



Kathryn Likley

Final Analysis
Legislative Service Commission

Am. Sub. H.B. 474
124th General Assembly
(As Passed by the General Assembly)

Reps. Kearns, Collier, Womer Benjamin, Reidelbach, Brinkman, Schneider, Gilb, Seaver, Schmidt, Faber, Raga, Seitz, Roman, Aslanides, Clancy, Distel, Hoops, Sulzer, Callender, Setzer, Jerse, Young, Wolpert, Krupinski, Willamowski, Metzger, Latta, Hagan, Boccieri, Schaffer, Flannery, Williams, Carey, White, Kilbane, Fessler, Driehaus, Grendell, Flowers, Core, Schuring, Niehaus, McGregor, Buehrer, Husted, Barrett, Fedor, Carano, Coates, Hollister, Reinhard, G. Smith, Britton, Blasdel, Stapleton, Wilson, Carmichael, Allen, Sullivan, Jolivette, Trakas, Hughes, Hartnett, Peterson, Perry, Ogg, DeWine, Widowfield, Oakar, Brown

Sens. Jordan, Fingerhut, Jacobson, Wachtmann, Randy Gardner, Amstutz, Austria, Blessing, Carnes, Robert Gardner, Harris, Hottinger, Mumper, Oelslager, Spada, Espy

Effective date: *

ACT SUMMARY

- Declares assisted suicide to be against the public policy of the state.
- Establishes a court action to obtain an injunction against assisting suicide.
- Authorizes the Board of Nursing, State Medical Board, and Ohio Respiratory Care Board to take disciplinary action against an individual whose professional practice is regulated by one of those boards if the individual assists a suicide.
- Establishes the Compassionate Care Task Force to (1) study and make recommendations concerning issues surrounding the treatment and care

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

of persons with terminal illness or severe chronic pain and (2) monitor and report on the implementation of its recommendations.

CONTENT AND OPERATION

State policy against assisting suicide

(secs. 3795.01, 3795.02, and 3795.03)

The act declares that assisting suicide is against the public policy of the state. "Assisting suicide" is defined as knowingly doing either of the following with the purpose of helping another person to commit or attempt suicide: providing the physical means by which the person commits or attempts to commit suicide or participating in a physical act by which the person commits or attempts to commit suicide.

The act provides, however, that neither this public policy declaration nor an injunction against assisting suicide (described below) does any of the following:

(1) Precludes a physician, certified nurse practitioner, certified nurse-midwife, or clinical nurse specialist who carries out the responsibility to provide comfort care to a patient in good faith and while acting within the scope of the physician's or nurse's authority from prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, prescribing, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the patient's pain or discomfort and not for the purpose of postponing or causing the patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death;

(2) Prohibits or precludes health care personnel acting under the direction of a person authorized to prescribe a patient's treatment and who carry out the responsibility to provide comfort care to the patient in good faith and while acting within the scope of their authority from dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the patient's pain or discomfort and not for the purpose of postponing or causing the patient's death,

even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death;¹

(3) Prohibits or affects the use or continuation, or the withholding or withdrawal, of life-sustaining treatment, cardiopulmonary resuscitation (CPR), or comfort care under state law governing living wills and do-not-resuscitate orders and identifications;²

(4) Prohibits or affects the provision or withholding of health care, life-sustaining treatment, or comfort care to a principal under a durable power of attorney for health care or any other health care decision made by an attorney in fact under state law governing durable powers of attorney for health care;³

(5) Affects or limits the authority of a physician, health care facility, person employed by or under contract with a health care facility, or emergency service personnel to provide or withhold health care to a person in accordance with reasonable medical standards applicable in an emergency situation;⁴

(6) Affects or limits the authority of a person to refuse to give informed consent to health care, including through the execution of a durable power of attorney for health care, execution of a living will, or authorizing the withholding or withdrawal of CPR.

