

S.77

Introduced by Committee on Health and Welfare

Date: February 5, 2013

Subject: Health; end of life; patient-directed dying; death with dignity

Statement of purpose of bill as introduced: This bill proposes to allow, subject to appropriate safeguards, a mentally competent person diagnosed as having less than six months to live to request a prescription which, if taken, would hasten the dying process.

An act relating to patient choice and control at end of life

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. FINDINGS~~

~~The General Assembly finds:~~

~~(1) The State of Oregon has been implementing its Death with Dignity Act since 1998. As of January 14, 2013, Oregon has seen a total of 1,050 terminal patients formally request medication to hasten death and, of those, 673 patients took the medication and died pursuant to the act. Oregon's most recent annual report on the act shows that in 2012, 115 prescriptions were written, and 66 patients died after ingesting the medication. An additional 11 patients died after taking medication pursuant to an earlier prescription, for a total of 77 deaths in 2012.~~

1 ~~(2) Vermont has about one sixth the population of Oregon. According~~
2 ~~to the 2010 census, Oregon has a population of 3,831,074 and Vermont a~~
3 ~~population of 625,741.~~

4 ~~(3) In the past 17 years, Oregon has seen its hospice enrollment increase~~
5 ~~significantly. In 1993, only 20 percent of all dying patients were enrolled in~~
6 ~~hospice. By 2005, enrollment had increased to 54 percent. In 2012, 97 percent~~
7 ~~of the patients who used medication under the Death with Dignity Act were in~~
8 ~~hospice care either at the time the prescription was written or at the time of~~
9 ~~death.~~

10 ~~(4) Despite continuing improvements in techniques for palliative care,~~
11 ~~most medical experts agree that not all pain can be relieved. Some terminal~~
12 ~~diseases, such as bone cancer, inflict untreatable agony at the end of life.~~
13 ~~Many cancer patients report that they would have greater comfort and courage~~
14 ~~in facing their future if they were assured they could use a Death with Dignity~~
15 ~~law if their suffering became unbearable.~~

16 Sec. 2. 18 V.S.A. chapter 113 is added to read:

17 CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A
18 TERMINAL CONDITION

19 § 5281. DEFINITIONS

20 As used in this chapter:

1 ~~(1) "Attending physician" means the physician whom the patient has~~
2 ~~designated to have primary responsibility for the care of the patient and who is~~
3 ~~willing to participate in the provision to a qualified patient of medication to~~
4 ~~hasten his or her death in accordance with this chapter.~~

5 (2) "Capacity" shall have the same meaning as in subdivision
6 9701(4)(B) of this title.

7 (3) "Consulting physician" means a physician who is qualified by
8 specialty or experience to make a professional diagnosis and prognosis
9 regarding the patient's illness and who is willing to participate in the provision
10 to a qualified patient of medication to hasten his or her death in accordance
11 with this chapter.

12 (4) "Counseling" means a consultation between a psychiatrist,
13 psychologist, or clinical social worker licensed in Vermont and a patient for
14 the purpose of confirming that the patient:

15 (A) has capacity; and

16 (B) is not suffering from a mental disorder or disease, including
17 depression, that causes the patient to have impaired judgment.

18 (5) "Dispense" means to prepare and deliver pursuant to a lawful order
19 of a physician a prescription drug in a suitable container appropriately labeled
20 for subsequent use by a patient entitled to receive the prescription drug. The

1 ~~term shall not include the actual administration of a prescription drug to the~~
2 patient.

3 (6) "Good faith" means objective good faith.

4 (7) "Health care provider" means a person, partnership, corporation,
5 facility, or institution, licensed or certified or authorized by law to administer
6 health care or dispense medication in the ordinary course of business or
7 practice of a profession.

8 (8) "Informed decision" means a decision by a patient to request and
9 obtain a prescription to hasten his or her death based on the patient's
10 understanding and appreciation of the relevant facts and that was made after
11 the patient was fully informed by the attending physician of all the following:

12 (A) The patient's medical diagnosis.

13 (B) The patient's prognosis.

14 (C) The range of possible results, including potential risks associated
15 with taking the medication to be prescribed.

