Senate Bill 291
By: Senators Henson of the 41st and Orrock of the 36th

A BILL TO BE ENTITLED
AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to create provisions for physician-assisted end-of-life options for terminally ill individuals; to provide for definitions; to provide a criminal penalty; to provide a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
This Act shall be known and may be cited as the "Georgia Death with Dignity Act."

SECTION 2.
Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding a new chapter to read as follows:

"CHAPTER 54

As used in this chapter, the term:
(1) 'Adult' means an individual who is 18 years of age or older.
(2) 'Attending physician' means a physician who has primary responsibility for the care of a terminally ill individual and the treatment of the individual's terminal illness.
(3) 'Consulting physician' means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding a terminally ill individual's illness.
(4) 'Health care provider' or 'provider' means a person or facility that is licensed, certified, registered, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession under this title or Title 34.

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(5) 'Informed decision' means a decision that is:
(A) Made by an individual to obtain a prescription for medical aid-in-dying medication that the qualified individual may decide to self-administer to end his or her life in a peaceful manner;
(B) Based on an understanding and acknowledgment of the relevant facts; and
(C) Made after the attending physician fully informs the individual of:
   (i) His or her medical diagnosis and prognosis of six months or less;
   (ii) The potential risks associated with taking the medical aid-in-dying medication to be prescribed;
   (iii) The probable result of taking the medical aid-in-dying medication to be prescribed;
   (iv) The choices available to such individual that demonstrate his or her self-determination and intent to end his or her life in a peaceful manner, including the ability to choose whether to:
      (I) Request medical aid in dying;
      (II) Obtain a prescription for medical aid-in-dying medication to end his or her life;
      (III) Fill the prescription and possess medical aid-in-dying medication to end his or her life; and
      (IV) Ultimately self-administer the medical aid-in-dying medication to bring about a peaceful death; and
   (v) All feasible alternatives or additional treatment opportunities, including comfort care, palliative care, hospice care, and pain control.

(6) 'Licensed mental health professional' means a psychiatrist licensed under Chapter 34 of Title 43 or a psychologist licensed under Chapter 39 of Title 43.

(7) 'Medical aid in dying' means the medical practice of a physician prescribing medical aid-in-dying medication to a qualified individual that the individual may choose to self-administer to bring about a peaceful death.

(8) 'Medical aid-in-dying medication' means medication prescribed by a physician pursuant to this chapter to provide medical aid in dying to a qualified individual.

(9) 'Medically confirmed' means that a consulting physician who has examined the terminally ill individual and the individual's relevant medical records has confirmed the medical opinion of the attending physician.

(10) 'Mental capacity' or 'mentally capable' means that in the opinion of an individual's attending physician, consulting physician, psychiatrist or psychologist, the individual has the ability to make and communicate an informed decision to health care providers.

(11) 'Physician' means a doctor of medicine or osteopathy licensed to practice medicine by the Georgia Composite Medical Board.
'(12) 'Prognosis of six months or less' means a prognosis resulting from a terminal illness that the illness will, within reasonable medical judgment, result in death within six months and which has been medically confirmed.

'(13) 'Qualified individual' means a terminally ill adult with a prognosis of six months or less, who has mental capacity, has made an informed decision, is a resident of this state, and has satisfied the requirements of this chapter in order to obtain a prescription for medical aid-in-dying medication to end his or her life in a peaceful manner.

'(14) 'Resident' means an individual who is able to demonstrate residency in this state by providing any of the following documentation to his or her attending physician:

(A) A driver's license or identification card issued pursuant to Chapter 5 of Title 40;

(B) A voter registration card or other documentation showing the individual is registered to vote in this state;

(C) Evidence that the individual owns or leases property in this state; or

(D) An income tax return filed with the State of Georgia for the most recent tax year.

'(15) 'Self-administer' means a qualified individual's affirmative, conscious, and physical act of administering the medical aid-in-dying medication to himself or herself to bring about his or her own death.

