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HOUSE BILL NO. 1649

Offered January 16, 2020

A *BILL to amend and reenact § 8.01-622.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 29 of Title 54.1 an article numbered 11, consisting of sections numbered 54.1-2999 through 54.1-2999.9, relating to health care; decision making; end of life; penalties.*

Patrons—Kory and Guzman

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-622.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 29 of Title 54.1 an article numbered 11, consisting of sections numbered 54.1-2999 through 54.1-2999.9, as follows:

§ 8.01-622.1. Injunction against assisted suicide; damages; professional sanctions.

A. Any person who knowingly and intentionally, with the purpose of assisting another person to commit or attempt to commit suicide, (i) provides the physical means by which another person commits or attempts to commit suicide or (ii) participates in a physical act by which another person commits or attempts to commit suicide shall be liable for damages as provided in this section and may be enjoined from such acts.

B. A cause of action for injunctive relief against any person who is reasonably expected to assist or attempt to assist a suicide may be maintained by any person who is the spouse, parent, child, sibling or guardian of, or a current or former licensed health care provider of, the person who would commit suicide; by an attorney for the Commonwealth with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the person from assisting any suicide in the Commonwealth.

C. A spouse, parent, child or sibling of a person who commits or attempts to commit suicide may recover compensatory and punitive damages in a civil action from any person who provided the physical means for the suicide or attempted suicide or who participated in a physical act by which the other person committed or attempted to commit suicide.

D. A licensed health care provider who assists or attempts to assist a suicide shall be considered to have engaged in unprofessional conduct for which his certificate or license to provide health care services in the Commonwealth shall be suspended or revoked by the licensing authority.

E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01 or, the Health Care Decisions Act (§ 54.1-2981 et seq.), or Article 11 (§ 54.1-2999 et seq.) of Chapter 29 of Title 54.1. This section shall not apply to a licensed health care provider who (i) administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort and without intent to cause death, even if the medication or procedure may hasten or increase the risk of death, or (ii) withholds or withdraws life-prolonging procedures as defined in § 54.1-2982. This section shall not apply to any person who properly administers a legally prescribed medication without intent to cause death, even if the medication may hasten or increase the risk of death.

F. For purposes of this section:

"Licensed health care provider" means a physician, surgeon, podiatrist, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist or pharmacist licensed under the laws of this Commonwealth.

"Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

Article 11.

Medical Aid in Dying.

§ 54.1-2999. Definitions.

As used in this article, unless the context requires a different meaning:

"Attending health care provider" means a physician who is licensed by the Board to practice medicine or osteopathy in the Commonwealth, physician assistant licensed by the Board pursuant to § 54.1-2952.1, or nurse practitioner licensed jointly by the Boards of Medicine and Nursing pursuant to § 54.1-2957, who has primary responsibility for the treatment of a qualifying patient's health care and with whom the patient has a practitioner-patient relationship prior to a request for medical aid in dying.

"Capacity reviewer" means a licensed psychologist or social worker who is qualified by training or experience to assess whether a person is capable of making an informed decision regarding consent to medical aid in dying.

"Consulting health care provider" means a physician who is licensed by the Board to practice medicine or osteopathy, physician assistant licensed by the Board pursuant to § 54.1-2952.1, or nurse

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59 practitioner licensed jointly by the Boards of Medicine and Nursing pursuant to § 54.1-2957 who is not
60 an attending health care provider and who is qualified by training and experience to make a
61 professional diagnosis and prognosis regarding a qualifying patient's injury, disease, or condition and
62 his capacity to make an informed decision regarding consent to medical aid in dying.

63 "Eligible patient" means a person (i) who is 18 years of age or older and a resident of the
64 Commonwealth, (ii) who has been diagnosed as having a terminal condition, and (iii) whose diagnosis
65 as having a terminal condition has been confirmed by a consulting health care provider following an
66 in-person examination and review of his medical records.

