REFERENCE TITLE: end-of-life decisions; terminally ill

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2347

Introduced by
Representatives Gonzales, Alston, Andrade, Bolding, Cardenas, Espinoza, Gabaldón, Hale, Mendez, Rios, Saldate, Velasquez; Benally, Clark, Fernandez, Friese, Otondo, Plumlee, Wheeler

AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 33; RELATING TO END-OF-LIFE DECISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 36, Arizona Revised Statutes, is amended by adding chapter 33, to read:

CHAPTER 33
DEATH WITH DIGNITY
ARTICLE 1. GENERAL PROVISIONS

36-3301. Definitions
IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "CONSULTING PHYSICIAN" MEANS A PHYSICIAN WHO IS QUALIFIED BY SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS REGARDING A PATIENT'S DISEASE.
2. "COUNSELING" MEANS A CONSULTATION BETWEEN A PSYCHIATRIST OR PSYCHOLOGIST LICENSED BY THIS STATE AND A PATIENT FOR THE PURPOSE OF DETERMINING WHETHER THE PATIENT IS SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.
3. "DEATH WITH DIGNITY" MEANS THE ISSUANCE OF A PRESCRIPTION FOR MEDICATION FOR SELF-ADMINISTRATION THAT WILL TERMINATE THE LIFE OF A QUALIFIED PATIENT IN A PAINLESS, HUMANE AND DIGNIFIED MANNER.
4. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.
5. "INFORMED DECISION" MEANS A DECISION BY A QUALIFIED PATIENT TO REQUEST AND OBTAIN A PRESCRIPTION TO END THE PATIENT'S LIFE THAT IS BASED ON AN APPRECIATION OF THE RELEVANT FACTS AND THAT IS MADE 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.
   (e) FEASIBLE ALTERNATIVES TO TAKING THE MEDICATION, INCLUDING COMFORT CARE, HOSPICE CARE AND PAIN CONTROL.
7. "QUALIFIED PATIENT" MEANS A CAPABLE ADULT WHO HAS RESIDED IN THIS STATE FOR AT LEAST NINETY DAYS AND WHO HAS SATISFIED THE REQUIREMENTS OF THIS ARTICLE IN ORDER TO OBTAIN A PRESCRIPTION TO END THE PATIENT'S LIFE.
8. "TERMINAL CONDITION" MEANS A CONDITION THAT RESULTS FROM AN ACCIDENT OR AN INCURABLE AND IRREVERSIBLE DISEASE, THAT HAS BEEN MEDICALLY CONFIRMED AND THAT WILL CAUSE DEATH, WITH REASONABLE MEDICAL JUDGMENT, WITHIN SIX MONTHS.

