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## **OLR Bill Analysis**

### **sSB 88**

#### ***AN ACT CONCERNING AID IN DYING FOR TERMINALLY ILL PATIENTS.***

#### **SUMMARY**

This bill allows terminally ill adults, under specified conditions, to obtain and use prescriptions to self-administer lethal medications.

To be eligible, the patient must (1) be a competent adult (age 18 or older) and Connecticut resident; (2) have a terminal illness, as determined by his or her attending physician; (3) have voluntarily expressed a wish to receive aid in dying; and (4) meet the bill's other requirements. To request aid in dying, the bill requires that a patient submit two written requests (at least 15 days apart) to his or her attending physician.

The attending physician must ensure that the patient is making an informed decision by discussing certain issues with the patient, including the diagnosis and prognosis and feasible alternative treatment options. Also, a consulting physician must examine the patient and confirm (1) the attending physician's diagnosis and (2) that the patient is competent, acting voluntarily, and making an informed decision. The bill broadly prohibits attending and consulting physicians from financially benefitting from a patient's estate.

Under the bill, a "terminal illness" is the final stage of an incurable and irreversible condition that the attending physician anticipates, within reasonable medical judgment, will produce the patient's death within six months if the condition's progression follows its typical course.

Among other provisions, the bill:

1. requires two witnesses for a written request for aid in dying to be

- valid and limits who may serve as a witness;
2. allows only patients themselves, and not anyone acting on their behalf (e.g., agents under a living will or conservators) to request aid in dying;
  3. requires the attending or consulting physician to refer the patient for counseling if they determine that the patient may be suffering from a psychological or psychiatric condition causing impaired judgment;
  4. establishes several procedural and recordkeeping requirements for attending physicians when they receive an aid in dying request and when they determine the patient qualifies;
  5. allows patients to rescind an aid in dying request at any time and in any manner;
  6. prohibits health care facilities from requiring their providers to participate in providing aid in dying medication; and
  7. requires attending physicians to report on aid in dying prescriptions and related deaths to the Department of Public Health (DPH), and the department to annually report that information to the Public Health Committee.

In authorizing aid in dying, the bill generally limits civil, criminal, and professional liability for individuals involved, provided the bill's requirements are met. It makes corresponding changes invalidating provisions of wills, annuities, life insurance, or other contracts impacted by a patient requesting aid in dying or rescinding such a request.

EFFECTIVE DATE: October 1, 2022, except upon passage for the provisions requiring DPH to create attending physician checklist and follow-up forms (§ 18).

#### **§§ 2-4 — REQUESTING AID IN DYING**

Under the bill, “aid in dying” is the medical practice of a physician prescribing medication to a terminally ill qualified patient, which the

patient may self-administer to bring about his or her death. “Self-administer” is a qualified patient’s voluntary, conscious, and affirmative act of ingesting medication.

***Eligibility (§ 2)***

To request aid in dying, the bill requires that a patient voluntarily express his or her wish to receive aid in dying and be:

1. an adult (i.e., age 18 or older);
2. a Connecticut resident;
3. competent (see below); and
4. determined by his or her attending physician to have a terminal illness.

A “qualified patient” is one who meets these criteria and has satisfied the bill’s other requirements.

An “attending physician” is a state-licensed physician with primary responsibility for the patient’s medical care and treatment of the patient’s terminal illness, and whose practice is not primarily comprised of evaluating or qualifying patients for aid in dying or prescribing or dispensing aid in dying medication.

Under the bill, a patient is “competent” if, in the opinion of his or her attending or consulting physician (see below), psychiatrist, psychologist, or licensed clinical social worker (LCSW), the patient has the capacity to understand and acknowledge the nature and consequences of health care decisions, including the benefits and disadvantages of treatment, to make an informed decision (see below) and to communicate that decision to a Connecticut licensed health care provider. This includes communicating through a person familiar with the patient’s manner of communicating.

The bill prohibits anyone from acting on a patient’s behalf for purposes of the bill, including an agent under a living will, an attorney-in-fact under a durable power of attorney, a guardian, or a conservator.

***Request Process (§ 3)***

Before receiving aid in dying, a patient must submit two written requests in a form the bill establishes to his or her attending physician, at least 15 days apart.

Each written request must be signed and dated by the patient and witnessed by at least two people in the patient’s presence. Each witness must attest in writing, that to the best of the witness’s knowledge and belief, the patient (1) appears to be of sound mind and (2) is acting voluntarily and not being coerced to sign the request.

Each witness must also attest in writing, that to the best of the witness’s knowledge and belief, he or she is not (1) related to the patient by blood, marriage, or adoption; (2) entitled to any portion of the estate upon the patient’s death, by will or operation of law; (3) an owner, operator, or employee of a health care facility where the patient resides or is receiving treatment; or (4) the patient’s attending physician when the request was signed.

