March 30, 2017, Introduced by Reps. Cochran and Faris and referred to the Committee on Health Policy.

A bill to regulate physician assistance for patient-requested life-ending medication; to require safeguards for determining that the patient has a terminal disease, receives adequate counseling, and makes a voluntary request for medication; to require documentation and reporting; to specify certain legal consequences regarding insurance; to provide for civil and criminal immunity and freedom from professional sanctions for persons acting in conformity with this act; to provide for penalties and sanctions for violations of this act; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "death with dignity act".

Sec. 2. As used in this act:

(a) "Adult" means an individual who is 18 years of age or
(b) "Attending physician" means the physician who has primary responsibility for the care of a patient and treatment of the patient's terminal disease.

(c) "Capable" means that, in the opinion of a court or in the opinion of a patient's attending physician or consulting physician, psychiatrist, or psychologist, the patient has the ability to make and communicate health care decisions to health care providers, including communication through individuals familiar with the patient's manner of communicating if those individuals are available.

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

(e) "Counseling" means 1 or more consultations as necessary between a psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

(g) "Informed decision" means a decision by a qualified patient to request and obtain a prescription for medication to end his or her life in a humane and dignified manner, that is based on
an appreciation of the relevant facts and is made after being fully informed by the attending physician of all of the following:

(i) The qualified patient's medical diagnosis.

(ii) The qualified patient's prognosis.

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

(iv) The probable result of taking the medication to be prescribed.

(v) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control.

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

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

(j) "Physician" means an individual who is licensed or otherwise authorized to engage in the practice of medicine or the practice of osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(k) "Psychiatrist" means 1 or more of the following:

(i) A physician who has completed a residency program in psychiatry approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who has completed 12 months of psychiatric rotation.

(ii) A physician who devotes a substantial portion of his or her time to the practice of psychiatry.
"Psychologist" means an individual who is licensed or otherwise authorized to engage in the practice of psychology under part 182 of the public health code, 1978 PA 368, MCL 333.18201 to 333.18237.

"Qualified patient" means an adult who is capable, who is a resident of this state, and who has satisfied the requirements of this act to obtain a prescription for medication to end his or her life in a humane and dignified manner.

"Terminal disease" means an incurable and irreversible disease or progressive pathological condition that has been medically confirmed and will, within reasonable medical judgment, produce death within 6 months.

Sec. 3. (1) An adult who is capable, is a resident of this state, has been determined by the attending and consulting physicians to be suffering from a terminal disease, and has voluntarily expressed his or her wish to die may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with this act.

(2) An individual is not qualified to make a request for medication under this act solely because of age or disability.

Sec. 4. (1) A written request for medication under this act must be in substantially the form described in section 22, signed and dated by the patient, and, subject to subsections (2) and (3), witnessed by 2 or more individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and not being coerced to sign the request.
(2) One of the witnesses must be an individual who, at the time the request is signed, is not any of the following:

(a) A relative of the patient by blood, marriage, or adoption.
(b) An individual who would be entitled to a portion of the estate of the qualified patient upon death under a will or by operation of law.
(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.
(d) The patient's attending physician.

(3) If the patient is in a long-term care facility at the time the written request is made, 1 of the witnesses must be an individual designated by the facility who has the qualifications specified by the department of health and human services by rule. The department of health and human services shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this subsection.

Sec. 5. (1) The attending physician shall do all of the following:
(a) Make the initial determination of whether the patient has a terminal disease, is capable, and has made the request for medication voluntarily.
(b) Request that the patient demonstrate residency in this state as described in section 14.
(c) To ensure that the patient is making an informed decision, inform the patient of all of the following:
   (i) The patient's medical diagnosis.
(ii) The patient's prognosis.

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

(iv) The probable result of taking the medication to be prescribed.

(v) The feasible alternatives, including, but not limited to, comfort care, hospice care, and pain control.

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis and for a determination that the patient is capable and acting voluntarily.

(e) Refer the patient for counseling, if appropriate, under section 7.

(f) Recommend that the patient notify his or her next of kin.

(g) Inform the patient about the importance of having another individual present when the patient takes the medication prescribed under this act and of not taking the medication in a public place.

(h) Inform the patient that he or she may rescind the request for medication at any time and in any manner, and again inform the patient of the opportunity to rescind the request at the end of the 15-day waiting period described in section 10.

(i) Immediately before writing the prescription for medication under this act, verify that the patient is making an informed decision.

