END OF LIFE OPTIONS ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: ____________

LONG TITLE

General Description:

This bill amends the Utah Uniform Probate Code to enact the End of Life Options Act.

Highlighted Provisions:

This bill:

- defines terms;
- designates when an individual may make a request for medication;
- establishes attending physician responsibilities;
- requires a consulting physician confirmation;
- provides for a counseling referral when needed;
- requires an informed decision;
- encourages family notification;
- requires written and oral requests and ability to rescind the request at any time;
- requires waiting periods;
- includes:
  - documentation and reporting requirements; and
  - a requirement that the patient be a resident of the state;
- establishes the effect of the decision to end an individual's life on wills, contracts, and insurance or annuity contracts;
- provides limited immunities and procedures for permissible sanctions;
- prohibits euthanasia or mercy killing;
establishes criminal penalties for certain actions; and
provides a uniform form for patient consent.

Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides a special effective date.

Utah Code Sections Affected:
ENACTS:

75-2c-101, Utah Code Annotated 1953
75-2c-102, Utah Code Annotated 1953
75-2c-103, Utah Code Annotated 1953
75-2c-104, Utah Code Annotated 1953
75-2c-105, Utah Code Annotated 1953
75-2c-106, Utah Code Annotated 1953
75-2c-107, Utah Code Annotated 1953
75-2c-108, Utah Code Annotated 1953
75-2c-109, Utah Code Annotated 1953
75-2c-110, Utah Code Annotated 1953
75-2c-111, Utah Code Annotated 1953
75-2c-112, Utah Code Annotated 1953
75-2c-113, Utah Code Annotated 1953
75-2c-114, Utah Code Annotated 1953
75-2c-115, Utah Code Annotated 1953
75-2c-116, Utah Code Annotated 1953
75-2c-117, Utah Code Annotated 1953
75-2c-118, Utah Code Annotated 1953
75-2c-119, Utah Code Annotated 1953
75-2c-120, Utah Code Annotated 1953
75-2c-121, Utah Code Annotated 1953
75-2c-122, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 75-2c-101 is enacted to read:

CHAPTER 2c. END OF LIFE OPTIONS ACT

75-2c-101. Title.

This chapter is known as the "End of Life Options Act."

Section 2. Section 75-2c-102 is enacted to read:

75-2c-102. Definitions.

As used in this chapter:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Capable" means that in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a 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.

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

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable.

(6) "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.

(7) "Informed decision" means a decision by a qualified patient to request and obtain a prescription to end the patient's life in a humane and dignified manner that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) the patient's medical diagnosis;

(b) the patient's prognosis;

(c) the potential risks associated with taking the medication to be prescribed;

(d) the probable result of taking the medication to be prescribed; and
the feasible alternatives, including palliative care, comfort care, hospice care, disability resources available in the community, and pain control.

(8) "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.

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

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state.

(11) "Qualified patient" means a capable adult who is a resident of Utah and has satisfied the requirements of this chapter to obtain a prescription for medication to end the patient's life in a humane and dignified manner.

(12) "Self administer" means a qualified individual's affirmative, conscious act of using the medication to bring about the individual's own peaceful and humane death.

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

Section 3. Section 75-2c-103 is enacted to read:

75-2c-103. Initiation of written request for medication.

(1) An individual may make a written request for medication for the purpose of ending the individual's life in a humane and dignified manner in accordance with this chapter if the individual:

(a) is an adult;

(b) is capable;

(c) is a resident of Utah;

(d) has been determined by the attending physician and consulting physician to be suffering from a terminal disease; and

(e) has voluntarily expressed a wish to die.

(2) An individual may not qualify under the provisions of Subsection (1) solely because of age or disability.

Section 4. Section 75-2c-104 is enacted to read:

75-2c-104. Form of the written request.
A valid request for medication under this chapter shall be in substantially the form described in Section 75-2c-122, signed and dated by the patient, and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, is acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be an individual who is not:
   (a) a relative of the patient by blood, marriage, or adoption;
   (b) an individual who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or
   (c) an owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

Section 5. Section 75-2c-105 is enacted to read:

75-2c-105. Attending physician responsibilities.
   (1) The attending physician shall:
       (a) make the initial determination of whether a patient:
           (i) has a terminal disease;
           (ii) is capable; and
           (iii) has made the request voluntarily;
       (b) request that the patient attest to Utah residency pursuant to Section 75-2c-113;
       (c) ensure that the patient is making an informed decision, by informing the patient of:
           (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; and
           (v) the feasible alternatives, including palliative care, comfort care, hospice care, disability resources available in the community, 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 pursuant to Section 75-2c-107;
       (f) recommend that the patient notify next of kin;
(g) counsel the patient about the importance of having another individual present when the patient takes the medication prescribed pursuant to this chapter and of not taking the medication in a public place;

(h) inform the patient that the patient has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15-day waiting period required by Section 75-2c-111;

(i) verify, immediately prior to writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) fulfill the medical record documentation requirements of Section 75-2c-112;

(k) ensure that all appropriate steps are carried out in accordance with this chapter prior to writing a prescription for medication to enable a qualified patient to end the patient's life in a humane and dignified manner;

(l) with the patient's consent:

(i) contact a pharmacist and inform the pharmacist of the prescription; and

(ii) deliver the written prescription personally or electronically to the pharmacist, who will dispense the medications to either the patient, the attending physician, or an expressly identified agent of the patient; and

(m) inform the Department of Health of the prescription written for the patient, including the name of any drugs prescribed.

