

LEGISLATURE OF NEBRASKA
FIRST LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 1056

A BILL

1 FOR AN ACT relating to public health and welfare; to adopt the Patient Choice at End of
2 Life Act; to provide penalties and to provide severability.

3 Section 1. Sections 1 to 20 of this act shall be known and may be cited as the
4 Patient Choice at End of Life Act.

5 Sec. 2. For purposes of the Patient Choice at End of Life Act:

6 (1) Adult means an individual eighteen years of age or older;

7 (2) Aid-in-dying medication means a medication determined and prescribed by a
8 physician for a qualified individual, which the qualified individual may choose to self-
9 administer to bring about his or her death;

10 (3) Attending physician means the physician who has primary responsibility for
11 the care of an individual and treatment of his or her terminal illness;

12 (4) Capacity to make medical decisions means the ability to understand the nature
13 and consequences of a health care decision, the ability to understand its significant
14 benefits, risks, and alternatives, and the ability to make and communicate an informed
15 decision to health care providers, including communication through a person familiar
16 with the individual's manner of communicating, if that person is available;

17 (5) Consulting physician means a physician who is independent from the
18 attending physician and who is qualified by specialty or experience to make a
19 professional diagnosis and prognosis regarding an individual's illness;

20 (6) Health care facility means any facility required to be licensed under the Health

21 Care Facility Licensure Act;

22 (7) Health care provider or provider means any person licensed or certified by the
23 State of Nebraska to deliver health care under the Uniform Credentialing Act, including
24 any professional corporation or other professional entity comprised of such health care
25 providers and any health care facility;

26 (8) Informed decision means a decision by an individual with a terminal illness to
27 request and obtain a prescription for medication that he or she may self-administer to end
28 his or her life, that is based on an understanding and acknowledgment of the relevant
29 facts, and that is made after being fully informed by his or her attending physician of:

30 (a) The individual's medical diagnosis and prognosis;

31 (b) The potential risks associated with self-administering the medication to be
32 prescribed;

33 (c) The probable result of self-administering the medication;

34 (d) The possibility that he or she may choose not to obtain the medication, or may
35 obtain the medication but may decide not to self-administer it; and

36 (e) The feasible alternatives or additional treatment opportunities, including, but
37 not limited to, comfort care, hospice care, palliative care, and pain control;

38 (9) Mental health specialist means a psychologist or psychiatrist licensed to
39 practice in this state as provided in the Uniform Credentialing Act;

40 (10) Mental health specialist assessment means one or more consultations
41 between an individual and a mental health specialist for the purpose of determining
42 whether the individual has the capacity to make medical decisions and is not suffering
43 from a psychiatric or psychological disorder or depression causing impaired decision
44 making;

45 (11) Physician means a person licensed to practice medicine or osteopathy in this
46 state as provided in the Uniform Credentialing Act;

47 (12) Qualified individual means an adult who has the capacity to make medical

48 decisions and has satisfied the requirements of the Patient Choice at End of Life Act to
49 obtain a prescription for medication to end his or her life;

50 (13) Self-administer means some affirmative and voluntary act by a qualified
51 individual to ingest medication to bring about his or her own peaceful and humane death;
52 and

53 (14) Terminal illness means an incurable and irreversible illness that will, within
54 reasonable medical judgment, result in death within six months.

55 Sec. 3. (1) An individual who is an adult with the capacity to make medical
56 decisions and has a terminal illness may make a request to receive a prescription for aid-
57 in-dying medication if all of the following conditions are satisfied:

58 (a) The individual's attending physician has determined him or her to be suffering
59 from a terminal illness;

60 (b) The individual has voluntarily expressed the wish to receive a prescription for
61 aid-in-dying medication; and

62 (c) The individual has the physical and mental ability to self- administer the aid-
63 in-dying medication.

64 (2) An individual may not be considered a qualified individual and is not eligible
65 to receive aid-in-dying medication under the Patient Choice at End of Life Act solely
66 because of age or disability.

