the aid-in-dying medication, who shall dispose of the medication by lawful means;

(2) a federally approved medication take-back program; or

(3) a local take-back program supported by a law enforcement agency, pharmacy, or health care provider.

Section 24. Section 75-2c-124 is enacted to read:

75-2c-124. Severability.

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

Section 25. Section 75-2c-125 is enacted to read:

75-2c-125. Form of the request.

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

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

I, ______________________, am an adult of sound mind.

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

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

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

INITIAL ONE:

_______ I have informed my family of my decision and taken their opinions into consideration.
I have decided not to inform my family of my decision.

I have no family to inform of my decision.

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

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

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

Signed: ___________________

Dated: __________________

DECLARATION OF WITNESSES

We declare that the individual signing this request:

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

(b) signed this request in our presence;

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

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

Witness 1/Date

Witness 2/Date

NOTE: One witness shall be an individual who is not a relative (by blood, marriage, or adoption) of the individual signing this request, is not entitled to any portion of the requestor's estate upon death, and does not own, operate, and is not employed at a health care facility where the requestor is a patient or resident.

Section 26. **Effective date.**

This bill takes effect on July 1, 2018.

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Legislative Review Note

Office of Legislative Research and General Counsel