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

17 (E) All feasible end-of-life services, including palliative care,
18 comfort care, hospice care, and pain control.

19 (9) "Palliative care" shall have the same meaning as in section 2 of this
20 title.

1 ~~(10) "Patient" means a person who is 18 years of age or older, a resident~~
2 ~~of Vermont, and under the care of a physician.~~

3 ~~(11) "Physician" means a physician licensed pursuant to 26 V.S.A.~~
4 ~~chapters 23 and 33.~~

5 ~~(12) "Qualified patient" means a patient with capacity who has satisfied~~
6 ~~the requirements of this chapter in order to obtain a prescription for medication~~
7 ~~to hasten his or her death. An individual shall not qualify under the provisions~~
8 ~~of this chapter solely because of age or disability.~~

9 ~~(13) "Terminal condition" means an incurable and irreversible disease~~
10 ~~which would, within reasonable medical judgment, result in death within six~~
11 ~~months.~~

12 § 5282. REQUESTS FOR MEDICATION

13 (a) In order to qualify under this chapter:

14 (1) A patient with capacity who has been determined by the attending
15 physician and consulting physician to be suffering from a terminal condition
16 and who has voluntarily expressed a wish to hasten the dying process may
17 request medication to be self-administered for the purpose of hastening his or
18 her death in accordance with this chapter.

19 (2) A patient shall have made an oral request and a written request and
20 shall have reaffirmed the oral request to his or her attending physician not less
21 ~~than 15 days after the initial oral request. At the time the patient makes the~~

1 ~~second oral request, the attending physician shall offer the patient an~~
2 ~~opportunity to rescind the request.~~

3 (b) Oral requests for medication by the patient under this chapter shall be
4 made in the presence of the attending physician.

5 (c) A written request for medication shall be signed and dated by the
6 patient and witnessed by at least two persons, at least 18 years of age, who, in
7 the presence of the patient, sign and affirm that the patient appeared to
8 understand the nature of the document and to be free from duress or undue
9 influence at the time the request was signed. Neither witness shall be any of
10 the following persons:

11 (1) the patient's attending physician, consulting physician, or any person
12 who has provided counseling for the patient pursuant to section 5285 of
13 this title;

14 (2) a person who knows that he or she is a relative of the patient by
15 blood, marriage, civil union, or adoption;

16 (3) a person who at the time the request is signed knows that he or she
17 would be entitled upon the patient's death to any portion of the estate or assets
18 of the patient under any will or trust, by operation of law, or by contract; or

19 (4) an owner, operator, or employee of a health care facility, nursing
20 home, or residential care facility where the patient is receiving medical
21 ~~treatment or is a resident.~~

1 ~~(d) A person who knowingly fails to comply with the requirements in~~
2 ~~subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.~~

3 ~~(e) The written request shall be completed only after the patient has been~~
4 ~~examined by a consulting physician as required under section 5284 of this title.~~

5 ~~(f)(1) Under no circumstances shall a guardian or conservator be permitted~~
6 ~~to act on behalf of a ward for purposes of this chapter.~~

7 ~~(2) Under no circumstances shall an agent under an advance directive be~~
8 ~~permitted to act on behalf of a principal for purposes of this chapter.~~

9 § 5283. ATTENDING PHYSICIAN; DUTIES

10 (a) The attending physician shall perform all the following:

11 (1) make the initial determination of whether a patient:

12 (A) is suffering a terminal condition;

13 (B) has capacity; and

14 (C) has made a voluntary request for medication to hasten his or her
15 death;

16 (2) request proof of Vermont residency, which may be shown by:

17 (A) a Vermont driver's license or photo identification card;

18 (B) proof of Vermont voter's registration;

19 (C) evidence of property ownership or a lease of residential premises
20 in Vermont; or

1 ~~(D) a Vermont personal income tax return for the most recent~~
2 ~~tax year;~~

3 ~~(3) inform the patient in person and in writing of all the following:~~

4 ~~(A) the patient's medical diagnosis;~~

5 ~~(B) the patient's prognosis;~~

6 ~~(C) the range of possible results, including potential risks associated~~
7 ~~with taking the medication to be prescribed;~~