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

Section 6. Section 75-2c-106 is enacted to read:

75-2c-106. Consulting physician confirmation.

Before a patient is qualified under this chapter, a consulting physician shall examine the patient and the patient's relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease and verify that the patient is capable, is acting voluntarily, and has made an informed decision.

Section 7. Section 75-2c-107 is enacted to read:

75-2c-107. Counseling referral.

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 causing impaired
judgment, either physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is capable, is acting voluntarily, and has made an informed decision.

Section 8. Section 75-2c-108 is enacted to read:

75-2c-108. Informed decision.

A patient shall not receive a prescription for medication to end the patient's life in a humane and dignified manner unless the patient has made an informed decision as defined in Section 75-2c-102. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the patient is making an informed decision.

Section 9. Section 75-2c-109 is enacted to read:

75-2c-109. Family notification.

The attending physician shall recommend that the patient notify the next of kin of the patient's request for medication pursuant to this chapter. A patient who declines or is unable to notify next of kin shall not have the patient's request denied for that reason.

Section 10. Section 75-2c-110 is enacted to read:

75-2c-110. Written and oral requests -- Opportunity to rescind.

(1) In order to receive a prescription for medication to end a patient's life in a humane and dignified manner, a qualified patient shall:

(a) make an oral request for medication;

(b) make a written request for medication; and

(c) repeat the oral request to the patient's attending physician no less than 15 days after making the initial oral request.

(2) At the time the qualified patient makes the second oral request, the attending physician shall offer the patient an opportunity to rescind the request.

(3) A patient may rescind the patient's request at any time and in any manner without regard to the patient's mental state. A prescription for medication under this chapter shall not be written without the attending physician offering the qualified patient an opportunity to rescind the request.

Section 11. Section 75-2c-111 is enacted to read:

75-2c-111. Waiting periods.
A physician shall not write a prescription under this chapter until:

(1) no less than 15 days have elapsed between the patient's initial oral request and the writing of a prescription; and

(2) no less than 48 hours have elapsed between the patient's written request and the writing of a prescription.

Section 12. Section 75-2c-112 is enacted to read:

75-2c-112. Medical record documentation requirements.

The following shall be documented or filed in the patient's medical record:

(1) all oral requests by the patient for medication to end the patient's life in a humane and dignified manner;

(2) all written requests by the patient for medication to end the patient's life in a humane and dignified manner;

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

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

(5) a report of the outcome and determinations made during counseling, if performed;

(6) the attending physician's offer to the patient to rescind the patient's request at the time of the patient's second oral request; and

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

Section 13. Section 75-2c-113 is enacted to read:

75-2c-113. Residency requirement.

(1) An attending physician may rely on a patient's attestation of meeting the requirements for being a resident of Utah if the attestation complies with Subsections (2) and (3).

(2) A patient shall attest to the attending physician that the patient is a resident of the state, and that the patient:

(a) possesses a Utah driver license or Utah identification card;

(b) is registered to vote in Utah:
(c) owns or leases property in Utah;
(d) filed a Utah tax return for the most recent tax year; or
(e) has some other indication of residency that is recognized by state law.
(3) A patient who relies on Subsection (2)(e) to attest to residency in Utah shall specifically describe the factors that the patient is relying upon in the attestation to the attending physician.

Section 14. Section 75-2c-114 is enacted to read:

**75-2c-114. Reporting requirements.**

(1) A health care provider who dispenses a medication pursuant to this chapter shall file a copy of the dispensing record with the Department of Health in the manner required by the department.
(2) (a) The Department of Health may review a sample of the medical records of patients who receive a medication under this chapter.
(b) Except as otherwise required by law, the information collected under Subsections (1) and (2)(a) shall not be a public record and may not be made available for inspection by the public.
(3) The Department of Health shall:
(a) generate and make available to the public an annual statistical report of de-identified information collected under this section;
(b) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the collection of information regarding compliance with this chapter; and
(c) provide an annual report to the Legislature's Health and Human Services Interim Committee regarding the statistical report in Subsection (3)(a).

Section 15. Section 75-2c-115 is enacted to read:

**75-2c-115. Effect on construction of wills, contracts, and statutes.**

(1) No provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether an individual may make or rescind a request for medication to end the individual's life in a humane and dignified manner, shall be valid.
(2) No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by an individual, for medication to end the individual's life in a humane and dignified manner.
Section 16. Section 75-2c-116 is enacted to read:

75-2c-116. Insurance or annuity policies.

