

SENATE BILL NO. 280

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on January 25, 2024)

(Patron Prior to Substitute--Senator Hashmi)

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.

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

26 means for the suicide or attempted suicide or who participated in a physical act by which the other person
27 committed or attempted to commit suicide.

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

31 E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01-~~02~~, the Health
32 Care Decisions Act (§ 54.1-2981 et seq.), or Article 11 (§ 54.1-2999 et seq.) of Chapter 29 of Title 54.1.
33 This section shall not apply to a licensed health care provider who (i) administers, prescribes or dispenses
34 medications or procedures to relieve another person's pain or discomfort and without intent to cause death,
35 even if the medication or procedure may hasten or increase the risk of death, or (ii) withholds or withdraws
36 life-prolonging procedures as defined in § 54.1-2982. This section shall not apply to any person who
37 properly administers a legally prescribed medication without intent to cause death, even if the medication
38 may hasten or increase the risk of death.

39 F. For purposes of this section:

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

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

44 Article 11.

45 Medical Aid in Dying.

46 **§ 54.1-2999. Definitions.**

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

48 "Attending health care provider" means a physician who is licensed by the Board to practice
49 medicine or osteopathy in the Commonwealth, physician assistant licensed by the Board pursuant to §
50 54.1-2952.1, or nurse practitioner licensed jointly by the Boards of Medicine and Nursing pursuant to §
51 54.1-2957 who has primary responsibility for the treatment of a qualifying patient's health care and with
52 whom the patient has a practitioner-patient relationship prior to a request for medical aid in dying.

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

56 "Consulting health care provider" means a physician who is licensed by the Board to practice
57 medicine or osteopathy, physician assistant licensed by the Board pursuant to § 54.1-2952.1, or nurse
58 practitioner licensed jointly by the Boards of Medicine and Nursing pursuant to § 54.1-2957 who is not
59 an attending health care provider and who is qualified by training and experience to make a professional
60 diagnosis and prognosis regarding a qualifying patient's injury, disease, or condition and his capacity to
61 make an informed decision regarding consent to medical aid in dying.

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

66 "Health care entity" means a general hospital, medical clinic, nursing home, hospice, or any other
67 entity licensed pursuant to § 32.1-123.

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

76 "Medical aid in dying" means the practice of evaluating a request, determining qualification,
77 performing the duties in accordance with this article, and providing a prescription to a qualified individual
78 pursuant to this article.

79 "Mentally capable" means that, in the opinion of the provider or licensed mental health care
80 professional, if an opinion is required, the individual requesting medication pursuant to this article has the
81 ability to make and communicate an informed decision.

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

85 "Self-administer" means a qualified individual performs an affirmative, conscious, voluntary act
86 to ingest medication prescribed pursuant to this article to bring about the individual's death. Self-
87 administration does not include administration by parenteral injection or infusion.

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

90 **§ 54.1-2999.1. Medical aid in dying; request; process; duties of attending health care**
91 **provider.**

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

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

96 1. Make a preliminary oral request for medical aid in dying to his attending health care provider;

97 2. Make a second oral request for medical aid in dying to his attending health care provider at least
98 15 days after his preliminary oral request for medical aid in dying. However, if the patient's attending
99 health care provider attests in writing that the patient's terminal disease and prognosis are such that the
100 patient can reasonably be expected to die within 15 days of the preliminary oral request for medical aid in
101 dying, the patient shall not be required to wait 15 days before making a second request for medical aid in
102 dying; and

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

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

107 1. Determine whether the patient is an eligible patient. If the patient is 18 years of age or older and
108 a resident of the Commonwealth and has been diagnosed as having a terminal disease but his terminal
109 disease has not been confirmed by a consulting health care provider, the attending health care provider
110 shall refer the patient to a consulting health care provider for the purpose of determining whether the
111 patient is a qualifying patient. However, if the patient is receiving hospice care at the time the request for
112 medical aid in dying is made, confirmation of the patient's terminal disease shall not be required.

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

117 3. Determine if the patient has voluntarily requested medical aid in dying. To ensure that the
118 decision to request medical aid in dying is voluntary, the attending health care provider shall review the
119 information required for informed consent, one-on-one with the patient and outside of the presence of any
120 other person other than an interpreter, if an interpreter is necessary, and shall confirm that the patient is
121 requesting medical aid in dying voluntarily and that the patient has not been coerced or unduly influenced
122 in such decision.

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

126 5. Counsel the patient regarding (i) the nature of the self-administered controlled substance that
127 will be prescribed to the patient; (ii) the expected outcome to the patient of taking the prescribed self-
128 administered controlled substance, including the fact that taking the prescribed self-administered
129 controlled substance is expected to result in the patient's death and the time that may elapse before such
130 death occurs; (iii) the risks associated with taking the self-administered controlled substance that will be
131 prescribed to the patient, including the risk that more or less time may elapse between the time the patient

132 takes the prescribed self-administered controlled substance and the time of the patient's death; and (iv) the
133 risks and benefits of having another person present when the patient takes the prescribed self-administered
134 controlled substance and until the patient's death occurs.