8 ~~(D) the probable result of taking the medication to be prescribed; and~~

9 ~~(E) all feasible end-of-life services, including palliative care, comfort~~
10 ~~care, hospice care, and pain control;~~

11 ~~(4) refer the patient to a consulting physician for medical confirmation~~
12 ~~of the diagnosis, prognosis, and a determination that the patient has capacity~~
13 ~~and is acting voluntarily;~~

14 ~~(5) refer the patient for counseling, if applicable, under section 5285 of~~
15 ~~this chapter;~~

16 ~~(6) recommend that the patient notify the next of kin or someone with~~
17 ~~whom the patient has a significant relationship;~~

18 ~~(7) counsel the patient about the importance of ensuring that another~~
19 ~~individual is present when the patient takes the medication prescribed pursuant~~
20 ~~to this chapter and the importance of not taking the medication in a~~
21 ~~public place;~~

1 ~~(8) inform the patient that the patient has an opportunity to rescind the~~
2 ~~request at any time and in any manner and offer the patient an opportunity to~~
3 ~~rescind at the end of the 15-day waiting period;~~

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

6 ~~(10) fulfill the medical record documentation requirements of section~~
7 ~~5290 of this title;~~

8 ~~(11) ensure that all required steps are carried out in accordance with this~~
9 ~~chapter prior to writing a prescription for medication to hasten death; and~~

10 ~~(12)(A) dispense medication directly, including ancillary medication~~
11 ~~intended to facilitate the desired effect to minimize the patient's discomfort,~~
12 ~~provided the attending physician is licensed to dispense medication in~~
13 ~~Vermont, has a current Drug Enforcement Administration certificate, and~~
14 ~~complies with any applicable administrative rules; or~~

15 ~~(B) with the patient's written consent:~~

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

18 ~~(ii) deliver the written prescription personally or by mail or~~
19 ~~facsimile to the pharmacist, who will dispense the medication to the patient,~~
20 ~~the attending physician, or an expressly identified agent of the patient.~~

1 ~~(b) Notwithstanding any other provision of law to the contrary, the~~
2 attending physician may sign the patient's death certificate, which shall list the
3 underlying terminal disease as the cause and manner of death.

4 § 5284. MEDICAL CONSULTATION REQUIRED

5 Before a patient is qualified in accordance with this chapter, a consulting
6 physician shall physically examine the patient, review the patient's relevant
7 medical records, and confirm in writing the attending physician's diagnosis
8 that the patient is suffering from a terminal condition and verify that the patient
9 has capacity, is acting voluntarily, and has made an informed decision.

10 § 5285. COUNSELING REFERRAL

11 If, in the opinion of the attending physician or the consulting physician, a
12 patient may be suffering from a mental disorder or disease, including
13 depression, causing impaired judgment, either physician shall refer the patient
14 for counseling. A medication to end the patient's life shall not be prescribed
15 until the person performing the counseling determines that the patient is not
16 suffering from a mental disorder or disease, including depression, that causes
17 the patient to have impaired judgment.

18 § 5286. INFORMED DECISION

19 A person shall not receive a prescription for medication to hasten his or her
20 death unless the patient has made an informed decision. Immediately prior to
21 ~~writing a prescription for medication in accordance with this chapter, the~~

1 ~~attending physician shall verify that the patient is making an informed~~
2 ~~decision.~~

3 § 5287. RECOMMENDED NOTIFICATION

4 The attending physician shall recommend that the patient notify the
5 patient's next of kin or someone with whom the patient has a significant
6 relationship of the patient's request for medication in accordance with this
7 chapter. A patient who declines or is unable to notify the next of kin or the
8 person with whom the patient has a significant relationship shall not be refused
9 medication in accordance with this chapter.

10 § 5288. RIGHT TO RESCIND

11 A patient may rescind the request for medication in accordance with this
12 chapter at any time and in any manner regardless of the patient's mental state.
13 A prescription for medication under this chapter shall not be written without
14 the attending physician's offering the patient an opportunity to rescind the
15 request.