(j) Fulfill the medical record documentation requirements of section 13.

(k) Ensure that all appropriate steps are carried out in accordance with this act before writing a prescription for
medication to enable the qualified patient to end his or her life
in a humane and dignified manner.

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

Sec. 6. A patient is not qualified to make a request for
medication under this act until a consulting physician has done
both of the following:

(a) Examined the patient and the patient's relevant medical
records and confirmed, in writing, the attending physician's
diagnosis that the patient is suffering from a terminal disease.

(b) Verified that the patient is capable, is acting
voluntarily, and has made an informed decision.

Sec. 7. If, in the opinion of the attending physician or the
consulting physician, a patient may be suffering from a psychiatric
or psychological disorder or depression that causes impaired
judgment, 1 of the physicians shall refer the patient for
counseling. After referral, a physician shall not prescribe
medication to end the patient's life in a humane and dignified
manner until the psychiatrist or psychologist who is performing the
counseling determines that the patient is not suffering from a
psychiatric or psychological disorder or depression causing
impaired judgment.

Sec. 8. A physician shall not prescribe medication to end a
patient's life in a humane and dignified manner unless the patient
has made an informed decision. Immediately before writing a
prescription for medication under this act, the attending physician
shall verify that the patient is making an informed decision.
Sec. 9. The attending physician shall recommend that the patient notify next of kin of the patient's request for medication under this act. The physician shall not deny a request for medication because the patient declines or is unable to notify his or her next of kin.

Sec. 10. To receive a prescription for medication to end his or her life in a humane and dignified manner, a qualified patient shall make both an oral request and a written request, and shall reiterate the oral request to his or her attending physician not less than 15 days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

Sec. 11. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. The attending physician shall not prescribe medication under this act unless he or she has offered the qualified patient an opportunity to rescind the request.

Sec. 12. A physician shall not write a prescription for medication under this act until 15 days or more after the patient's initial oral request and 48 hours or more after the patient's written request.

Sec. 13. All of the following must be documented or filed in a patient's medical record:

(a) Each oral request by the patient for medication to end his or her life in a humane and dignified manner.

(b) Each written request by the patient for medication to end
his or her life in a humane and dignified manner.

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

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

(e) A report of the outcome and determinations made during counseling, if performed.

(f) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request as required under section 10.

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

Sec. 14. A physician shall comply with a request under this act only if the request is made by a resident of this state.

Factors that the physician may consider to demonstrate residency in this state include, but are not limited to, any of the following:

(a) A driver license issued by this state.

(b) Documentation of registration to vote in this state.

(c) Evidence that the patient owns or leases property in this state.

(d) A Michigan income tax return filed for the most recent tax year.

Sec. 15. (1) The department of health and human services shall
annually review a sample of records maintained under this act. It shall require a health care provider that dispenses medication under this act to file a copy of the dispensing record with the department.

(2) The department of health and human services shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to facilitate collecting information regarding compliance with this act. The information collected is privileged; is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246; and is not available for inspection by the public.

(3) The department of health and human services shall generate and make available to the public an annual statistical report of information collected under subsection (2) that does not disclose identifying information.

Sec. 16. (1) A provision in a contract, will, or other agreement, whether written or oral, is not valid to the extent it would affect whether an individual may make or rescind a request for medication to end his or her life in a humane and dignified manner.

(2) An obligation owed under any existing contract must not be conditioned on or affected by an individual's request or rescission of a request for medication to end his or her life in a humane and dignified manner.

Sec. 17. The sale, procurement, or issuance of a life, health, or accident insurance or annuity policy or the rate charged for a policy must not be conditioned upon or affected by the individual's
making or rescinding a request for medication to end his or her life in a humane and dignified manner. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner must not have any effect on a life, health, or accident insurance or annuity policy.

Sec. 18. This act does not authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this act do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide under the law.

Sec. 19. (1) Except as otherwise provided in this section and section 20, all of the following apply to actions taken in accordance with this act:

(a) A person is not subject to civil or criminal liability or professional disciplinary action for participating in good-faith compliance with this act. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.