67 "Informed decision regarding medical aid in dying" means a decision made by a patient who has
68 been informed by his attending health care provider as to (i) his medical diagnosis and prognosis; (ii)
69 the probable results of taking a self-administered controlled substance prescribed to the patient for the
70 purpose of ending his life in a humane and dignified manner; (iii) the potential risks of taking a
71 self-administered controlled substance prescribed to the patient for the purpose of ending his life in a
72 humane and dignified manner; (iv) any feasible alternatives to medical aid in dying, including comfort
73 care, hospice care, and pain control; and (v) his right to withdraw consent to medical aid in dying at
74 any time and to decide not to continue with medical aid in dying or any other care or treatment.

75 "Medical aid in dying" means a prescription for a self-administered controlled substance that will be
76 self-administered by a qualifying patient for the purpose of ending a qualifying patient's life in a
77 humane and dignified manner by an attending health care provider in accordance with this article.

78 "Qualifying patient" means an eligible patient who (i) has been determined to possess capacity to
79 make an informed decision regarding consent to medical aid in dying and (ii) who has complied with
80 the requirements of this article related to obtaining medical aid in dying.

81 "Terminal condition" means an injury, disease, or condition from which a patient will not recover
82 and that will result in the patient's death within the next six months, as determined by a licensed health
83 care provider after an in-person examination of the patient and review of his medical records.

84 **§ 54.1-2999.1. Medical aid in dying; request; process; duties of attending health care provider.**

85 A. An attending health care provider may prescribe a self-administered controlled substance to a
86 qualifying patient for the purpose of ending the qualifying patient's life in a humane and dignified
87 manner, upon request of the patient and in accordance with the provisions of this article.

88 B. A patient who wishes to receive medical aid in dying shall:

89 1. Make a preliminary oral request for medical aid in dying to his attending health care provider;
90 2. Make a second oral request for medical aid in dying to his attending health care provider at least
91 15 days after his preliminary oral request for medical aid in dying. However, if the patient's attending
92 health care provider attests in writing that the patient's terminal condition and prognosis are such that
93 the patient can reasonably be expected to die within 15 days of the preliminary oral request for medical
94 aid in dying, the patient shall not be required to wait 15 days before making a second request for
95 medical aid in dying; and

96 3. Make a written request for medical aid in dying to his attending health care provider in
97 accordance with the provisions of § 54.1-2999.2.

98 C. Upon receipt of a preliminary oral request pursuant to subsection B, an attending health care
99 provider shall:

100 1. Determine whether the patient is an eligible patient. If the patient is 18 years of age or older and
101 a resident of the Commonwealth and has been diagnosed as having a terminal condition but his
102 terminal condition has not been confirmed by a consulting health care provider, the attending health
103 care provider shall refer the patient to a consulting health care provider for the purpose of determining
104 whether the patient is an eligible patient. However, if the patient is receiving hospice care at the time
105 the request for medical aid in dying is made, confirmation of the patient's terminal condition shall not
106 be required.

107 2. Determine whether the patient is a qualifying patient. If the patient is an eligible patient and the
108 attending health care provider is uncertain as to whether he is capable of making an informed decision
109 regarding consent to medical aid in dying, the attending health care provider shall refer the patient to a
110 capacity reviewer for the purpose of determining whether the patient is a qualifying patient.

111 3. Determine if the patient has voluntarily requested medical aid in dying. To ensure that the
112 decision to request medical aid in dying is voluntary, the attending health care provider shall review the
113 information required for informed consent, as defined in § 54.1-2999, one-on-one with the patient and
114 outside of the presence of any other person other than an interpreter, if an interpreter is necessary, and
115 shall confirm that the patient is requesting medical aid in dying voluntarily and that the patient has not
116 been coerced or unduly influenced in such decision.

117 4. Provide the patient with a referral for comfort care, palliative care, hospice care, pain
118 management, or other end-of-life care as requested by the patient or as determined by the health care
119 provider to be appropriate.