16 § 5289. WAITING PERIOD

17 The attending physician shall write a prescription no less than 48 hours after
18 the last to occur of the following events:

19 (1) the patient's written request for medication to hasten his or her
20 death;

21 ~~(2) the patient's second oral request; or~~

1 ~~(3) the attending physician's offering the patient an opportunity to~~
2 ~~rescind the request.~~

3 § 5290. MEDICAL RECORD DOCUMENTATION

4 (a) The following shall be documented and filed in the patient's medical
5 record:

6 (1) the date, time, and wording of all oral requests of the patient for
7 medication to hasten his or her death;

8 (2) all written requests by a patient for medication to hasten his or her
9 death;

10 (3) the attending physician's diagnosis, prognosis, and basis for the
11 determination that the patient has capacity, is acting voluntarily, and has made
12 an informed decision;

13 (4) the consulting physician's diagnosis, prognosis, and verification,
14 pursuant to section 5284 of this title, that the patient has capacity, is acting
15 voluntarily, and has made an informed decision;

16 (5) a report of the outcome and determinations made during any
17 counseling which the patient may have received;

18 (6) the date, time, and wording of the attending physician's offer to the
19 patient to rescind the request for medication at the time of the patient's second
20 oral request; and

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

4 ~~(b) Medical records compiled pursuant to this chapter shall be subject to~~
5 ~~discovery only if the court finds that the records are necessary to resolve issues~~
6 ~~of compliance with or limitations on actions under this chapter.~~

7 § 5291. REPORTING REQUIREMENT

8 ~~(a) The Department of Health shall require that any physician who writes a~~
9 ~~prescription pursuant to this chapter file a report with the Department covering~~
10 ~~all the prerequisites for writing a prescription under this chapter. In addition,~~
11 ~~physicians shall report the number of written requests for medication that were~~
12 ~~received, regardless of whether a prescription was actually written in each~~
13 ~~instance.~~

14 ~~(b) The Department shall review annually the medical records of qualified~~
15 ~~patients who have hastened their deaths in accordance with this chapter.~~

16 ~~(c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to~~
17 ~~facilitate the collection of information regarding compliance with this chapter.~~

18 ~~Individual medical information collected and reports filed pursuant to~~
19 ~~subsection (a) of this section are confidential and are exempt from public~~
20 ~~inspection and copying under the Public Records Act.~~

1 ~~(d) The Department shall generate and make available to the public an~~
2 annual statistical report of information collected under subsections (a) and (b)
3 of this section. The report shall include the number of instances in which
4 medication was taken by a qualified patient to hasten death but failed to have
5 the intended effect.

6 § 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

7 (a) The Department of Health shall adopt rules providing for the safe
8 disposal of unused medications prescribed under this chapter.

9 (b) Expedited rulemaking. Notwithstanding any contrary provision of
10 3 V.S.A. chapter 25 and 2010 Acts and Resolves No. 146, Sec. F4, the
11 Department may adopt expedited rules to implement subsection (a) of this
12 section pursuant to the following expedited rulemaking process:

13 (1) Within 90 days after the date this act is passed, the Department shall
14 file proposed rules with the Secretary of State and the Legislative Committee
15 on Administrative Rules under 3 V.S.A. § 841 after publication in three daily
16 newspapers with the highest average circulation in the State of a notice that
17 lists the rules to be adopted pursuant to this process and a 15-day public
18 comment period following publication.

19 (2) The Department shall file final proposed rules with the Legislative
20 Committee on Administrative Rules no later than 14 days after the public
21 comment period.

1 ~~(3) The Legislative Committee on Administrative Rules shall review~~
2 ~~and may approve or object to the final proposed rules under 3 V.S.A. § 842,~~
3 ~~except that its action shall be completed no later than 14 days after the final~~
4 ~~proposed rules are filed with the Committee.~~

5 (4) The Department may adopt a properly filed final proposed rule after
6 the passage of 14 days from the date of filing final proposed rules with the
7 Legislative Committee on Administrative Rules or after receiving notice of
8 approval from the Committee, provided the Department:

9 (A) has not received a notice of objection from the Legislative
10 Committee on Administrative Rules; or

11 (B) after having received a notice of objection from the Committee,
12 has responded pursuant to 3 V.S.A. § 842.