36-3302. Request for medication; requirements; witnesses; signatures
A. A QUALIFIED PATIENT MAY MAKE A WRITTEN REQUEST FOR MEDICATION TO END THE PATIENT'S LIFE AS PRESCRIBED BY THIS ARTICLE.
B. A REQUEST FOR MEDICATION UNDER THIS ARTICLE MUST BE IN
SUBSTANTIALLY THE FORM DESCRIBED IN SECTION 36-3318, SIGNED AND DATED BY THE
PATIENT AND BE WITNESSED BY AT LEAST TWO PERSONS WHO, IN THE PRESENCE OF THE
PATIENT, ATTEST THAT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF THE PATIENT IS
COMPETENT, IS ACTING VOLUNTARILY AND IS NOT BEING COERCED TO SIGN THE
REQUEST.
C. AT LEAST ONE OF THE WITNESSES MUST BE A PERSON WHO IS NOT:
1. A RELATIVE OF THE PATIENT BY BLOOD, MARRIAGE OR ADOPTION.
2. AT THE TIME THE REQUEST IS SIGNED, ENTITLED TO ANY PORTION OF THE
ESTATE OF THE PATIENT ON THE PATIENT'S DEATH UNDER ANY WILL OR BY OPERATION
OF LAW.
3. AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE
PATIENT IS RECEIVING MEDICAL TREATMENT OR IS A RESIDENT.
D. THE PATIENT'S ATTENDING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED
MAY NOT BE A WITNESS.
E. NOTWITHSTANDING SUBSECTION C, PARAGRAPH 3 OF THIS SECTION, IF THE
PATIENT RESIDES IN A LONG-TERM CARE FACILITY AT THE TIME THE WRITTEN REQUEST
IS MADE, ONE OF THE WITNESSES MUST BE A PERSON WHO IS DESIGNATED BY THE
FACILITY AND WHO HAS THE QUALIFICATIONS SPECIFIED BY THE DEPARTMENT AS
PRESCRIBED BY RULE.
F. IF THE PATIENT IS COMPETENT BUT IS UNABLE TO WRITE OR TO SIGN A
STATEMENT, THE PATIENT MAY SUBSTITUTE A VIDEO RECORDING, WITNESSED BY TWO
QUALIFIED INDIVIDUALS, FOR THE WRITTEN REQUEST.
36-3303. Safeguards; attending physician; requirements
THE ATTENDING PHYSICIAN MUST:
1. MAKE THE INITIAL DETERMINATION OF WHETHER A PATIENT HAS A TERMINAL
CONDITION, IS COMPETENT AND HAS MADE THE REQUEST VOLUNTARILY.
2. INFORM THE PATIENT 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.
(e) FEASIBLE ALTERNATIVES TO TAKING THE MEDICATION, INCLUDING COMFORT
CARE, HOSPICE CARE AND PAIN CONTROL.
3. REFER THE PATIENT TO A CONSULTING PHYSICIAN FOR MEDICAL
CONFIRMATION OF THE DIAGNOSIS AND FOR A DETERMINATION THAT THE PATIENT IS
COMPETENT AND IS ACTING VOLUNTARILY.
4. REFER THE PATIENT FOR COUNSELING IF REQUIRED PURSUANT TO SECTION
36-3305.
5. REQUEST THAT THE PATIENT NOTIFY THE PATIENT'S NEXT OF KIN.
6. INFORM THE PATIENT THAT THE PATIENT CAN RESCIND THE REQUEST AT ANY
TIME AND IN ANY MANNER AND OFFER THE PATIENT AN OPPORTUNITY TO RESCIND AT THE
END OF THE FIFTEEN-DAY WAITING PERIOD PRESCRIBED IN SECTION 36-3310.
7. VERIFY, IMMEDIATELY BEFORE WRITING THE PRESCRIPTION FOR MEDICATION, THAT THE PATIENT IS MAKING AN INFORMED DECISION.
8. FULFILL THE MEDICAL RECORD DOCUMENTATION REQUIREMENT OF SECTION 36-3311.
9. ENSURE THAT ALL APPROPRIATE STEPS ARE CARRIED OUT IN ACCORDANCE WITH THIS ARTICLE BEFORE WRITING A PRESCRIPTION FOR MEDICATION TO ENABLE THE QUALIFIED PATIENT TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER.

36-3304. Consulting physician; confirmation of diagnosis
A. BEFORE A PATIENT IS DEEMED QUALIFIED UNDER THIS ARTICLE, A CONSULTING PHYSICIAN MUST EXAMINE THE PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS, MUST CONFIRM, IN WRITING, THE ATTENDING PHYSICIAN'S DIAGNOSIS THAT THE PATIENT IS SUFFERING FROM A TERMINAL CONDITION AND MUST VERIFY THAT THE PATIENT IS COMPETENT, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED DECISION.
B. THE CONSULTING PHYSICIAN MAY NOT BE A PARTNER, SHAREHOLDER OR EMPLOYEE IN THE SAME MEDICAL PRACTICE AS THE ATTENDING PHYSICIAN.

36-3305. Counseling referral
A. 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, THE PHYSICIAN MUST REFER THE PATIENT FOR COUNSELING.
B. A PHYSICIAN MAY NOT PRESCRIBE MEDICATION TO END A PATIENT'S LIFE UNTIL THE COUNSELING PSYCHIATRIST OR PSYCHOLOGIST DETERMINES THAT THE PATIENT IS NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.
C. A COUNSELING PSYCHIATRIST OR PSYCHOLOGIST MAY NOT BE A PARTNER, SHAREHOLDER OR EMPLOYEE IN THE SAME PRACTICE AS THE ATTENDING PHYSICIAN.

36-3306. Informed decision
A PATIENT MAY NOT RECEIVE A PRESCRIPTION FOR MEDICATION TO END THE PATIENT'S LIFE UNLESS THE PATIENT HAS MADE AN INFORMED DECISION AS PRESCRIBED IN SECTION 36-3923.

36-3307. Family notification
THE ATTENDING PHYSICIAN MUST ASK THE PATIENT TO NOTIFY THE PATIENT'S NEXT OF KIN OF THE PATIENT'S REQUEST FOR MEDICATION PURSUANT TO THIS ARTICLE. IF A PATIENT DECLINES OR IS UNABLE TO NOTIFY THE PATIENT'S NEXT OF KIN, THE PHYSICIAN MAY NOT DENY A REQUEST FOR MEDICATION FOR THIS REASON.