'(16) 'Terminal illness' means an incurable and irreversible illness that will, within reasonable medical judgment, result in death.

31-54-2.

(a) An adult resident of this state may make a request, pursuant to Code Sections 31-54-3 and 31-54-11, to receive a prescription for medical aid-in-dying medication if:

(1) The individual's attending physician has diagnosed the individual with a terminal illness with a prognosis of six months or less;

(2) The individual's attending physician has determined the individual has mental capacity; and

(3) The individual has voluntarily expressed the wish to receive a prescription for medical aid-in-dying medication.

(b) The right to request medical aid-in-dying medication shall not exist because of age or disability.

31-54-3.

(a) In order to receive a prescription for medical aid-in-dying medication pursuant to this chapter, an individual who satisfies the requirements in Code Section 31-54-2 shall make two oral requests, separated by at least 15 days, and a valid written request to his or her attending physician.
(b) To be valid, a written request for medical aid-in-dying medication shall be:

(1) Substantially in the same form as set forth in Code Section 31-54-11;

(2) Signed and dated by the individual seeking the medical aid-in-dying medication;

(3) Witnessed by at least two persons who, in the presence of the individual, attest to the best of their knowledge and belief that the individual is:

(A) Mentally capable;

(B) Acting voluntarily; and

(C) Not being coerced to sign the request; and

(4) Of the two witnesses to the written request, at least one must not be:

(A) Related to the individual by blood, marriage, civil union, or adoption;

(B) A person who, at the time the request is signed, is entitled, under a will or by operation of law, to any portion of the individual's estate upon his or her death; or

(C) An owner, operator, or employee of a health care facility where the individual is receiving medical treatment or is a resident.

(c) Neither the individual's attending physician nor a person authorized as the individual's qualified power of attorney or durable medical power of attorney shall serve as a witness to the written request.

31-54-4.

(a) At any time, an individual may rescind his or her request for medical aid-in-dying medication without regard to the individual's mental state.

(b) An attending physician shall not write a prescription for medical aid-in-dying medication under this chapter unless the attending physician offers the qualified individual an opportunity to rescind the request for the medical aid-in-dying medication.

31-54-5.

The attending physician shall:

(1) Make the initial determination of whether an individual requesting medical aid-in-dying medication has a terminal illness, has a prognosis of six months or less, is mentally capable, is making an informed decision, and has made the request voluntarily;

(2) Request that the individual demonstrate Georgia residency by providing documentation as described in Code Section 31-54-1;

(3) Provide care that conforms to established medical standards and accepted medical guidelines;

(4) Refer the individual to a consulting physician for medical confirmation of the diagnosis and prognosis and for a determination of whether the individual is mentally capable, is making an informed decision, and acting voluntarily;
(5) Provide full, individual-centered disclosures to ensure that the individual is making an informed decision by discussing with the individual:

(A) His or her medical diagnosis and prognosis of six months or less;

(B) The feasible alternatives or additional treatment opportunities, including comfort care, palliative care, hospice care, and pain control;

(C) The potential risks associated with taking the medical aid-in-dying medication to be prescribed;

(D) The probable result of taking the medical aid-in-dying medication to be prescribed; and

(E) The possibility that the individual can obtain the medical aid-in-dying medication but chooses not to use it;

(6) Refer the individual to a licensed mental health professional pursuant to Code Section 31-54-7 if the attending physician believes that the individual may not be mentally capable of making an informed decision;

(7) Confirm that the individual's request does not arise from coercion or undue influence by another person by discussing with the individual, outside the presence of other persons, whether the individual is feeling coerced or unduly influenced by another person;

(8) Counsel the individual about the importance of:

(A) Having another person present when the individual self-administers the medical aid-in-dying medication prescribed pursuant to this chapter;

(B) Not taking the medical aid-in-dying medication in a public place;