13 (5) Rules adopted under this section shall be effective upon being filed
14 with the Secretary of State and shall have the full force and effect of rules
15 adopted pursuant to 3 V.S.A. chapter 25. Rules filed with the Secretary of
16 State pursuant to this section shall be deemed to be in full compliance with
17 3 V.S.A. § 843 and shall be accepted by the Secretary of State if filed with a
18 certification by the Secretary of Human Services that a rule is required to meet
19 the purposes of this section.

~~§ 5293. PROHIBITIONS; CONTRACT CONSTRUCTION~~

~~(a) A provision in a contract, will, trust, or other agreement, whether written or oral, shall not be valid to the extent the provision would affect whether a person may make or rescind a request for medication to hasten his or her death in accordance with this chapter.~~

~~(b) The sale, procurement, or issue of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication to hasten his or her death in accordance with this chapter or the act by a qualified patient to hasten his or her death pursuant to this chapter. Neither shall a qualified patient's act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.~~

§ 5294. LIMITATIONS ON ACTIONS

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter. This includes being present when a qualified patient takes the prescribed medication to hasten his or her death in accordance with this chapter.

(b) A professional organization or association or health care provider shall ~~not subject a person to censure, discipline, suspension, loss of license, loss of~~

1 ~~privileges, loss of membership, or other penalty for actions taken in good faith~~
2 reliance on the provisions of this chapter or refusals to act under this chapter.

3 (c) A provision by an attending physician of medication in good faith
4 reliance on the provisions of this chapter shall not constitute patient neglect for
5 any purpose of law.

6 (d) A request by a patient for medication under this chapter shall not
7 provide the sole basis for the appointment of a guardian or conservator.

8 (e) A health care provider shall not be under any duty, whether by contract,
9 by statute, or by any other legal requirement, to participate in the provision to a
10 qualified patient of medication to hasten his or her death in accordance with
11 this chapter. If a health care provider is unable or unwilling to carry out a
12 patient's request in accordance with this chapter and the patient transfers his or
13 her care to a new health care provider, the previous health care provider, upon
14 request, shall transfer a copy of the patient's relevant medical records to the
15 new health care provider. A decision by a health care provider not to
16 participate in the provision of medication to a qualified patient shall not
17 constitute the abandonment of the patient or unprofessional conduct under
18 26 V.S.A. § 1354.

19 § 5295. HEALTH CARE FACILITY EXCEPTION

20 Notwithstanding any other provision of law to the contrary, a health care
21 facility may prohibit an attending physician from writing a prescription for

1 ~~medication under this chapter for a patient who is a resident in its facility and~~
2 intends to use the medication on the facility's premises, provided the facility
3 has notified the attending physician in writing of its policy with regard to the
4 prescriptions. Notwithstanding subsection 5294(b) of this title, any health care
5 provider who violates a policy established by a health care facility under this
6 section may be subject to sanctions otherwise allowable under law or contract.

7 § 5296. LIABILITIES AND PENALTIES

8 (a) With the exception of the limitations on actions established by section
9 5294 of this title and with the exception of the provisions of section 5298 of
10 this title, nothing in this chapter shall be construed to limit liability for civil
11 damages resulting from negligent conduct or intentional misconduct by any
12 person.

13 (b) With the exception of the limitations on actions established by section
14 5294 of this title and with the exception of the provisions of section 5298 of
15 this title, nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to
16 limit criminal prosecution under any other provision of law.

17 (c) A health care provider is subject to review and disciplinary action by
18 the appropriate licensing entity for failing to act in accordance with this
19 ~~chapter, provided such failure is not in good faith.~~

~~§ 5297. FORM OF THE WRITTEN REQUEST~~

~~A written request for medication as authorized by this chapter shall be substantially in the following form:~~

~~REQUEST FOR MEDICATION TO HASTEN MY DEATH~~

~~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 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 end-of-life services, including palliative care, comfort care, hospice care, and pain control.~~

~~I request that my attending physician prescribe medication that will hasten my death.~~

~~INITIAL ONE:~~

~~_____ I have informed my family or others with whom I have a significant relationship of my decision and taken their opinions into consideration.~~

~~_____ I have decided not to inform my family or others with whom I have a significant relationship of my decision.~~