Under the bill, a patient’s act of requesting aid in dying, or a qualified patient’s self-administration of aid in dying medication, must not provide the sole basis for appointing a conservator or guardian for the patient.

***Form of Written Request (§ 4)***

The bill requires written requests for aid in dying to be substantially the same as the following form:

REQUEST FOR MEDICATION TO AID IN DYING

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

I am a resident of the State of Connecticut.

I am suffering from ..., which my attending physician has determined is an incurable and irreversible medical condition that will, within reasonable medical judgment, result in death within six months from the date on which this document is executed if the progression of

such condition follows its typical course. This diagnosis of a terminal illness has been medically confirmed by another physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be dispensed or prescribed to aid me in dying, the potential associated risks, the expected result, feasible alternatives to aid in dying and additional health care treatment options, including hospice care and palliative care and the availability of counseling with a psychologist, psychiatrist or licensed clinical social worker.

I request that my attending physician dispense or prescribe medication that I may self-administer for aid in dying. I authorize my attending physician to contact a pharmacist to fill the prescription for such medication, upon my request.

INITIAL ONE:

.... I have informed my family of my decision and taken family 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 if and when I take the medication to be dispensed or prescribed. I further understand that although most deaths occur within one hour, my death may take longer and my attending physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full responsibility for my decision to request aid in dying.

Signed: ....

Dated: ....

DECLARATION OF WITNESSES

By initialing and signing below on the date the person named above signs, I declare that:

Witness 1 .... Witness 2 ....

Initials .... Initials ....

.... 1. The person making and signing the request is personally known to me or has provided proof of identity;

.... 2. The person making and signing the request signed this request in my presence on the date of the person's signature;

.... 3. The person making the request appears to be of sound mind and not under duress, fraud or undue influence;

.... 4. I am not the attending physician for the person making the request;

.... 5. The person making the request is not my relative by blood, marriage or adoption;

.... 6. I am not entitled to any portion of the estate of the person making the request upon such person's death under any will or by operation of law; and

.... 7. I am not an owner, operator or employee of a health care facility where the person making the request is a resident or receiving medical treatment.

Printed Name of Witness 1 ....

Signature of Witness 1 .... Date ....

Printed Name of Witness 2 ....

Signature of Witness 2 .... Date ....

## **§ 5 — RESCISSION OF AID IN DYING REQUEST**

The bill allows qualified patients to rescind aid in dying requests at

any time and in any manner without regard to their mental state.

Under the bill, a qualified patient's attending physician must offer the patient an opportunity to rescind an aid in dying request when the patient makes his or her second written request. The bill prohibits attending physicians from dispensing or prescribing aid in dying medication without first offering the patient a second opportunity to rescind the request.

## **§§ 6-10 — PROCESS TO PRESCRIBE OR DISPENSE AID IN DYING MEDICATION**

### ***Steps to Verify Eligibility (§ 6)***

Under the bill, when an attending physician is presented with a patient's first written request for aid in dying, the physician must determine that the patient is a competent adult, has a terminal illness, and is voluntarily making the request. The physician cannot make this determination solely based on the patient's age, disability, or any specific illness.

The physician must also require the patient to demonstrate Connecticut residency by showing (1) a valid driver's license, (2) a valid voter registration card, or (3) any other valid government-issued document that the physician reasonably believes demonstrates state residency on the date the request is presented.

The physician must also ensure that the patient is making an informed decision by informing the patient about (1) his or her diagnosis and prognosis; (2) the potential risks and probable results of self-administering the medication; (3) feasible alternatives and treatment options, including hospice and palliative care; and (4) the availability of counseling with a psychologist, psychiatrist, or LCSW. The physician must fully inform the patient of these matters, and the patient's decision must be based on understanding and acknowledging the relevant facts.

### ***Consulting Physician (§§ 6 & 7)***

The bill also requires the attending physician to refer the patient to a

consulting physician qualified by specialty or experience to make a diagnosis and prognosis about the terminal illness. In order for the patient to be qualified for aid in dying, the consulting physician must:

1. examine the patient and the patient's relevant medical records;
2. confirm the diagnosis; and
3. verify that the patient is competent, has made the request voluntarily, and has made an informed decision.

The confirmation of the terminal diagnosis must be in writing.

***Counseling Referral (§§ 7 & 8)***

Under the bill, if either the attending or consulting physician believes that the patient's judgment may be impaired by a psychiatric or psychological condition (including depression), then that physician must refer the patient for counseling to determine whether he or she is competent to request aid in dying.