(C) Safekeeping and proper disposal of unused medical aid-in-dying medication in accordance with Code Section 31-54-19; and

(D) Notifying his or her next of kin of the request for medical aid-in-dying medication;

(9) Inform the individual that he or she may rescind the request for medical aid-in-dying medication at any time and in any manner;

(10) Verify, immediately prior to writing the prescription for medical aid-in-dying medication, that the individual is making an informed decision;

(11) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medical aid-in-dying medication; and

(12)(A) Dispense medical aid-in-dying medications directly to the qualified individual, including ancillary medications intended to minimize the individual's discomfort, if the attending physician has a current drug enforcement administration certificate and complies with any applicable administrative rule; or

(B) Deliver the written prescription personally, by mail, or through authorized electronic transmission in the manner permitted by law to a licensed pharmacist, who

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shall dispense the medical aid-in-dying medication to the qualified individual, the
attending physician, or a person expressly designated by the qualified individual.

31-54-6.
Before an individual who is requesting medical aid-in-dying medication may receive a
prescription for such medication, a consulting physician shall:
(1) Examine the individual and his or her relevant medical records; and
(2) Confirm, in writing, to the attending physician that:
( A) The individual has a terminal illness;
( B) The individual has a prognosis of six months or less;
( C) The individual is making an informed decision; and
( D) The individual is mentally capable, or provide documentation that the consulting
physician has referred the individual for further evaluation in accordance with Code
Section 31-54-7.

31-54-7.
(a) An attending physician shall not prescribe medical aid-in-dying medication under this
chapter for an individual with a terminal illness until the individual is determined to be
mentally capable of making an informed decision, and those determinations are confirmed
in accordance with this Code section.
(b) If the attending physician or the consulting physician believes that the individual may
not be mentally capable of making an informed decision, the attending physician or
consulting physician shall refer the individual to a licensed mental health professional for
a determination of whether the individual is mentally capable of making an informed
decision.
(c) A licensed mental health professional who evaluates an individual under this Code
section shall communicate, in writing, to the attending or consulting physician who
requested the evaluation his or her conclusions about whether the individual is mentally
capable of making an informed decision. If the licensed mental health professional
determines that the individual is not mentally capable of making an informed decision, the
individual shall not be deemed a qualified individual under this chapter and the attending
physician shall not prescribe medical aid-in-dying medication to the individual.

31-54-8.
(a) Unless otherwise prohibited by law, the attending physician or the hospice medical
director shall sign the death certificate of a qualified individual who obtained and
(b) When a death has occurred in accordance with this chapter, the cause of death shall be listed as the underlying terminal illness and the death shall not constitute grounds for post-mortem inquiry under Article 2 of Chapter 16 of Title 45.

31-54-9.
(a) An individual with a terminal illness is not a qualified individual and shall not receive a prescription for medical aid-in-dying medication unless he or she has made an informed decision.
(b) Immediately before writing a prescription for medical aid-in-dying medication under this chapter, the attending physician shall verify that the individual with a terminal illness is making an informed decision.

31-54-10.
(a) The attending physician shall document, in the individual's medical record, the following information:
   (1) Dates of all oral requests;
   (2) A valid written request;
   (3) The attending physician's diagnosis and prognosis, determination of mental capacity, and that the individual is making a voluntary request and an informed decision;
   (4) The consulting physician's confirmation of diagnosis and prognosis, mental capacity, and that the individual is making an informed decision;
   (5) If applicable, written confirmation of mental capacity from a licensed mental health professional;
   (6) A notation of notification of the right to rescind a request made pursuant to this chapter; and
   (7) A notation by the attending physician that all requirements under this chapter have been satisfied, indicating steps taken to carry out the request, including a notation of the medical aid-in-dying medications prescribed and when.
(b)(1) The Department of Public Health shall annually review a sample of records maintained pursuant to this chapter to ensure compliance. The department shall adopt rules to facilitate the collection of information defined in subsection (a) of this Code section. Except as otherwise required by law, the information collected by the department is not a public record and is not available for public inspection. However, the department shall generate and make available to the public an annual statistical report of information collected under this subsection.
(2) The department shall require any health care provider, upon dispensing a medical aid-in-dying medication pursuant to this chapter, to file a copy of a dispensing record
with the department. The dispensing record is not a public record and is not available for public inspection.