~~_____ I have no family or others with whom I have a significant relationship to inform of my decision.~~

1 ~~I understand that I have the right to change my mind at any time.~~

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

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

8 Signed: _____ Dated: _____

9 AFFIRMATION OF WITNESSES

10 We affirm that, to the best of our knowledge and belief:

11 (1) the person signing this request:

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

13 (B) signed this request in our presence;

14 (C) appears to understand the nature of the document and to be free
15 from duress or undue influence at the time the request was signed; and

16 (2) that neither of us:

17 (A) is under 18 years of age;

18 (B) is a relative (by blood, marriage, civil union, or adoption) of the
19 ~~person signing this request;~~

1 ~~(C) is the patient's attending physician, consulting physician, or a~~
2 ~~person who has provided counseling for the patient pursuant to 18 V.S.A.~~

3 ~~§ 5285;~~

4 ~~(D) is entitled to any portion of the person's assets or estate upon~~
5 ~~death; or~~

6 ~~(E) owns, operates, or is employed at a health care facility where the~~
7 ~~person is a patient or resident.~~

8 ~~Witness 1/Date _____~~

9 ~~Witness 2/Date _____~~

10 ~~NOTE: A knowingly false affirmation by a witness may result in criminal~~
11 ~~penalties.~~

12 ~~§ 5298. STATUTORY CONSTRUCTION~~

13 ~~Nothing in this chapter shall be construed to authorize a physician or any~~
14 ~~other person to end a patient's life by lethal injection, mercy killing, or active~~
15 ~~euthanasia. Action taken in accordance with this chapter shall not be~~
16 ~~considered tortious under law and shall not be construed for any purpose to~~
17 ~~constitute suicide, assisted suicide, mercy killing, or homicide under the law.~~

1 ~~Sec. 3. 13 V.S.A. § 2312 is added to read:~~

2 § 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF
3 LIFE ACT

4 A person who violates 18 V.S.A. chapter 113 with the intent to cause the
5 death of a patient as defined in subdivision 5281(10) of that title may be
6 prosecuted under chapter 53 of this title (homicide).

7 Sec. 4. 13 V.S.A. § 2004 is added to read:

8 § 2004. FALSE WITNESSING

9 A person who knowingly violates the requirements of 18 V.S.A. § 5282(c)
10 shall be imprisoned for not more than 10 years or fined not more than
11 \$2,000.00, or both.

12 Sec. 5. EFFECTIVE DATE

13 ~~This act shall take effect on September 1, 2013.~~

~~Sec. 1. 18 V.S.A. chapter 113 is added to read:~~

~~CHAPTER 113. IMMUNITY FOR TERMINALLY ILL PATIENT'S USE OF~~
~~PRESCRIPTION MEDICATION~~

~~§ 5281. TERMINALLY ILL PATIENTS; IMMUNITY FOR PRESCRIBING OR~~
~~BEING PRESENT WHEN MEDICATION IS TAKEN~~

~~(a) As used in this section:~~

~~(1) "Bona fide health care professional-patient relationship" means a~~
~~treating or consulting relationship in the course of which a health care~~
~~professional has completed a full assessment of the patient's medical history~~
~~and current medical condition, including a personal physical examination.~~

~~(2) "Health care professional" means an individual licensed to practice~~
~~medicine under 26 V.S.A. chapter 23 or 33.~~

~~(3) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.~~

~~(b) A health care professional who has a bona fide health care professional-patient relationship with a patient with a terminal condition and who prescribes medication to that patient for the relief of symptoms associated with or caused by the terminal condition shall not be subject to criminal or civil liability or professional disciplinary action if the patient self-administers more than a prescribed dosage of the medication and dies as a result.~~

~~(c) A person shall not be subject to criminal or civil liability solely for being present when a patient self-administers a lethal dose of a medication that has been prescribed for that patient by a health care professional.~~

Sec. 2. EFFECTIVE DATE

~~This act shall take effect on July 1, 2013.~~

Sec. 1. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. PATIENT CHOICE AT END OF LIFE

§ 5281. DEFINITIONS

(a) As used in this chapter:

(1) "Bona fide physician-patient relationship" means a treating or consulting relationship in the course of which a physician has completed a full assessment of the patient's medical history and current medical condition, including a personal physical examination.