In that case, the bill prohibits the attending physician from providing the patient aid in dying until the counselor (a psychiatrist, psychologist, or LCSW) determines that the patient is not suffering from a judgment-impairing psychiatric or psychological condition.

***Steps After Second Request (§ 9)***

Under the bill, after both physicians determine that the patient is qualified to obtain aid in dying and the patient submits a second written request, the attending physician must:

1. recommend that the patient notify his or her next-of-kin of the aid in dying request, but also inform the patient that it is not required;
2. counsel the patient on the importance of (a) having someone else there when the patient self-administers the medication and (b) not taking it in public;
3. tell the patient that he or she may rescind the request at any time

and in any manner;

4. verify that the patient is making an informed decision, immediately before dispensing or prescribing the medication;
5. document specified information in the patient's medical record (see § 10 below); and
6. either dispense the medication directly to the patient, or upon the patient's request, deliver the prescription to a pharmacist so that the pharmacist may dispense it to the patient (see below).

If the physician is authorized to dispense the medication and dispenses it directly, he or she must also dispense ancillary medication intended to minimize the patient's discomfort.

Alternatively, if the patient provides written consent and requests it, the physician must (1) contact a pharmacist who chooses to participate in providing aid in dying medication and inform the pharmacist of the prescription and (2) personally deliver the written prescription to the pharmacist by mail, fax, or electronic transmission. The pharmacist then may dispense the medication directly to the patient, the attending physician, or the patient's expressly identified agent.

***Attending Physician Recordkeeping Requirements (§ 10)***

The bill requires a qualified patient's attending physician to ensure that the following items are documented or filed in the patient's medical record:

1. the basis for determining that the patient is an adult and a state resident;
2. the patient's written requests for aid in dying medication;
3. the physician's terminal diagnosis and the prognosis;
4. the physician's determination that the patient is competent, acting voluntarily, and has made an informed decision to request aid in dying;

5. the consulting physician's confirmation of the information in items 3 and 4;
6. a report of the outcome and determinations made during counseling for patients with potentially impaired judgment;
7. documentation of the attending physician's offer to the patient to rescind his or her aid in dying request when the physician dispensed or prescribed the medication; and
8. the physician's statement indicating (a) that all of the bill's foregoing requirements have been met and (b) the steps that were taken to carry out the patient's request for aid in dying, including the medication dispensed or prescribed.

#### **§ 11 — MEDICATION RETURN**

Under the bill, if anyone other than a qualified patient possesses dispensed or prescribed aid in dying medication that the patient did not use, that person must (1) destroy it a manner prescribed on the Department of Consumer Protection's website or (2) dispose of it at a pharmacy or municipal police department that accepts and disposes of unused medications under existing law.

#### **§ 12 — EFFECT ON INSURANCE CONTRACTS, WILLS, AND OTHER LAWS**

The bill declares as invalid any contract provisions, including contracts related to insurance policies and annuities, or will or codicil provisions that are conditioned upon or affected by a patient making or rescinding an aid in dying request.

Starting October 1, 2022, the bill prohibits the sale, procurement, or issuance of life, health, or accident insurance or annuity policies, or policy rates, that are conditioned upon or affected by the making or rescinding of an aid in dying request.

The bill provides that a qualified patient's act of requesting aid in dying or self-administering the medication does not constitute suicide for any purpose, including criminal prosecution for 2<sup>nd</sup> degree

manslaughter.

### **§ 13 — VOLUNTARY NATURE OF PARTICIPATION BY PATIENTS AND PROVIDERS**

The bill provides that participation in any action under the bill is voluntary, whether by a patient, health care provider, or anyone else. In addition, health care providers must individually and affirmatively determine whether to “participate in the provision of medication” to qualified patients for aid in dying.

The bill prohibits health care facilities (i.e., hospitals, residential care homes, nursing homes, or rest homes) from requiring providers to participate. As further explained below, health care facilities may adopt policies prohibiting associated providers from participating and, under certain circumstances, they may impose sanctions on providers who fail to comply with that policy. However, the bill allows these providers to participate as long as they do so when acting outside the scope of their employment contract.

For these purposes, to “participate in the provision of medication” means to perform the duties of an attending or consulting physician, psychiatrist, psychologist, or pharmacist under the bill. It does not include (1) making an initial diagnosis of a patient’s terminal illness, (2) informing a patient of his or her medical diagnosis or prognosis, (3) informing a patient about the bill upon the patient’s request, or (4) referring a patient to another health care provider for aid in dying.

Under the bill, if a health care provider or facility chooses not to participate in providing medication for aid in dying, the provider or facility must, upon a qualified patient’s request, transfer all relevant medical records to another provider or facility as the patient directs.