67 Sec. 4. (1) An individual who is eligible to make a request under section 3 of this
68 act and who seeks to receive a prescription for aid-in-dying medication shall make an oral
69 request to his or her attending physician and submit a written request to his or her
70 attending physician that satisfies the requirements of this section.

71 (2) A written request for aid-in-dying medication must be in substantially the
72 form described in section 11 of this act and signed and dated by the individual seeking
73 the medication in the presence of two witnesses in accordance with subsection (3) of this
74 section.

75 (3) A written request for aid-in-dying medication under the Patient Choice at End
76 of Life Act must be witnessed by at least two other adult persons who, in the presence of
77 the requestor, attest that to the best of their knowledge and belief:

78 (a) The requestor has the capacity to make medical decisions;

79 (b) The requestor is acting voluntarily and without coercion to sign the request;
80 and

81 (c) The witnesses satisfy the requirements of subsection (4) of this section.

82 (4) One of the witnesses must be a person who is not:

83 (a) Related to the requestor by blood, marriage, or adoption;

84 (b) At the time the request is signed, entitled to any portion of the requestor's
85 estate upon death of the requestor under a will or any operation of law; or

86 (c) An owner, operator, or employee of a health care facility where the requestor
87 is receiving medical treatment or where the requestor resides.

88 (5) The requestor's attending physician, consulting physician, or mental health
89 specialist may not serve as a required witness to the signing of the written request.

90 (6) A request for a prescription for aid-in-dying medication pursuant to this
91 section shall be made solely and directly by the individual diagnosed with the terminal
92 illness and shall not be made on behalf of such individual, including, but not limited to,
93 through a power of attorney, an advance health care directive, a conservator, health care
94 agent, surrogate, or any other legally recognized health care decision maker.

95 Sec. 5. (1) An individual may at any time rescind his or her request for aid-in-
96 dying medication or decide not to self-administer such medication without regard to his
97 or her mental state.

98 (2) A prescription for aid-in-dying medication under the Patient Choice at End of
99 Life Act may not be written without the attending physician offering the individual an
100 opportunity to rescind the request.

101 Sec. 6. (1) Before prescribing aid-in-dying medication, the attending physician

102 shall complete the requirements of this section.

103 (2) The attending physician shall provide care that meets the standard of care
104 under accepted medical guidelines.

105 (3) The attending physician shall make an initial determination of whether the
106 requesting adult has the capacity to make medical decisions. If there are indications of a
107 mental disorder or cause to question the individual's capacity to make medical decisions,
108 the physician shall refer the individual for a mental health specialist assessment. If such a
109 referral is made, no aid-in-dying medication shall be prescribed unless the mental health
110 specialist determines that the individual has the capacity to make medical decisions and is
111 not suffering from a psychiatric or psychological disorder or depression causing impaired
112 decision making.

113 (4) The attending physician shall make an initial determination of whether the
114 requesting adult:

115 (a) Has a terminal illness;

116 (b) Has voluntarily made the request for aid-in-dying medication pursuant to
117 sections 3 and 4 of this act; and

118 (c) Is a qualified individual.

119 (5) The attending physician shall confirm that the person is making an informed
120 decision by discussing with the individual:

121 (a) His or her medical diagnosis and prognosis;

122 (b) The potential risks associated with self-administering the aid-in-dying
123 medication to be prescribed;

124 (c) The probable result of self-administering such medication;

125 (d) The possibility that he or she may choose not to obtain the medication, or may
126 obtain the medication but may decide not to self-administer it; and

127 (e) The feasible alternatives or additional treatment opportunities, including, but
128 not limited to, comfort care, hospice care, palliative care, and pain control.

129 (6)(a) The attending physician shall confirm that the individual's request does not
130 arise from coercion or undue influence by another person by discussing with the
131 individual, outside of the presence of any other person, except for an interpreter, whether
132 or not the qualified individual is feeling coerced or unduly influenced by another person.