¹ *The individuals considered "health care personnel" under the act are physicians; nurses; physician assistants; emergency medical technicians; medical technicians; dietitians; other authorized persons acting under the direction of an attending physician; and administrators of hospitals, hospice care programs, home health agencies, or intermediate care facilities for the mentally retarded.*

² *Under the act, "CPR" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, but does not include clearing a person's airway for a purpose other than as a component of CPR.*

³ *"Health care" is defined by the act as any care, treatment, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition. The act defines "health care decision" as informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.*

⁴ *"Physician" is defined by the act as a person authorized under state law to practice medicine and surgery or osteopathic medicine and surgery. The act defines "health care facility" as a hospital, hospice care program, nursing home, home health agency, or intermediate care facility for the mentally retarded.*

Injunction against assisting suicide

(sec. 3795.02)

The act requires a court of common pleas to grant an injunction enjoining any action related to assisting suicide if it finds there is a reason to believe that the person enjoined is preparing to assist a suicide, is in the course of assisting a suicide, or has assisted a suicide. The injunction must prohibit the person from assisting any suicide in this state regardless of who is being assisted. If an injunction is granted, the court may award the party requesting the injunction all reasonable attorney fees, which are to be considered damages.

Injunction requests

The act provides that an injunction against assisting suicide may be granted at the request of (1) a person who has prepared or attempted to commit suicide with the assistance of the person sought to be enjoined, (2) the guardian, spouse, parent, child, or sibling of a person who is preparing or has prepared to commit, who is attempting or has attempted to commit, or who committed suicide with the assistance of the person sought to be enjoined, (3) a person entitled to inherit from a person who is preparing or has prepared to commit, who is attempting or has attempted to commit, or who committed suicide with the assistance of the person sought to be enjoined, (4) a person who has inherited from a person who has prepared or attempted to commit or who committed suicide with the assistance of the person sought to be enjoined, (5) an individual who is providing or has provided health care to a person who is preparing or has prepared to commit or who is attempting or has attempted to commit suicide with the assistance of the person sought to be enjoined, (6) an individual who has provided health care to a person who committed suicide with the assistance of the person sought to be enjoined, (7) a prosecuting attorney, or (8) the Attorney General.

Professional disciplinary action for assisting suicide

(secs. 4723.28, 4730.25, 4731.22, and 4761.09)

The act authorizes the Board of Nursing, State Medical Board, and Ohio Respiratory Care Board to take disciplinary action against an individual whose professional practice is regulated by one of those boards if the individual assists a suicide. Among the professionals subject to this provision are registered nurses, licensed practical nurses, certified nurse practitioners and other advanced practice nurses, dialysis technicians, medical doctors, osteopathic doctors, podiatrists, physician assistants, and respiratory care professionals.

The disciplinary actions the Board of Nursing may take are (1) denying, revoking, suspending, or placing restrictions on a license or certificate, (2) reprimanding or otherwise disciplining a license or certificate holder, or (3) imposing a fine of not more than \$500 per violation. The State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend a certificate; refuse to register an individual; refuse to reinstate a certificate; or reprimand or place a certificate holder on probation. The Ohio Respiratory Care Board may refuse to issue or renew a license or limited permit. It may also issue a reprimand, suspend or permanently revoke a license or limited permit, or place a license or limited permit holder on probation.

Compassionate Care Task Force

(Section 3)

Membership

The act creates the Compassionate Care Task Force consisting of the following members:

- (1) Two members of the House of Representatives from the majority party, appointed by the Speaker of the House;
- (2) Two members of the House from the minority party, appointed by the House Minority Leader;
- (3) Two members of the Senate from the majority party, appointed by the Senate President;
- (4) Two members of the Senate from the minority party, appointed by the Senate Minority Leader;
- (5) The Director of Health or the Director's designee;
- (6) All members of the Ohio Pain Advisory Task Force;⁵
- (7) Two physicians certified in the specialty of pain medicine by a national professional organization, at least one of whom is a pediatrician;

⁵ *The Ohio Pain Advisory Committee was established by the Director of Health in 1996 to advise the Department of Health and educate medical professionals and the public about the treatment of intractable pain.*

- (8) A psychiatrist and a psychologist, both of whom have experience in treating depression in persons with terminal illness or severe chronic pain;⁶
- (9) A representative of the Ohio State Medical Association;
- (10) A representative of the Ohio Osteopathic Association;
- (11) A physician representing the State Medical Board;
- (12) A representative of the Ohio Hospital Association;
- (13) A representative of the Ohio Nurses Association;
- (14) A representative of the Board of Nursing;
- (15) A representative of the Ohio Hospice and Palliative Care Organization;
- (16) A representative of the Ohio Council for Home Care;
- (17) Three persons representing the accredited medical schools in Ohio;
- (18) Three persons representing the public, at least one of whom has been diagnosed with severe chronic pain.