120 5. Counsel the patient regarding (i) the nature of the self-administered controlled substance that will

be prescribed to the patient; (ii) the expected outcome to the patient of taking the prescribed self-administered controlled substance, including the fact that taking the self-administered controlled substance is expected to result in the patient's death and the time that may elapse before such death occurs; (iii) the risks associated with taking the self-administered controlled substance that will be prescribed to the patient, including the risk that more or less time may elapse between the time the patient takes the prescribed self-administered controlled substance and the time of the patient's death; and (iv) the risks and benefits of having another person present when the patient takes the prescribed self-administered controlled substance and until the patient's death occurs.

6. Inform the patient that he may refuse medical aid in dying at any time prior to taking the prescribed self-administered controlled substance.

7. Document in the patient's medical record that the requirements of this article have been met.

D. If an attending health care provider determines that a patient is a qualifying patient, and the requirements of subsection C have been satisfied, the attending health care provider shall either (i) dispense a self-administered controlled substance intended to end the qualifying patient's life in a humane and dignified manner to the patient if he is licensed by the Board of Pharmacy to dispense self-administered controlled substances, holds a current U.S. Drug Enforcement Administration certificate, and complies with all other applicable requirements for the dispensing of self-administered controlled substances or (ii) prescribe a self-administered controlled substance to the qualifying patient for the purpose of ending the qualifying patient's life in a humane and dignified manner. Self-administered controlled substances dispensed or prescribed pursuant to this subsection shall include the self-administered controlled substance intended to end the qualifying patient's life in a humane and dignified manner and any other self-administered controlled substance necessary to facilitate such outcome or minimize the patient's discomfort during the process of ending his life in a humane and dignified manner. However, no prescription for a self-administered controlled substance for the purpose of ending a qualifying patient's life in a humane and dignified manner shall be provided until 15 days have elapsed from the date of the qualifying patient's preliminary oral request for medical aid in dying, except as provided in subdivision B 2.

E. An attending health care provider who dispenses a self-administered controlled substance pursuant to subsection D shall file a notice of such dispensing with the Board.

F. Notwithstanding any other provision of law, an attending health care provider who prescribes a self-administered controlled substance to a qualifying patient for the purpose of ending a qualifying patient's life in a humane and dignified manner may sign the qualifying patient's death certificate.

G. No medical certification of death completed for a patient who received medical aid in dying in accordance with this article shall identify suicide or homicide as the cause of death for such person solely because the person was provided medical aid in dying pursuant to this article.

§ 54.1-2999.2. Written request for medical aid in dying; form.

A. A written request for medical aid in dying shall be signed and dated by the person requesting medical aid in dying and witnessed by at least one individual who, in the presence of the person requesting medical aid in dying, attests that to the best of his knowledge and belief, the person is making an informed decision, acting voluntarily, and not being coerced into requesting medical aid in dying. The witness shall not be (i) a relative of the patient by blood, marriage, or adoption; (ii) entitled to any portion of the patient's estate upon his death by will or operation of law; (iii) the patient's attending health care provider; or (iv) an owner, operator, or employee of a health care facility in which the patient is a resident or is receiving medical care. If the patient is a resident in a long-term care facility at the time the request is made, the witness may be an individual designated by the facility and having qualifications specified by regulation of the Board.

B. A written request for medical aid in dying shall be executed in substantially the following form:

REQUEST FOR A SELF-ADMINISTERED CONTROLLED SUBSTANCE TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending health care provider has determined is a terminal condition and which has been confirmed by a consulting health care provider.

I have been fully informed of my diagnosis, the prognosis, the nature of the self-administered controlled substance to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice, and pain control.

I request that my attending health care provider prescribe a self-administered controlled substance 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.

