



Bob Bennett

Bill Analysis

Legislative Service Commission

H.B. 474

124th General Assembly
(As Introduced)

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, Redfern, Barrett, Fedor, Carano, Coates, Hollister, Reinhard, G. Smith, Britton, Blasdel, Stapleton, Wilson, Carmichael, Allen**

BILL SUMMARY

- Declares assisted suicide to be against the public policy of the state.
- Establishes court actions to obtain an injunction against assisting suicide or to obtain civil damages for assisting a suicide.
- Specifies certain care situations to which the public policy and court actions do not apply.
- 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 the board 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 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 bill 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 suicide or participating in a physical act by which the person commits or attempts to commit suicide.

The bill provides, however, that neither this public policy declaration nor an injunction against assisting suicide or a civil action for damages (both described below) do any of the following:

(1) Prohibit a person who has authority to do so under a license or certificate issued under state law regulating the practice of various professions from administering, prescribing, or dispensing medications or treatments to relieve a patient's pain or discomfort, even if the medication or treatment may hasten or increase the risk of death, unless the medication or treatment is administered, prescribed, or dispensed to cause death;

(2) Prohibit or affect the use or continuation, or the withholding or withdrawal, of life sustaining treatment or comfort care under state law governing living wills and do-not-resuscitate orders and identifications;

(3) Prohibit or affect 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;¹

(4) Affect or limit the authority of a physician, health care facility, person employed by or under contract with a health care facility, or emergency service

¹ "Health care" is defined by the bill as any care, treatment, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition. The bill defines "health care decision" as informed consent, refusal to give informed consent, or withdrawal of informed consent to health care.

personnel to provide or withhold health care to a person in accordance with reasonable medical standards applicable in an emergency situation.²

Injunction against assisting suicide

(sec. 3795.02)

The bill 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. The injunction may be granted at the request of (1) the guardian, spouse, parent, child, or sibling of the person who would commit suicide, (2) a person entitled to inherit from the person who would commit suicide, (3) an individual who is providing or has provided health care to the person who would commit suicide, (4) a prosecuting attorney, or (5) the Attorney General.

Civil action for damages

(sec. 3795.02)

Under the bill, the executor, administrator, guardian, spouse, parent, child, or sibling of a person who commits or attempts suicide, a person entitled to inherit from the person who commits or attempts suicide, or the person who would have committed suicide may commence a civil action for compensatory damages, punitive and exemplary damages, and court costs and reasonable attorney fees against any person who assists or attempts to assist a suicide. The action may be brought regardless of whether the person who brings the action consented to or had prior knowledge of the assisted suicide or attempted assisted suicide.

Professional disciplinary action for assisting suicide

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

The bill 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 the board if the individual assists a suicide.

² "Physician" is defined by the bill as a person authorized under state law to practice medicine and surgery or osteopathic medicine and surgery. The bill defines "health care facility" as a hospital, hospice care program, nursing home, home health agency, or intermediate care facility for the mentally retarded.

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 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. 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 issue or reinstate a certificate; or reprimand or place a certificate holder on probation.

Compassionate Care Task Force

(Section 3)

Membership

The bill 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;³
- (7) Two physicians, at least one of whom is certified in the specialty of pain medicine by a national professional organization;

³ *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;⁴

(9) A representative of the Ohio State Medical Association;

(10) A physician representing the State Medical Board;

(11) A representative of the Ohio Hospital Association;

(12) A representative of the Ohio Nurses Association;

(13) A representative of the Board of Nursing;

(14) A representative of the Ohio Hospice and Palliative Care Organization;

(15) Three persons representing the accredited medical schools in this state;

(16) 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 (16), none of whom may be members of the Ohio Pain Advisory Committee.

All appointments and designations to the Task Force must be made no later than 30 days after the bill'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.

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.

⁴ "Psychiatrist" is defined by the bill 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, 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 bill defines "psychologist" as an individual holding a current, valid license to practice psychology issued by the State Board of Psychology.

Study and recommendations

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

(1) The need and availability in all areas of the state 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 this state 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 this state 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.⁵

Report on recommendations

No later than one year after the effective date of the bill, the Task Force is required 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

⁵ *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.*

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 period beginning after the making of the report on its recommendations and the date it ceases to exist, 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 who received the report on the Task Force recommendations.

Resources to conduct duties

The bill requires the Department of Health to provide the 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

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