(2) "Capable" means that a patient has the ability to make and communicate health care decisions to a physician, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(3) "Health care facility" shall have the same meaning as in section 9432 of this title.

(4) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(5) "Impaired judgment" means that a person does not sufficiently understand or appreciate the relevant facts necessary to make an informed decision.

(6) "Interested person" means:

(A) the patient's physician;

(B) a person who knows that he or she is a relative of the patient by blood, civil marriage, civil union, or adoption;

(C) a person who knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(D) an owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(7) "Palliative care" shall have the same definition as in section 2 of this title.

(8) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(9) "Physician" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

(10) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. RIGHT TO INFORMATION

The rights of a patient under section 1871 of this title to be informed of all available options related to terminal care and under 12 V.S.A. § 1909(d) to receive answers to any specific question about the foreseeable risks and benefits of medication without the physician's withholding any requested information exist regardless of the purpose of the inquiry or the nature of the information. A physician who engages in discussions with a patient related to such risks and benefits in the circumstances described in this chapter shall not be construed to be assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication, and such discussions shall not be used to establish civil or criminal liability or professional disciplinary action.

§ 5283. REQUIREMENTS FOR PRESCRIPTION AND DOCUMENTATION; IMMUNITY

(a) A physician shall not be subject to any civil or criminal liability or professional disciplinary action if the physician prescribes to a patient with a terminal condition medication to be self-administered for the purpose of hastening the patient's death and the physician affirms by documenting in the patient's medical record that all of the following occurred:

(1) The patient made an oral request to the physician in the physician's physical presence for medication to be self-administered for the purpose of hastening the patient's death.

(2) No fewer than 15 days after the first oral request, the patient made a second oral request to the physician in the physician's physical presence for medication to be self-administered for the purpose of hastening the patient's death.

(3) At the time of the second oral request, the physician offered the patient an opportunity to rescind the request.

(4) The patient made a written request for medication to be self-administered for the purpose of hastening the patient's death that was signed by the patient in the presence of two or more witnesses who were not interested persons, who were at least 18 years of age, and who signed and affirmed that the patient appeared to understand the nature of the document and to be free from duress or undue influence at the time the request was signed.

(5) The physician determined that the patient:

(A) was suffering a terminal condition, based on the physician's physical examination of the patient and review of the patient's relevant medical records;

(B) was capable;

(C) was making an informed decision;

(D) had made a voluntary request for medication to hasten his or her death; and

(E) was a Vermont resident.

(6) The physician informed the patient in person, both verbally and in writing, of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy was an estimate based on the physician's best medical judgment and was not a guarantee of the actual time remaining in the patient's life, and that the patient could live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) if the patient was not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

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

(7) The physician referred the patient to a second physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient was capable, was acting voluntarily, and had made an informed decision.

(8) The physician either verified that the patient did not have impaired judgment or referred the patient for an evaluation by a psychiatrist, psychologist, or clinical social worker licensed in Vermont for confirmation that the patient was capable and did not have impaired judgment.

(9) If applicable, the physician consulted with the patient's primary care physician with the patient's consent.

(10) The physician informed the patient that the patient may rescind the request at any time and in any manner and offered the patient an opportunity to rescind after the patient's second oral request.

(11) The physician ensured that all required steps were carried out in accordance with this section and confirmed, immediately prior to writing the prescription for medication, that the patient was making an informed decision.

(12) The physician wrote the prescription no fewer than 48 hours after the last to occur of the following events:

(A) the patient's written request for medication to hasten his or her death;

(B) the patient's second oral request; or

(C) the physician's offering the patient an opportunity to rescind the request.

(13) The physician either:

(A) dispensed the medication directly, provided that at the time the physician dispensed the medication, he or she was licensed to dispense medication in Vermont, had a current Drug Enforcement Administration certificate, and complied with any applicable administrative rules; or

(B) with the patient's written consent:

(i) contacted a pharmacist and informed the pharmacist of the prescription; and

(ii) delivered the written prescription personally or by mail or facsimile to the pharmacist, who dispensed the medication to the patient, the physician, or an expressly identified agent of the patient.