133 (b) If an interpreter is present during the confirmation required by subdivision
134 (6)(a) of this section, such interpreter must not be:

135 (i) Related to the individual by blood, marriage, or adoption; or (ii) Entitled to any
136 portion of the individual's estate upon death of the individual under a will or any
137 operation of law.

138 (7)(a) The attending physician shall refer the individual to a consulting physician
139 for medical confirmation of the diagnosis and prognosis, and for an additional
140 determination that the individual has the capacity to make medical decisions and has
141 complied with the requirements of the Patient Choice at End of Life Act.

142 (b) If the consulting physician determines that the individual does not have a
143 terminal illness, lacks the capacity to make medical decisions, is not making an informed
144 decision, is not acting voluntarily and without coercion, or is otherwise ineligible to
145 receive aid-in-dying medication, the attending physician shall not prescribe and the
146 individual shall not obtain aid-in-dying medication, except that such individual's
147 attending physician may again refer the individual to a consulting physician after three
148 months have passed from the date of the previous consulting physician's determination of
149 ineligibility.

150 (8) The attending physician shall counsel the individual about the importance of:

151 (a) Having another person present when he or she self-administers the aid-in-
152 dying medication;

153 (b) Not self-administering such medication in a public place;

154 (c) Notifying the next of kin of his or her request for aid-in-dying medication. A
155 qualified individual who declines or is unable to notify his or her next of kin shall not

156 have his or her request denied for that reason;

157 (d) Participating in a hospice program; and

158 (e) Maintaining the medication in a safe and secure location until the time that the
159 individual decides to self-administer it.

160 (9) The attending physician shall (a) inform the individual that he or she may
161 rescind the request for aid-in-dying medication at any time and in any manner and (b)
162 offer the individual an opportunity to rescind the request for such medication before
163 prescribing it.

164 (10) A person may not receive a prescription for aid-in-dying medication unless
165 he or she has made an informed decision. The attending physician shall verify,
166 immediately before writing the prescription for aid-in-dying medication, that the
167 individual is making an informed decision.

168 (11) The attending physician shall ensure that all appropriate steps are carried out
169 in accordance with the Patient Choice at End of Life Act before writing a prescription for
170 aid-in-dying medication.

171 (12) The attending physician shall fulfill the record documentation required by
172 section 14 of this act.

173 Sec. 7. Before a qualified individual may obtain a prescription for aid-in-dying
174 medication from the attending physician, the consulting physician shall:

175 (1) Examine the individual and his or her relevant medical records;

176 (2) If the consulting physician determines that the attending physician's diagnosis
177 and prognosis is correct, confirm such diagnosis and prognosis in writing;

178 (3) Determine that the individual has the capacity to make medical decisions, is
179 acting voluntarily, and has made an informed decision. If there are indications of a mental
180 disorder or cause to question the individual's capacity to make medical decisions, the
181 consulting physician shall refer the individual for a mental health specialist assessment. If
182 such a referral is made, no aid-in-dying medication shall be prescribed until the mental

183 health specialist determines that the individual has the capacity to make medical
184 decisions and is not suffering from a psychiatric or psychological disorder or depression
185 causing impaired decision making; and

186 (4) Fulfill the record documentation required by section 13 of this act.

187 Sec. 8. Upon referral from the attending or consulting physician pursuant to
188 section 6 or 7 of this act, the mental health specialist shall:

189 (1) Examine the individual and his or her relevant medical records;

190 (2) Determine whether the individual has the capacity to make medical decisions,
191 act voluntarily, and make an informed decision;

192 (3) Determine whether the individual is suffering from impaired decision making
193 due to a psychiatric or psychological disorder or depression; and

194 (4) Fulfill the record documentation required by section 13 of this act.