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

183 *I understand the full import of this request, and I expect to die when I take the self-administered*
184 *controlled substance to be prescribed. I further understand that, although most deaths occur within three*
185 *hours, my death may take longer, and my attending health care provider has counseled me about this*
186 *possibility.*

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

189 *Name: _____*

190 *Signed: _____*

191 *Dated: _____*

192 **DECLARATION OF WITNESS**

193 *I declare that the person signing this request:*

194 *1. Is personally known to me or has provided proof of identity;*

195 *2. Signed this request in my presence;*

196 *3. Appears to be of sound mind and not under duress, fraud, or undue influence; and*

197 *4. Is not a person for whom I am the attending health care provider.*

198 *I also declare that my signature complies with the following: The witness shall not be a relative by*
199 *blood, marriage, or adoption of the person signing this request; shall not be entitled to any portion of*
200 *the person's estate upon death; and shall not be the person's attending health care provider.*

201 *Witness Name: _____*

202 *Signature: _____*

203 *Date: _____*

204 *Witness Name: _____*

205 *Signature: _____*

206 *Date: _____*

207 **§ 54.1-2999.3. Capacity; informed decision regarding medical aid in dying.**

208 *Every adult shall be presumed to be capable of making an informed decision regarding medical aid*
209 *in dying unless he is determined to be incapable of making an informed decision by a capacity reviewer.*

210 *A person shall be deemed incapable of making an informed decision regarding medical aid in dying if,*
211 *because of mental illness, intellectual disability, or any other mental or physical disorder that precludes*
212 *communication or impairs judgment, he is unable to understand the nature, extent, or probable*
213 *consequences of the decision or to make a rational evaluation of the risks and benefits of alternatives to*
214 *medical aid in dying. No person who is otherwise capable of making an informed decision regarding*
215 *medical aid in dying and who is able to communicate by means other than speech shall be deemed*
216 *incapable of making an informed decision regarding medical aid in dying solely because he is deaf or*
217 *dysphasic or has any other communication disorder.*

218 **§ 54.1-2999.4. Effect on wills, contracts, insurance, and annuities.**

219 *A. Any provision of a contract, will, or other agreement, written or oral, shall be invalid to the*
220 *extent that it would affect whether a person may make or rescind a request for a self-administered*
221 *controlled substance to end his life in a humane and dignified manner.*

222 *B. Notwithstanding subsection B of § 38.2-3106, the fact that a patient requests and administers a*
223 *self-administered controlled substance to end his life in a humane and dignified manner pursuant to the*
224 *provisions of this article shall not be a defense in any action, motion, or other proceeding on a life,*
225 *health, or accident insurance policy or annuity contract that (i) was issued to any person residing in the*
226 *Commonwealth at the time of issuance or (ii) is otherwise subject to the laws of this Commonwealth to*
227 *recover for the death of that person.*

228 **§ 54.1-2999.5. Claims by governmental entities for costs incurred.**

229 *Any governmental entity that incurs costs resulting from a person ending his life pursuant to the*
230 *provisions of this article in a public place shall have a claim against the estate of the person to recover*
231 *such costs and reasonable attorney fees related to enforcing the claim.*

232 **§ 54.1-2999.6. Prohibited acts; penalty.**

233 *A. A person who without authorization of the patient willfully and deliberately alters, forges,*
234 *conceals, or destroys a patient's request, or rescission of request, for a self-administered controlled*
235 *substance to end his life with the intent and effect of causing the patient's death is guilty of a Class 2*
236 *felony.*

237 *B. A person who coerces, intimidates, or exerts undue influence on a patient to request a*
238 *self-administered controlled substance for the purpose of ending the patient's life or to destroy the*
239 *patient's rescission of such request with the intent and effect of causing the patient's death is guilty of a*
240 *Class 2 felony.*

241 *C. A person who coerces, intimidates, or exerts undue influence on a patient to forgo requesting or*
242 *obtaining a self-administered controlled substance for the purpose of ending the patient's life pursuant*
243 *to this article is guilty of a Class 2 felony.*

D. Nothing in this article limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

E. The penalties in this article do not preclude criminal penalties under other applicable law for conduct that is inconsistent with the provisions of this article.

§ 54.1-2999.7. Immunity of health care providers providing medical aid in dying.

A. No health care provider shall be required to provide medical aid in dying to a qualifying patient. If a health care provider is unable or unwilling to provide medical aid in dying to a qualifying patient, the health care provider shall, upon request of the patient, transfer the patient's care and a copy of the patient's relevant medical records to any other health care provider identified by the patient.