(14) The physician recorded and filed the following in the patient's medical record:

(A) the date, time, and wording of all oral requests of the patient for medication to hasten his or her death;

(B) all written requests by the patient for medication to hasten his or her death;

(C) the physician's diagnosis, prognosis, and basis for the determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(D) the second physician's diagnosis, prognosis, and verification that the patient was capable, was acting voluntarily, and had made an informed decision;

(E) the physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten his or her death or that the physician informed the patient of all feasible end-of-life services;

(F) the physician's verification that the patient either did not have impaired judgment or that the physician referred the patient for an evaluation and the person conducting the evaluation has determined that the patient did not have impaired judgment;

(G) a report of the outcome and determinations made during any evaluation which the patient may have received;

(H) the date, time, and wording of the physician's offer to the patient to rescind the request for medication at the time of the patient's second oral request; and

(I) a note by the physician indicating that all requirements under this section were satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

(15) After writing the prescription, the physician promptly filed a report with the Department of Health documenting completion of all of the requirements under this section.

(b) This section shall not be construed to limit civil or criminal liability for gross negligence, recklessness, or intentional misconduct.

§ 5284. NO DUTY TO AID

A patient with a terminal condition who self-administers a lethal dose of medication shall not be considered to be a person exposed to grave physical harm under 12 V.S.A. § 519, and no person shall be subject to civil or criminal liability solely for being present when a patient with a terminal condition self-administers a lethal dose of medication or for not acting to prevent the patient from self-administering a lethal dose of medication.

§ 5285. LIMITATIONS ON ACTIONS

(a) A physician, nurse, pharmacist, or other person shall not be under any duty, by law or contract, to participate in the provision of a lethal dose of medication to a patient.

(b) A health care facility or health care provider shall not subject a physician, nurse, pharmacist, or other person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

(c) Except as otherwise provided in this section and sections 5283, 5289, and 5290 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

§ 5286. HEALTH CARE FACILITY EXCEPTION

A health care facility may prohibit a physician from writing a prescription for a dose of medication intended to be lethal for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5285(b) of this title, any physician who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5287. INSURANCE POLICIES; PROHIBITIONS

(a) A person and his or her beneficiaries shall not be denied benefits under a life insurance policy, as defined in 8 V.S.A. § 3301, for actions taken in accordance with this chapter.

(b) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing or unwilling to participate in the provisions of this chapter.

§ 5288. NO EFFECT ON PALLIATIVE SEDATION

This chapter shall not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with accepted medical standards.

§ 5289. PROTECTION OF PATIENT CHOICE AT END OF LIFE

A physician with a bona fide physician–patient relationship with a patient with a terminal condition shall not be considered to have engaged in unprofessional conduct under 26 V.S.A. § 1354 or 26 V.S.A. § 1842 if:

(1) the physician determines that the patient is capable and does not have impaired judgment;

(2) the physician informs the patient of all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(3) the physician prescribes a dose of medication that may be lethal to the patient;

(4) the physician advises the patient of all foreseeable risks related to the prescription; and

(5) the patient makes an independent decision to self-administer a lethal dose of the medication.

§ 5290. IMMUNITY FOR PHYSICIANS

A physician shall be immune from any civil or criminal liability or professional disciplinary action for actions performed in good faith compliance with the provisions of this chapter.

§ 5291. SAFE DISPOSAL OF UNUSED MEDICATIONS

The Department of Health shall adopt rules providing for the safe disposal of unused medications prescribed under this chapter.

§ 5292. STATUTORY CONSTRUCTION

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. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law. This section shall not be construed to conflict with section 1553 of the Patient Protection and Affordable Care Act, Pub.L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L. No. 111-152.

Sec. 2. REPEAL

18 V.S.A. § 5283 (immunity for prescription and documentation) is repealed on July 1, 2016.

Sec. 3. EFFECTIVE DATES

(a) Sec. 1 (18 V.S.A. chapter 113) of this act shall take effect on passage, except that 18 V.S.A. §§ 5289 (protection of patient choice at end of life) and 5290 (immunity for physicians) shall take effect on July 1, 2016.

(b) The remaining sections of this act shall take effect on passage.