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

(c) A request by a patient for, or an attending physician's provision of, medication in good-faith compliance with this act is not neglect for any purpose of law and does not, in itself, constitute sufficient basis for the appointment of a guardian or
(d) A health care provider is not under a duty, whether by contract, statute, or other legal requirement, to participate in providing a qualified patient with medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this act and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in this act on the premises of the prohibiting provider if the prohibiting provider has notified the health care provider of the prohibiting provider's policy regarding participating in this act. This section does not prevent a health care provider from providing health care services to a patient that do not constitute participation in this act. Notwithstanding subsection (1), a health care provider that has given notice that it prohibits participation in this act may subject another health care provider that participates in this act after that notification to any of the following sanctions:

(a) Loss of privileges, loss of membership, or other sanction provided under 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 and participates in this act while on the premises of
the health care facility of the sanctioning health care provider. However, this subdivision does not apply to a health care provider that participates in this act at the private medical office of a physician or other provider.

(b) Termination of a lease, other property contract, or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned health care provider participates in this act while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider.

(c) Termination of contract or other nonmonetary remedies provided by contract if the sanctioned health care provider participates in this act while acting in the course and scope of the sanctioned health care provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Subsection (2) does not prevent or allow sanctions for either of the following:

(a) Participation in this act while acting outside the course and scope of the provider's capacity as an employee or independent contractor.

(b) An attending physician's or consulting physician's contract with the physician's patient to act outside the course and scope of the physician's capacity as an employee or independent contractor of the sanctioning health care provider.

(4) A health care provider that imposes sanctions under subsection (2) shall follow all due process and other policies and
procedures that the sanctioning health care provider has adopted
that are related to the imposition of sanctions on another health
care provider.

(5) As used in this section:

(a) "Notify" means a separate statement in writing to the
health care provider specifically informing the health care
provider before the provider participates in this act of the
sanctioning health care provider's policy about participating in an
activity that is covered by this act.

(b) "Participate in this act" means to perform the duties of
an attending physician in section 5, the consulting physician
function in section 6, or the counseling function in section 7, but
does not include any of the following:

(i) Making an initial determination that a patient has a
terminal disease and informing the patient of the medical
prognosis.

(ii) Providing information about this act to a patient upon
the request of the patient.

(iii) Providing a patient, upon the request of the patient,
with a referral to another physician.

(iv) An attending physician's or consulting physician's
contracting with the physician's patient to act outside of the
course and scope of the physician's capacity as an employee or
independent contractor of a health care provider.

(6) Suspension or termination of staff membership or
privileges under subsection (2) is not reportable for purposes of
qualification for licensure under article 15 of the public health
code, 1978 PA 368, MCL 333.16101 to 333.18838. Action taken in accordance with section 4, 5, 6, or 7 is not grounds for investigation or discipline under section 16221 of the public health code, 1978 PA 368, MCL 333.16221.

(7) This act does not allow a lower standard of care for patients in the community where the patient is treated or in a similar community.

Sec. 20. (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $375,000.00, or both.

(2) A person who coerces or exerts undue influence on a patient to either request medication for the purpose of ending the patient's life or destroy the patient's rescission of a request for medication for the purpose of ending the patient's life is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $375,000.00, or both.

(3) This act does not limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

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

Sec. 21. Any governmental entity that incurs costs resulting from an individual terminating his or her life under this act in a
public place may recover those costs and reasonable and necessary
atorney fees related to enforcing the claim from the estate of the
individual.

Sec. 22. A request for a medication as authorized by this act
must be in substantially the following form:

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

I, ______________________, am an adult of sound mind.
I am suffering from_________, which my attending physician has
determined is a terminal disease and which has been medically
confirmed by a consulting physician.

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

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

(INITIAL ONLY 1 OF THE FOLLOWING)

_____I have informed my family of my decision and taken their
opinions into consideration.

_____I have decided not to inform my family of my decision.

_____I have no family to inform of my decision.

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

I understand the full import of this request, and I expect to
die when I take the medication to be prescribed. I further
understand that although most deaths occur within 3 hours, my death
may take longer and my physician has counseled me about this possibility.

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

Signed: _______________  Dated: _______________

DECLARATION OF WITNESSES

I declare all of the following:

(a) The individual is personally known to me or has provided proof of identity.

(b) The individual signed this request in my presence.

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

(d) The individual is not a patient for whom I am an attending physician.

_____________ Witness 1 Dated _____

_____________ Witness 2 Dated _____

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

Enacting section 1. The following acts and parts of acts are repealed:

(a) Section 329a of the Michigan penal code, 1931 PA 328, MCL
(b) 1992 PA 270, MCL 752.1021 to 752.1027.

Enacting section 2. This act takes effect 90 days after the date it is enacted into law.