A qualified patient's act of ingesting medication to end the patient's life in a humane and dignified manner does not affect a life, health, or accident insurance or annuity policy.

Section 17. Section 75-2c-117 is enacted to read:

75-2c-117. Construction of chapter.

Nothing in this chapter shall be construed to 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 chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law.

Section 18. Section 75-2c-118 is enacted to read:

75-2c-118. Immunities -- Basis for prohibiting health care provider from participation -- Notification -- Permissible sanctions.

(1) Except as provided in Section 75-2c-119, the provisions of this section apply to this chapter.

(2) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter, including being present when a qualified patient takes the prescribed medication to end the qualified patient's life in a humane and dignified manner.

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

(4) A request by a patient for, or provision by an attending physician of, medication in good faith compliance with the provisions of this chapter shall not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

(5) A health care provider shall not be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to end the patient's 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 chapter, and the patient transfers the patient's 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.

(6) (a) Notwithstanding any other provision of law, a health care provider may prohibit another health care provider from participating in this chapter on the premises of the prohibiting health care provider if the prohibiting health care provider notifies the health care provider of the prohibiting provider's policy regarding participating in this chapter. Nothing in this Subsection (6)(a) prevents a health care provider from providing health care services to a patient that do not constitute participation in this chapter.

(b) Notwithstanding the provisions of Subsections (2) through (5), a health care provider may subject another health care provider to the sanctions stated in this Subsection (6)(b) if the sanctioning health care provider has notified the sanctioned provider before participation in this chapter that the sanctioning health care provider prohibits participation in this chapter. The sanctions may include:

(i) loss of privileges, loss of membership, or other sanction provided pursuant to the medical staff bylaws, policies, and procedures of the sanctioning health care provider, if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in this chapter while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) termination of lease or other property contract or other nonmonetary remedies provided by lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in this chapter 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; and

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

(c) Nothing in Subsections (6)(a) and (b) shall be construed to prevent:

(i) a health care provider from participating in this chapter while acting outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider; or
(ii) a patient from contracting with the patient's attending physician and consulting
physician to act outside the course and scope of the provider's capacity as an employee or
independent contractor of the sanctioning health care provider.

(7) A health care provider that imposes sanctions pursuant to Subsection (6)(b) shall
follow all due process and other procedures the sanctioning health care provider may have that
are related to the imposition of sanctions on another health care provider.

(8) For purposes of this section:

(a) "Notify" means a separate statement in writing to the health care provider
specifically informing the health care provider before the provider's participation in this chapter
of the sanctioning health care provider's policy about participation in activities covered by this
chapter.

(b) "Participate in this chapter":

(i) means to perform the duties of an attending physician pursuant to Section
75-2c-105, the consulting physician function pursuant to Section 75-2c-106, or the counseling
function pursuant to Section 75-2c-107; and

(ii) does not include:

(A) making an initial determination that a patient has a terminal disease and informing
the patient of the medical prognosis;

(B) providing information to a patient, upon the request of the patient, about the End of
Life Options Act;

(C) providing a patient, upon the request of the patient, with a referral to another
physician; or

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

(9) Suspension or termination of staff membership or privileges under Subsection (6) is
not reportable under Title 58, Occupations and Professions. Action taken pursuant to Section
75-2c-118 shall not be the sole basis for a report of unprofessional conduct to a licensing board
under Title 58, Occupations and Professions.

(10) This chapter shall not be construed to allow a lower standard of care for patients
in the community where the patient is treated or a similar community.
Section 19. Section 75-2c-119 is enacted to read:

75-2c-119. Liabilities.

(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 shall be guilty of a first degree felony.

(2) A person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient's life, or to destroy a rescission of such a request, shall be guilty of a first degree felony.

(3) Nothing in this chapter limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

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

Section 20. Section 75-2c-120 is enacted to read:

75-2c-120. Claims by governmental entity for costs incurred.

A governmental entity that incurs costs resulting from an individual terminating the individual's life pursuant to the provisions of this chapter in a public place shall have a claim against the estate of the individual to recover the costs and reasonable attorney fees related to enforcing the claim.

Section 21. Section 75-2c-121 is enacted to read:

75-2c-121. Severability.

Any section of this chapter that is held invalid as to any person or circumstance shall not affect the application of any other section of this chapter that can be given full effect without the invalid section or application.

Section 22. Section 75-2c-122 is enacted to read:

75-2c-122. Form of the request.

A request for a medication as authorized by this chapter shall 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, prognosis, the nature of medication to be prescribed, and potential associated risks, the expected result, and the feasible alternatives, including palliative care, comfort care, hospice care, disability resources available in the community, and pain control.

I request that my attending physician prescribe medication 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.

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 three 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

We declare that the individual signing this request:

(a) is personally known to us or has provided proof of identity;

(b) signed this request in our presence;

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

(d) is not a patient for whom either of us is the attending physician.

______________ Witness 1/Date

______________ Witness 2/Date

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

Section 23. Effective date.
This bill takes effect on July 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel