

DEATH WITH DIGNITY

Date: 3/25/2022

To: Members of Vermont House Committee on Human Services

From: Peg Sandeen, PhD, MSW, CEO, Death with Dignity Political Fund

RE: Proposed Amendments to Act 39

This memo provides an overview of proposed amendments to Act 39, examining them through the context of similar amendments proposed or enacted recently in other states. I am pleased to provide my assessment, as Death with Dignity Political Fund was one of the advocacy groups supporting the people of Vermont who advocated for the law's passage in 2013 (and the years prior). As a social worker, I know Vermont remains a national leader in the provision of quality end-of-life care, and the amendments to Act 39 bill continues the long partnership we have built together.

S.74, which proposes three amendments to Act 39, Vermont's Patient Choice and Control at the End of Life law, reflects changes enacted by other states with existing Death with Dignity statutes (California, 2021; Oregon, 2020). They are also similar to amendments under consideration this session in legislatures in Hawai'i and Washington state. Additionally, they were integrated into the New Mexico law upon its first passage in 2021.

To understand the importance of these minor shifts in the process is to understand the underpinnings of Act 39, the framework guiding the medical standard of care in Vermont for terminally ill, qualified patients requesting a hastened death. Typically, medical standards of care evolve within the field of medicine. A few medical issues, however, become politicized and, therefore, codified, requiring the legislature to amend the underlying medical standard of care when the practice of medicine shifts or patients' needs change. That is the situation you are considering today.

To take each amendment topic, one-by-one, let's first consider the telemedicine language. The Patient Protection and Affordable Care Act, enacted the year before Vermont's Act 39 was signed into law, was the first major national policy foray into telemedicine and the Centers for Medicare and Medicaid Services (CMS) issued a comprehensive set of telemedicine guidelines at the beginning of the COVID-19 pandemic. CMS guidelines have impacted standards of care in many areas of medicine, regardless if the healthcare services were provided by Medicare or Medicaid.

Because national telemedicine policy guidelines have evolved since Act 39 was signed into law, it needs a minor update to bring it in line with other end-of-life healthcare practices and with existing Vermont statutory guidance on telemedicine. Every other state with Death with Dignity statutes allow telemedicine consultations for aid in dying, either expressly or through typical medical practice. This updated provision would ease physical pain for dying patients pursuing this end-of-life option, and unify telehealth practices across the healthcare spectrum in Vermont.

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The second component of S.74 addresses timelines. Vermont features one of the longest timelines to accessing a prescription to hasten death. To reduce undue suffering for terminally ill patients, California shortened its timeline earlier this year, as did Oregon in 2019. It's too early to examine any data out of California, but data from Oregon's annual Death with Dignity Act Reports demonstrate that 20% of Oregonians who qualified for the law did so under a waiver that allowed a shortened timeline in 2020 and 21% of Oregonians qualified for a similar waiver in 2021.

S.74 proposes shortening the timeline by 48 hours, a minimal change that could have a maximal impact on patient wellbeing. Anecdotally, we know that as patients get closer to death, each day can become more unbearable. This amendment could save a patient from two additional days of suffering that should not, and do not need to, exist, as the law's numerous steps would remain intact, which ensure at several stages, the law is being adhered to by all parties involved. Patients would maintain the right to stop the process at any time, or choose not to consume the medication, under the provisions of Act 39.

Lastly, S.74 provides more specificity to the existing immunities clause in Act 39 by adding pharmacists. This section of the proposed amendment should be deemed a minor modification because it *explicitly asserts* an idea that was implicit in the original: that all healthcare providers involved in the process are immune from prosecution if they adhere in good faith to the standards set forth by the Vermont legislature. It makes no changes, substantive or minor, to the original law; rather, it codifies an interpretation made by the Vermont attorney general and brings Act 39 in line with all other similar statutes in the U.S.

These three amendments to Act 39 are minor statutory modifications, but their impact could be tremendous to increasing patient access, while also eliminating unnecessary suffering. Since 2013, Vermont residents with terminal illness who have accessed Act 39, have done so without incident, nor has the Vermont Department of Health received any complaints since the law's inception. The law has worked as intended. But, standards of medical practice have evolved, and Vermont's current standards for medical aid in dying should evolve, also.

Passing S.74 will undoubtedly increase wellbeing for terminally-ill patients accessing Death with Dignity in Vermont. Telemedicine has become a more patient-centered and efficient model for practicing quality healthcare, with no expense to the level of patient care. When dying, the physical act of traveling to a healthcare facility can be prohibitive and exclusionary for access to this option. Further, requiring a patient to endure an additional 48 hours can increase already paramount pain. Finally, codifying immunity for pharmacists who choose to fill aid-in-dying prescriptions for qualified patients, will likely increase numbers of participating pharmacists, which ultimately increases patient access. As the first state to pass Death with Dignity through the legislative process, Vermont will remain a national model for comprehensive end-of-life care in passing S.74.