36-3308. Written and oral requests
A. IN ORDER TO RECEIVE A PRESCRIPTION FOR MEDICATION UNDER THIS ARTICLE, A PATIENT MUST MAKE AN ORAL AND A WRITTEN REQUEST AND MUST REITERATE THE ORAL REQUEST TO THE PATIENT'S ATTENDING PHYSICIAN AT LEAST FIFTEEN DAYS AFTER MAKING THE INITIAL ORAL REQUEST.
B. AT THE TIME THE QUALIFIED PATIENT MAKES THE SECOND ORAL REQUEST, THE ATTENDING PHYSICIAN MUST OFFER THE PATIENT AN OPPORTUNITY TO RESCIND THE REQUEST.
36-3309. **Right to rescind request**

A patient may rescind a request at any time and in any manner without regard to the patient's mental state. A prescription for medication under this article may not be written without the attending physician offering the qualified patient an opportunity to rescind the request. If the patient rescinds the directive or request, it must be as if the directive or request were never made.

36-3310. **Waiting periods**

A. At least fifteen days must elapse between the patient's initial oral request and the writing of a prescription under this article. At least forty-eight hours must elapse between the patient's written request and the writing of a prescription under this article.

B. If all other requirements of this article are met, the waiting periods provided in this section may be shortened if the attending physician certifies in writing that the patient is in extreme pain and the imposition of a waiting period would serve only to extend the suffering of the patient.

36-3311. **Medical records; documentation; requirements**

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

1. All oral requests by a patient for medication to end the patient's life.
2. All written requests by a patient for medication to end the patient's life.
3. The attending physician's diagnosis and prognosis and verification that the patient is competent, is acting voluntarily and has made an informed decision.
4. The consulting physician's diagnosis and prognosis and verification that the patient is competent, 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 pursuant to section 36-3308.
7. A note by the attending physician indicating that all requirements under this article have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

36-3312. **Reporting requirements**

A. The department shall annually review a sample of records maintained pursuant to this article.
B. The department shall adopt rules to facilitate the collection of information regarding compliance with this article. The information collected is not a public record and is not available for inspection by the public.
C. THE DEPARTMENT SHALL GENERATE AND MAKE AVAILABLE TO THE PUBLIC AN
ANNUAL STATISTICAL REPORT OF INFORMATION COLLECTED UNDER THIS ARTICLE.

36-3313. Effect on construction of wills and contracts
A. A PROVISION IN ANY CONTRACT, WILL OR OTHER AGREEMENT, WHETHER
WRITTEN OR ORAL, THAT WOULD AFFECT WHETHER A PERSON MAY MAKE OR RESCIND A
REQUEST FOR MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED
MANNER IS NOT VALID.
B. AN OBLIGATION OWING UNDER ANY CURRENTLY EXISTING CONTRACT MAY NOT
BE CONDITIONED ON OR AFFECTED BY A PERSON MAKING OR RESCINDING A REQUEST FOR
MEDICATION TO END THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED MANNER.

36-3314. Insurance or annuity policies
A. THE SALE, PROCUREMENT OR ISSUANCE OF ANY LIFE, HEALTH OR ACCIDENT
INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR ANY POLICY MAY NOT BE
CONDITIONED ON OR AFFECTED BY A PERSON MAKING OR RESCINDING A REQUEST FOR
MEDICATION TO END THE PERSON'S LIFE IN A HUMANE AND DIGNIFIED MANNER.
B. AN INSURER MAY NOT REQUIRE OR REQUEST AN INSURED TO DISCLOSE
WHETHER THE INSURED HAS CONSIDERED OR EXECUTED A REQUEST FOR DEATH WITH
DIGNITY.
C. 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.

36-3315. Construction of article
THIS ARTICLE DOES NOT AUTHORIZE A PHYSICIAN OR ANY OTHER PERSON TO END
A PATIENT'S LIFE BY LETHAL INJECTION, MERCY KILLING OR ACTIVE EUTHANASIA.
NOTWITHSTANDING ANY OTHER LAW, ACTIONS TAKEN IN ACCORDANCE WITH THIS ARTICLE
DO NOT CONSTITUTE, FOR ANY PURPOSE, SUICIDE, ASSISTED SUICIDE, MERCY KILLING
OR HOMICIDE.