B. Except as provided in § 54.1-2999.6, no health care provider shall be subject to civil or criminal liability, disciplinary action, loss of privileges, loss of membership in a professional organization or association, or other penalty for providing medical aid in dying to a qualifying patient in good faith in accordance with this article or declining to provide medical aid in dying to a qualifying patient in good faith in accordance with this article or declining to provide medical aid in dying to a qualifying patient shall not constitute unprofessional conduct for purposes of § 54.1-2915.

§ 54.1-2999.8. Authority of health care provider to prohibit medical aid in dying.

A. Notwithstanding the provisions of § 54.1-2999.7, a health care provider may prohibit the performance of acts pursuant to this article on its premises by another health care provider, provided that the prohibiting health care provider has (i) adopted a written policy prohibiting the provision of medical aid in dying to qualifying patients on its premises and (ii) given written notice of such policy, including a written copy of such policy, to each health care provider providing health care services on its premises.

B. A health care provider that has adopted a policy prohibiting the provision of medical aid in dying on its premises and provided written notice of such policy in accordance with the requirements of subsection A may impose any of the following sanctions against a health care provider that provides medical aid in dying to a qualifying patient on its premises: (i) loss of privileges, loss of membership, or any other sanction authorized by the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned health care provider is a member of the sanctioning health care provider's medical staff; (ii) termination of a lease or other property contract between the sanctioning health care provider and a health care provider that provides medical aid in dying to a qualifying patient on the sanctioning health care provider's premises or other imposition of nonmonetary remedies provided by such lease or other property contract; or (iii) termination of contract between the sanctioning health care provider and a health care provider that provides medical aid in dying to a qualifying patient on the sanctioning health care provider's premises or imposition of other nonmonetary remedies provided by such contract if the health care provider that provided medical aid in dying to a qualifying patient was acting within the course and scope of his capacity as an employee or independent contractor of the sanctioning health care provider.

C. Nothing in this section shall be construed to prevent a health care provider who is employed by or an independent contractor of a health care provider that has adopted a policy prohibiting the provision of medical aid in dying on its premises from performing acts pursuant to this article on property not located on the premises of a health care provider that has adopted a policy prohibiting the provision of medical aid in dying on its premises, provided he is acting outside the scope of his employment or contract.

For purposes of this subsection, the following acts shall not be considered to be acts performed pursuant to this article: (i) making an initial determination that a patient has a terminal condition and informing the patient of his medical prognosis; (ii) providing information about the provisions of this article to a patient upon the patient's request; (iii) referring a patient to another health care provider upon the patient's request; or (iv) entering into an agreement to perform acts pursuant to this article at a location that is not on the premises of a health care provider that has adopted a policy prohibiting the provision of medical aid in dying on its premises and while acting other than as an employee or independent contractor of such health care provider while on the premises of a health care provider that has adopted a policy prohibiting the provision of medical aid in dying on its premises.

§ 54.1-2999.9. Information regarding medical aid in dying.

The Board shall:

1. Adopt rules to facilitate the collection of information regarding compliance with the provisions of this article. Except as otherwise required by law, such information shall not be a public record or be made available for public inspection;

2. Annually review a sample of records maintained by attending health care providers who provide medical aid in dying to qualifying patients; and

3. Make available to the public an annual statistical report of nonidentifying information collected

305 *pursuant to this section.*

306 **2. That the Board of Medicine shall adopt regulations that establish (i) qualifications for a witness**
307 **designated by a long-term care facility to sign a resident patient's request for a self-administered**
308 **controlled substance for the purpose of ending his life in a humane and dignified manner pursuant**
309 **to subsection A of § 54.1-2999.2 of the Code of Virginia, as created by this act, and (ii) a list of**
310 **acceptable documents that attending health care providers shall use to verify a patient's Virginia**
311 **residency.**

312 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
313 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
314 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
315 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
316 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**
317 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**
318 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**