195 Sec. 9. (1) If the requirements of sections 6 to 8 of this act have been satisfied, the
196 attending physician may prescribe aid-in-dying medication to the qualified individual.
197 Once the medication is prescribed, it shall be dispensed as provided for in this section.

198 (2) The attending physician may dispense the aid-in-dying medication directly,
199 including ancillary medication intended to minimize the qualified individual's discomfort
200 or enhance the efficacy of the aid-in- dying medication, if the attending physician:

201 (a) Is qualified to dispense such medication under state law;

202 (b) Has a current certificate from the federal Drug Enforcement Administration;

203 and

204 (c) Complies with any applicable administrative rule or regulation.

205 (1) If the attending physician is not eligible under subsection (2) of this section to
206 dispense the aid-in-dying or ancillary medications directly, the attending physician shall,
207 with the qualified individual's written consent, contact a pharmacist, inform the
208 pharmacist of the prescription, and deliver the written prescription personally or by mail
209 to the pharmacist, who shall dispense the medication to either the qualified individual, the

210 attending physician, or a person expressly designated by the qualified individual.

211 (4) Delivery of the dispensed medication to the qualified individual, the attending
212 physician, or a person expressly designated by the qualified individual may be made by
213 personal delivery or, with a signature required on delivery, by the United States Postal
214 Service or a commercial messenger or mail delivery service.

215 Sec. 10. (1) A health care provider shall provide medical services under the
216 Patient Choice at End of Life Act that meet or exceed the standard of care for end-of-life
217 medical care.

218 (2) A physician shall inform a terminally ill patient of all available options related
219 to his or her care.

220 Sec. 11. A qualified individual who obtains aid-in-dying medication in
221 compliance with the Patient Choice at End of Life Act may choose to use such
222 medication to end his or her life. If an individual chooses to do so, he or she must self-
223 administer such medication, and no other person shall administer such medication to the
224 individual.

225 Sec. 12. If a qualified individual dies as a result of self-administering aid-in-dying
226 medication in compliance with the Patient Choice at End of Life Act, the person
227 responsible for completing and signing that part of the certificate of death entitled
228 medical certificate of death pursuant to section 71-605 shall list as the cause of death the
229 qualified individual's underlying terminal illness.

230 Sec. 13. All of the following shall be documented in the individual's medical
231 record:

232 (1) All oral requests for aid-in-dying medication;

233 (2) All written requests for aid-in-dying medication;

234 (3) The attending physician's diagnosis and prognosis of the individual's terminal
235 illness;

236 (4) The attending physician's determination: (a) That a qualified individual has

237 the capacity to make medical decisions, is acting voluntarily, and has made an informed
238 decision or (b) that the individual is not a qualified individual;

239 (5) The consulting physician's diagnosis and prognosis;

240 (6) The consulting physician's determination: (a) That a qualified individual has
241 the capacity to make medical decisions, is acting voluntarily, and has made an informed
242 decision or (b) that the individual is not a qualified individual;

243 (7) A report of the outcome and determinations made during any mental health
244 specialist assessment;

245 (8) That the attending physician offered the qualified individual an opportunity,
246 prior to prescribing any aid-in-dying medication, to rescind his or her request; and

247 (9) A note by the attending physician indicating that all requirements of sections 6
248 to 8 of this act have been satisfied and indicating the steps taken to carry out the request,
249 including a notation of the aid-in-dying medication prescribed.

250 Sec. 14. (1) A provision in a contract, will, or other agreement executed on or
251 after the effective date of this act, whether written or oral, to the extent the provision
252 would affect whether a person may make or rescind a request for aid-in-dying
253 medication, is void.

254 (2) An obligation owing under any contract executed on or after the effective date
255 of this act may not be conditioned upon or affected by an individual making or rescinding
256 a request for aid-in-dying medication.

257 Sec. 15. (1) The sale, procurement, or issuance of a life, health, or accident
258 insurance or annuity policy, health care service plan contract or health benefit plan, or the
259 rate charged for such policy or plan may not be conditioned upon or affected by a person
260 making or rescinding a request for aid-in-dying medication.