#### ***Health Care Facility Policies***

The bill allows health care facilities to adopt written policies prohibiting associated providers from participating in providing medication for aid in dying, as long as the facility gives them written notice of the policy and any sanctions for violating it.

The bill prohibits health care facilities, except as provided in such a policy, from subjecting employees or contracted service providers to disciplinary action, loss of privileges, loss of membership, or any other penalty for participating, or refusing to participate, in the provision of medication or related activities in good faith compliance with the bill.

Even if a facility adopts such a policy, the facility's providers may:

1. diagnose patients with a terminal illness;
2. inform patients of their medical prognoses;
3. provide patients with information about the bill upon request;
4. refer patients to other health care facilities or providers;
5. transfer medical records to other health care facilities or providers, as requested by the patient; or
6. participate in providing aid in dying medication when the provider is acting outside the scope of his or her employment or contract with the facility that prohibits the participation.

#### **§§ 14 & 15 — UNAUTHORIZED ACTIONS, LIABILITY, AND RELATED ISSUES**

The bill specifies that it does not authorize a:

1. physician or anyone else to end someone else's life by lethal injection, mercy killing, assisting a suicide, or any other active euthanasia; or
2. health care provider or anyone else, including a qualified patient, to end the patient's life by intravenous or other parenteral injection or infusion, mercy killing, homicide, murder, manslaughter, euthanasia, or any other criminal act.

The bill specifies that any actions taken under its aid in dying procedures do not constitute suicide, assisted suicide, euthanasia, mercy killing, homicide, murder, manslaughter, elder abuse or neglect, or any other civil or criminal violation under law. It further specifies that these

actions do not constitute causing or assisting suicide under existing laws that make it (1) murder to intentionally cause someone to commit suicide by force, duress, or deception (CGS § 53a-54a) and (2) 2<sup>nd</sup> degree manslaughter to intentionally cause or aid someone to commit suicide by other means (CGS § 53a-56).

The bill prohibits anyone from being subject to civil or criminal liability or professional disciplinary action (including license revocation) for (1) participating in the provision of medication or related activities in good faith compliance with the bill or (2) being present when a qualified patient self-administers aid in dying medication.

Under the bill, an attending physician's dispensing or prescribing aid in dying medication, a pharmacist's dispensing of this medication, or a patient's aid in dying request, in good faith compliance with the bill does not (1) constitute neglect under law or (2) provide the sole basis for appointing a guardian or conservator for the patient.

However, the bill does not limit civil liability for damages resulting from negligence or intentional misconduct.

#### **§ 16 — PROTECTION AND ADVOCACY SYSTEM JURISDICTION**

The bill specifies that it does not limit the jurisdiction or authority of the nonprofit entity the governor designated to serve as the state's protection and advocacy system for individuals with disabilities (i.e., Disability Rights Connecticut).

#### **§ 17 — LIMITATIONS ON PHYSICIANS' INHERITANCE**

The bill prohibits anyone who serves as an attending or consulting physician under the bill from inheriting from or receiving any part of the patient's estate. This includes (1) receiving part of the estate under the intestate succession laws, as a devisee or legatee, or otherwise under the patient's will, or (2) receiving any property as the patient's beneficiary or survivor, after the patient has self-administered aid in dying medication.

#### **§§ 18 & 19 — ATTENDING PHYSICIAN CHECKLIST AND FOLLOW-UP FORMS; REPORTING**

The bill requires attending physicians, within 30 days after prescribing aid in dying medication to a qualified patient, to submit a checklist form to DPH. These physicians must also submit a follow-up form to DPH within 60 days after they are notified that a qualified patient died from self-administration of this medication. By October 1, 2022, DPH must (1) create these forms to facilitate collecting the required information and (2) post the forms on its website.

Both forms must include the qualified patient's name and date of birth. The first form must also include (1) the qualified patient's diagnosis and prognosis and (2) a statement by the attending physician indicating that all of the bill's applicable requirements have been met and that the physician has prescribed medication pursuant to the bill. The follow-up form must include (1) the date of the qualified patient's death and (2) whether the patient was provided hospice care at the time of death.

Under the bill, starting by January 1, 2023, DPH must (1) annually review the submitted forms to ensure compliance with the bill's reporting requirements and (2) report to the Public Health Committee. The department's annual reports to the committee must include the number of (1) aid in dying prescriptions written for qualified patients and (2) such patients who died following self-administration of this medication. The reports must not contain identifying information about qualified patients or health care providers.

The bill excludes any data DPH collects under these provisions from disclosure under the Freedom of Information Act.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 22    Nay 9    (03/08/2022)