31-54-11.

A request for medical aid-in-dying medication authorized by this chapter shall be in substantially the following form:

'REQUEST FOR MEDICATION TO END MY LIFE IN A PEACEFUL MANNER

I,_____________________________________________, am an adult of sound mind.
I am suffering from _____________________________, which my attending physician has determined is a terminal illness and which has been medically confirmed. I have been fully informed of my diagnosis and prognosis of six months or less, the nature of the medical aid-in-dying medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment opportunities, including comfort care, palliative care, hospice care, and pain control.
I request that my attending physician prescribe medical aid-in-dying medication that will end my life in a peaceful manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

____ I understand that I have the right to rescind this request at any time.
____ I understand the seriousness of this request, and I expect to die if I take the aid-in-dying medication prescribed.
____ I further understand that although most deaths occur within three hours, my death may take longer, and my attending physician has counseled me about this possibility. I make this request voluntarily, without reservation, and without being coerced, and I accept full responsibility for my actions.

Signed: ________________________________________________________
Dated: _________________________________________________________

DECLARATION OF WITNESSES

We declare that the individual signing this request:
____ Is personally known to us or has provided proof of identity;
____ Signed this request in our presence;
____ Appears to be of sound mind and not under duress, coercion, or undue influence; and
I am not the attending physician for the individual.

WITNESS ONE
Name:____________________________________________ Date:_________________

WITNESS TWO
Name:____________________________________________ Date:_________________

Note:
(a) Of the two witnesses to the written request, at least one must not:
(1) Be a relative (by blood, marriage, civil union, or adoption) of the individual signing this request;
(2) Be entitled to any portion of the individual's estate upon death; or
(3) Own, operate, or be employed at a health care facility where the individual is a patient or resident; and
(b) Neither the individual's attending physician nor a person authorized as the individual's qualified power of attorney or durable medical power of attorney shall serve as a witness to the written request.'

31-54-12.
(a) Physicians and health care providers shall provide medical services under this chapter that meet or exceed the standard of care for end-of-life medical care.
(b) If a health care provider is unable or unwilling to carry out an eligible individual's request and the individual transfers care to a new health care provider, the health care provider shall coordinate transfer of the individual's medical records to a new health care provider.

31-54-13.
(a) A provision in a contract, will, or other agreement, whether written or oral, that would affect whether an individual may make or rescind a request for medical aid in dying pursuant to this chapter is invalid.
(b) An obligation owing under any currently existing contract shall not be conditioned upon, or affected by, an individual's act of making or rescinding a request for medical aid-in-dying medication pursuant to this chapter.
31-54-14.

(a) The sale, procurement, or issuance of, or the rate charged for, any life, health, or accident insurance or annuity policy shall not be conditioned upon, or affected by, an individual's act of making or rescinding a request for medical aid-in-dying medication in accordance with this chapter.

(b) A qualified individual's act of self-administering medical aid-in-dying medication pursuant to this chapter shall not affect a life, health, or accident insurance or annuity policy.

(c) An insurer shall not deny or otherwise alter health care benefits available under a policy of sickness and accident insurance for an individual with a terminal illness who is covered under the policy, based on whether or not the individual makes a request pursuant to this chapter.

(d) An individual with a terminal illness who is a recipient under any medical assistance program of this state shall not be denied benefits under such program or have his or her benefits under such program otherwise altered based on whether or not such individual makes a request pursuant to this chapter.

31-54-15.

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for acting in good faith under this chapter, which includes being present when a qualified individual self-administers the prescribed medical aid-in-dying medication.