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

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

138 D. If an attending health care provider determines that a patient is a qualifying patient, and the
139 requirements of subsection C have been satisfied, the attending health care provider shall either (i)
140 dispense a self-administered controlled substance intended to end the qualifying patient's life to the patient
141 if he is licensed by the Board of Pharmacy to dispense self-administered controlled substances, holds a
142 current U.S. Drug Enforcement Administration certificate, and complies with all other applicable
143 requirements for the dispensing of self-administered controlled substances or (ii) prescribe a self-
144 administered controlled substance to the qualifying patient for the purpose of ending the qualifying
145 patient's life. Self-administered controlled substances dispensed or prescribed pursuant to this subsection
146 shall include the self-administered controlled substance intended to end the qualifying patient's life and
147 any other self-administered controlled substance necessary to facilitate such outcome or minimize the
148 patient's discomfort during the process of ending his life. However, no prescription for a self-administered
149 controlled substance for the purpose of ending a qualifying patient's life shall be provided until 15 days
150 have elapsed from the date of the qualifying patient's preliminary oral request for medical aid in dying,
151 except as provided in subdivision B 2. After the patient's death, any individual in control of any excess
152 controlled substance used in medical administration of death shall be required to properly dispose of such
153 controlled substance in a timely manner.

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

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

159 G. The cause of death listed on a medical certification of death completed for a patient who
 160 received medical aid in dying shall be listed as the patient's underlying terminal disease. No medical
 161 certification of death completed for a patient who received medical aid in dying in accordance with this
 162 article shall identify suicide or homicide as the cause of death for such person solely because the person
 163 was provided medical aid in dying pursuant to this article.

164 **§ 54.1-2999.2. Written request for medical aid in dying; form.**

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

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

176 **REQUEST FOR A SELF-ADMINISTERED CONTROLLED SUBSTANCE TO END MY LIFE**

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

178 I am suffering from _____, which my attending health care provider has determined
 179 is a terminal disease and which has been confirmed by a consulting health care provider or I am enrolled
 180 in hospice.

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

184 I request that my attending health care provider prescribe a self-administered controlled substance
 185 that will end my life.

186 INITIAL ONE:

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

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

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

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

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

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

197 Name: _____

198 Signed: _____

199 Dated: _____

200 DECLARATION OF WITNESS

201 I declare that the person signing this request:

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

203 2. Signed this request in my presence;

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

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

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

209 Witness Name: _____

210 Signature: _____

211 Date: _____

212 Witness Name: _____

213 Signature: _____

214 Date: _____

215 **§ 54.1-2999.3. Capacity; informed decision regarding medical aid in dying.**

216 No person who is otherwise mentally capable of making an informed decision regarding medical
217 aid in dying and who is able to communicate by means other than speech shall be deemed incapable of
218 making an informed decision regarding medical aid in dying solely because he is deaf or dysphasic or has
219 any other communication disorder.

220 **§ 54.1-2999.4. Effect on wills, contracts, insurance, and annuities.**

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

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

229 **§ 54.1-2999.5. Claims by governmental entities for costs incurred.**

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

233 **§ 54.1-2999.6. Prohibited acts; penalty.**

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

238 B. A person who coerces, intimidates, or exerts undue influence on a patient to request a self-
239 administered controlled substance for the purpose of ending the patient's life or to destroy the patient's

240 rescission of such request with the intent and effect of causing the patient's death is guilty of a Class 2
241 felony.

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

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

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

249 **§ 54.1-2999.7. Immunity of health care providers; medical aid in dying.**

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

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

261 **§ 54.1-2999.8. Authority of health care entity to prohibit medical aid in dying.**

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

266 copy of such policy, to each health care entity providing health care services on its premises; and (iii)
267 made written notice of such policy, including a written copy of such policy, available to the public.

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

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

287 For purposes of this subsection, the following acts shall not be considered to be acts performed
288 pursuant to this article: (i) making an initial determination that a patient has a terminal disease and
289 informing the patient of his medical prognosis; (ii) providing information about the provisions of this
290 article to a patient upon the patient's request; (iii) referring a patient to another health care entity upon the
291 patient's request; or (iv) entering into an agreement to perform acts pursuant to this article at a location
292 that is not on the premises of a health care entity that has adopted a policy prohibiting the provision of

293 medical aid in dying on its premises and while acting other than as an employee or independent contractor
294 of such health care entity while on the premises of a health care entity that has adopted a policy prohibiting
295 the provision of medical aid in dying on its premises.

296 **§ 54.1-2999.9. Information regarding medical aid in dying.**

297 The Board shall:

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

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

303 3. Make available to the public an annual statistical report of nonidentifying information collected
304 pursuant to this section.

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

310 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
311 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
312 **appropriation cannot be determined for periods of imprisonment in state adult correctional**
313 **facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the**
314 **Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant**
315 **to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot**
316 **be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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