The Governor is to appoint the members listed in (7) through (18), none of whom may be members of the Ohio Pain Advisory Committee.

All appointments and designations to the Task Force must be made not later than 30 days after the act's effective date. The Director of Health or the Director's designee is to be the chairperson of the Task Force. The Task Force is required to meet on the call of the chairperson and may conduct one or more public hearings to permit public comment on the matters about which the Task Force is required to study and make recommendations.

⁶ "Psychiatrist" is defined by the act as a physician who has satisfactorily completed a residency training program in psychiatry, as approved by the Residency Review Committee of the American Medical Association, the Committee on Post-graduate Education of the American Osteopathic Association, the American Board of Psychiatry and Neurology, or the American Osteopathic Board of Neurology and Psychiatry, or who on July 1, 1989, has been recognized as a psychiatrist by the Ohio State Medical Association or the Ohio Osteopathic Association on the basis of formal training and five or more years of medical practice limited to psychiatry. The act defines "psychologist" as an individual holding a current, valid license to practice psychology issued by the State Board of Psychology.

Task Force members are not to receive compensation for performing their duties as members, but are to be reimbursed for reasonable expenses incurred in conducting their duties, if the expenses are approved by the chairperson.

Study and recommendations

The act requires the Task Force to study and make recommendations about all of the following:

(1) The need and availability in all areas of Ohio of health care, including nursing services and hospice visits, counseling, and social services resources for persons with terminal illness or severe chronic pain and their families;

(2) The use in Ohio of pain and symptom control treatment for patients with terminal illness or severe chronic pain;

(3) Ways to better inform the public about the existence of entities that provide services for persons with terminal illness or severe chronic pain and the ability to control pain and depression experienced by persons with terminal illness or severe chronic pain;

(4) Ways to improve the ability of health care and social service professionals to identify and obtain treatment for depression and other emotional problems experienced by persons with terminal illness or severe chronic pain;

(5) Ways to improve the delivery in Ohio of pain and symptom control treatment to patients with terminal illness or severe chronic pain. This is to include increasing awareness by health care professionals of the best types of pain and symptom control treatment for various types of terminal illness and severe chronic pain. It is also to include removing any existing impediments to the delivery of the best possible pain and symptom control treatment to all patients with terminal illness or severe chronic pain.

The Task Force is not permitted to study or make recommendations about euthanasia, assisted suicide, advance directives, or the use, continuation, withholding, or withdrawal of life-sustaining treatment.⁷

⁷ *An advance directive is a document, such as a living will, through which a person specifies in advance how decisions are to be made should the person be both in a terminal condition and incapable of making health care decisions.*

Report on recommendations

Not later than one year after the act's effective date, the Task Force is to make a written report of its recommendations to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the House and Senate Minority Leaders. In making the report, the Task Force must focus on the development of a public-private partnership to provide the most compassionate and life-affirming treatment possible to all persons with terminal illness or severe chronic pain. The Task Force is to cease to exist one year after the date it makes the report of its recommendations.

Monitoring and reporting on implementation of recommendations

During the year after issuance of its report, the Task Force must review the progress of any attempt to implement its recommendations. Not later than its last day in existence, the Task Force must issue a written report on the progress of implementation. The report must be provided to the same persons that received the report on the Task Force recommendations.

Resources to conduct duties

The act requires the Department of Health to provide staff resources and meeting facilities for the Task Force to conduct its duties. Reimbursement for Task Force member expenses must be made from amounts appropriated to the Department of Health. The Department is required to seek Controlling Board approval of any fund transfers necessary to make the reimbursements.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-16-02	p. 1241
Reported, H. Health & Family Services	05-15-02	p. 1775
Passed House (83-7)	05-21-02	pp. 1780-1781
Reported, S. Health, Human Services and Aging	11-14-02	pp. 2125-2126
Passed Senate (24-7)	11-20-02	p. 2144
House concurred in Senate changes (87-4)	11-21-02	pp. 2092-2093

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