(b) Except as provided for in Code Section 31-54-17, a health care provider or professional organization or association shall not subject an individual to any of the following for participating or refusing to participate in good-faith compliance under this chapter:

(1) Censure;
(2) Discipline;
(3) Suspension;
(4) Loss of license, privileges, or membership; or
(5) Any other penalty.

(c) A request by an individual for, or the provision by an attending physician of, medical aid-in-dying medication in good-faith compliance with this chapter shall not:

(1) Constitute neglect or elder abuse for any purpose of law; or
(2) Provide the basis for the appointment of a guardian or conservator.

(d) This Code section shall not limit civil or criminal liability for negligence, recklessness, or intentional misconduct.
31-54-16.
(a) A health care provider may choose whether to participate in providing medical aid-in-dying medication to an individual in accordance with this chapter.
(b) If a health care provider is unable or unwilling to carry out an individual's request for medical aid-in-dying medication made in accordance with this chapter, and the individual transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the individual's relevant medical records to the new health care provider.

31-54-17.
(a) A health care facility may prohibit a physician employed or under contract from writing a prescription for medical aid-in-dying medication for a qualified individual who intends to use the medical aid-in-dying medication on the facility's premises. The health care facility shall notify the physician in writing of its policy with regard to prescriptions for medical aid-in-dying medication. A health care facility that fails to provide advance notice to the physician shall not be entitled to enforce such a policy against the physician.
(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 or privileges, or any other penalty or sanction for actions taken in good-faith reliance on this chapter or for refusing to act under this chapter.
(c) A health care facility shall notify patients in writing of its policy with regard to medical aid in dying. A health care facility that fails to provide advance notification to patients shall not be entitled to enforce such a policy.

31-54-18.
(a) A person commits a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years if the person, knowingly or intentionally, causes an individual's death by:
   (1) Forging or altering a request for medical aid-in-dying medication to end an individual's life without the individual's authorization; or
   (2) Concealing or destroying a rescission of a request for medical aid-in-dying medication.
(b) A person commits a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years if the person knowingly or intentionally coerces or exerts undue influence on an individual with a terminal illness to:
   (1) Request medical aid-in-dying medication for the purpose of ending the terminally ill individual's life; or
(2) Destroy a rescission of a request for medical aid-in-dying medication.

(c) Nothing in this chapter limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(d) The penalties specified in this chapter do not preclude criminal penalties applicable under Title 16 for conduct that is inconsistent with this chapter.

31-54-19.

A person who has custody or control of medical aid-in-dying medication dispensed under this chapter that the terminally ill individual decides not to use or that remains unused after the terminally ill individual's death shall dispose of the unused medical aid-in-dying medication either by:

(1) Returning the unused medical aid-in-dying medication to the attending physician who prescribed the medical aid-in-dying medication, who shall dispose of the unused medical aid-in-dying medication in the manner required by law; or

(2) Lawful means in accordance with a state or federally approved medication take-back program authorized under the federal Secure and Responsible Drug Disposal Act of 2010, Pub. L. 111-273, and regulations adopted pursuant to the federal act.

31-54-20.

Nothing in this chapter authorizes a physician or any other person to end an individual's life by lethal injection, mercy killing, or euthanasia. Actions taken in accordance with this chapter shall not, for any purpose, constitute suicide, assisted suicide, mercy killing, homicide, or elder abuse under Title 16.

31-54-21.

A government entity that incurs costs resulting from an individual terminating his or her life pursuant to this chapter in a public place has a claim against the estate of the individual to recover the costs and reasonable attorney fees related to enforcing the claim.

31-54-22.

Nothing in this chapter shall change the legal effect of:

(1) A declaration made under Chapter 32 of this title directing that life-sustaining procedures be withheld or withdrawn;

(2) A cardiopulmonary resuscitation directive executed under Chapter 32 of this title;

(3) An advance medical directive executed under Chapter 32 of this title.”
SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.