261 (2) A qualified individual's act of self-administering aid-in-dying medication in
262 compliance with the Patient Choice at End of Life Act shall not have any effect upon a
263 life, health, or accident insurance or annuity policy, or health care service plan contract or

264 health benefit plan other than that of a natural death from the underlying illness.

265 (3) A health carrier shall not provide any information in communications made to
266 an individual about the availability of an aid-in-dying medication absent a request by the
267 individual or his or her attending physician at the behest of the individual. Any
268 communication shall not include both a denial of other treatment and information as to
269 the availability of aid-in-dying medication coverage. For the purposes of this subdivision,
270 health carrier has the same meaning as in section 44-1303.

271 Sec. 16. (1) No person is subject to civil or criminal liability or professional
272 disciplinary action for participating in good faith compliance with the Patient Choice at
273 End of Life Act, including a person who is present when a qualified individual self-
274 administers the prescribed aid-in-dying medication.

275 (2) Subject to subdivision (5)(c) of this section, a health care provider may not
276 subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss
277 of membership, or other penalty for participating in good faith compliance with the
278 Patient Choice at End of Life Act or for refusing to so participate.

279 (3) A request by a qualified individual to an attending physician to provide aid-in-
280 dying medication in good faith compliance with the provisions of the Patient Choice at
281 End of Life Act shall not provide the sole basis for the appointment of a guardian or
282 conservator.

283 (4) No actions taken in compliance with the Patient Choice at End of Life Act
284 shall constitute or provide the basis for any claim of neglect or elder abuse for any
285 purpose.

286 (5)(a) A health care provider may choose whether to participate in providing aid-
287 in-dying medication to a qualified individual pursuant to the Patient Choice at End of
288 Life Act;

289 (b) If a health care provider is unable or unwilling to carry out an individual's
290 request under the Patient Choice at End of Life Act and the individual transfers care to a

291 new health care provider, the previous provider shall transfer, upon request, a copy of the
292 individual's relevant medical records to the new provider;

293 (c) A health care provider may prohibit a physician from writing a prescription for
294 aid-in-dying medication for a patient who is a resident in the provider's facility and
295 intends to use the medication on the facility's premises, if the provider has previously
296 notified the physician in writing of its policy with regard to such prescriptions;

297 (6) Nothing in this section shall prevent a health care provider from providing an
298 individual with health care services that do not constitute participation in the Patient
299 Choice at End of Life Act.

300 Sec. 17. (1) A person who knowingly and intentionally alters or forges a written
301 request for aid-in-dying medication for another person without his or her authorization or
302 knowingly and intentionally conceals or destroys a rescission of a request for such
303 medication with the intent of causing such other person's death is guilty of a Class III
304 felony.

305 (2) A person who knowingly and intentionally coerces or exerts undue influence
306 on another person to request aid-in-dying medication or destroy or conceal a rescission of
307 such a request is guilty of a Class III felony.

308 (3) Nothing in the Patient Choice at End of Life Act limits further liability for
309 civil damages resulting from other negligent conduct or intentional misconduct by any
310 person in violation of such act.

311 (4) This section does not preclude criminal penalties applicable under other
312 provisions of law for conduct in violation of the provisions of the Patient Choice at End
313 of Life Act.

314 Sec. 18. Nothing in the Patient Choice at End of Life Act shall be construed to
315 authorize a physician or any other person to end an individual's life by lethal injection,
316 mercy killing, or active euthanasia. Actions taken in accordance with the Patient Choice
317 at End of Life Act shall not, for any purpose, constitute suicide, assisted suicide, mercy

318 killing, homicide, or elder abuse nor constitute the aiding or abetting of such acts.

319 Sec. 19. If any section in this act or any part of any section is declared invalid or

320 unconstitutional, the declaration shall not affect the validity or constitutionality of the

321 remaining portions.