36-3316. Immunities
EXCEPT AS PROVIDED IN SECTION 36-3317:
1. A PERSON IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR
PROFESSIONAL DISCIPLINARY ACTION FOR PARTICIPATING IN GOOD FAITH COMPLIANCE
WITH THIS ARTICLE, INCLUDING BEING PRESENT WHEN A QUALIFIED PATIENT TAKES THE
PRESCRIBED MEDICATION TO END THE PATIENT'S LIFE IN A HUMANE AND DIGNIFIED
MANNER.
2. THIS ARTICLE DOES NOT AUTHORIZE ANY PERSON TO ASSIST IN THE
ADMINISTRATION OF MEDICATION UNLESS THAT PERSON IS DESIGNATED BY A QUALIFIED
PATIENT TO ADMINISTER OR DISPENSE THE MEDICATION BECAUSE OF THE QUALIFIED
PATIENT'S PHYSICAL DISABILITY.
3. A PROFESSIONAL ORGANIZATION OR ASSOCIATION OR HEALTH CARE PROVIDER
MAY NOT SUBJECT A PERSON TO CENSURE, DISCIPLINE, SUSPENSION, LOSS OF
PRIVILEGES, LOSS OF MEMBERSHIP OR ANY OTHER PENALTY FOR PARTICIPATING OR
REFUSING TO PARTICIPATE IN GOOD FAITH COMPLIANCE WITH THIS ARTICLE.
4. A REQUEST BY A PATIENT FOR OR PROVISION BY AN ATTENDING PHYSICIAN
OF MEDICATION IN GOOD FAITH COMPLIANCE WITH THIS ARTICLE DOES 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 IS NOT 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 ARTICLE, THE HEALTH CARE PROVIDER
MUST PROMPTLY TRANSFER THE RESPONSIBILITY TO ANOTHER PROVIDER WHO IS WILLING
TO ACT IN ACCORDANCE WITH THE QUALIFIED PATIENT'S WISHES. THE HEALTH CARE
PROVIDER MUST TRANSFER, ON REQUEST, A COPY OF THE PATIENT'S RELEVANT MEDICAL
RECORDS TO THE NEW HEALTH CARE PROVIDER.

6. A HEALTH CARE FACILITY THAT REFUSES TO ALLOW DEATH WITH DIGNITY TO
BE PRESCRIBED OR ADMINISTERED ON ITS PREMISES MAY NOT DENY STAFF PRIVILEGES
OR EMPLOYMENT TO A PERSON FOR THE SOLE REASON THAT THE PERSON PREVIOUSLY
PARTICIPATED IN DEATH WITH DIGNITY.

7. A LICENSED PHARMACIST WHO DISPENSES LETHAL MEDICINE BASED ON A
VALID PRESCRIPTION BY A PHYSICIAN AIDING A PATIENT TO DIE UNDER THIS ARTICLE
IS NOT SUBJECT TO CIVIL, CRIMINAL OR ADMINISTRATIVE LIABILITY FOR DOING SO.

36-3317. Violations; classification; liability
A. A PERSON WHO WITHOUT AUTHORIZATION OF THE PATIENT WILFULLY 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 MANSLAUGHTER.

B. 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 IS GUILTY OF MANSLAUGHTER.

C. THIS ARTICLE DOES NOT LIMIT FURTHER LIABILITY FOR CIVIL DAMAGES
RESULTING FROM OTHER NEGLIGENT CONDUCT OR INTENTIONAL MISCONDUCT BY ANY
PERSON.

D. THE PENALTIES IN THIS ARTICLE DO NOT PRECLUDE CRIMINAL PENALTIES
APPLICABLE UNDER ANY OTHER LAW FOR CONDUCT THAT IS INCONSISTENT WITH THIS
ARTICLE.

36-3318. Sample form
A REQUEST FOR A MEDICATION AS AUTHORIZED BY THIS ARTICLE 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 CONDITION AND
WHICH HAS BEEN MEDICALLY CONFIRMED BY A CONSULTING PHYSICIAN.

I HAVE BEEN FULLY INFORMED OF MY DIAGNOSIS, MY 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 ONE:
_____ I HAVE INFORMED MY FAMILY MEMBERS OF MY DECISION AND HAVE
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 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 PERSON SIGNING THIS REQUEST:
1.  IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF
IDENTITY.
2.  SIGNED THIS REQUEST IN OUR PRESENCE.
3.  APPEARS TO BE OF SOUND MIND AND TO NOT BE UNDER
DURESS, FRAUD OR UNDUE INFLUENCE.
4.  IS NOT A PATIENT FOR WHOM EITHER OF US IS THE
ATTENDING PHYSICIAN.

WITNESS 1 ________________________________
DATE _____________________________________

WITNESS 2 ________________________________
DATE _____________________________________

NOTE: ONE WITNESS MAY NOT BE A RELATIVE (BY BLOOD,
MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, MAY
NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE ON DEATH
AND MAY NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE
FACILITY WHERE THE PERSON IS A PATIENT OR RESIDENT. IF THE
PATIENT IS AN INPATIENT AT A HEALTH CARE FACILITY, ONE OF THE
WITNESSES MUST BE AN INDIVIDUAL DESIGNATED BY THE FACILITY.

Sec. 2.  Short title
This act may be cited as the "Death with Dignity Act of 2016".