

SB 891 A STAFF MEASURE SUMMARY

Carrier: Sen. Thatcher

Senate Committee On Judiciary

Minority Report

Action Date: 04/04/23**Action:** Do pass with amendments. (Printed A-Eng.) Minority**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Report Signers:** Sen. Kim Thatcher, Sen. Dennis Linthicum**Prepared By:** Patricia Pascone, LPRO Analyst**Meeting Dates:** 3/6, 4/4**WHAT THE MEASURE DOES:**

Requires contents of the measure be submitted to the people for their approval or rejection at the next general statewide election. Permits ORS 127.800 to ORS 127.897 to be cited as the Oregon Death with Dignity Act (Act). Eliminates Oregon residency requirement. Expands authorized health care providers who may provide services under the Act to include physician assistants and nurse practitioners. Allows prescription to be delivered to pharmacist by facsimile or electronic means, if confirmed by phone or other two-way communication device. Permits health care providers to electronically submit required records. Reduces waiting period from 15 days to 48 hours after a patient makes a first oral request before the patient must make a second oral request and the provider must wait before writing a prescription. Removes minimum waiting period of 48 hours after a patient's written request before prescription may be written, if an attending provider has medically confirmed that the patient will within reasonable medical judgment die within that time. Eliminates requirement that one witness not be an employee, operator, or owner of the health care facility where the terminally ill person is a patient or resident.

ISSUES DISCUSSED:

- Most patients requesting end of life medication are within two or three weeks of death, and at least half are already bedridden
- Physical exam requirements
- Ensuring that seniors and disabled are not being coerced
- Training on evaluation of cognitive capacity
- Depression in persons with terminal illness or in long term care
- Informed consent requirements
- Medical record portability concerns with non-Oregon residents

EFFECT OF AMENDMENT:

Requires contents of the measure be submitted to the people for their approval or rejection at the next general statewide election.

BACKGROUND:

Oregon enacted its Death with Dignity Act (Act) in 1997 to allow terminally ill patients who meet certain criteria to end their lives through voluntary self-administration of a lethal dose of a medication prescribed by a physician for that purpose. A qualified patient is at least 18 years of age, is a resident of Oregon, has been diagnosed with a terminal illness that will lead to death within six months, and is capable of informed decision-making and communication about health care decisions. The terminal diagnosis and capacity for informed decision-making must be confirmed by both an attending and a consulting physician. Either of the physicians must refer the patient to counseling if of the opinion that the patient is suffering from a psychiatric or psychological disorder or depression causing impaired judgment, and no life-ending medication may be prescribed during such impairment. A qualified patient must make both an oral and a written request, and must make a second oral request at least

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15 days after the first oral request. The physician must wait 15 days after the first oral request before writing the prescription, unless the attending physician determines with reasonable medical judgment that the patient will die within that time period, and the patient makes a second request orally or in writing. The patient has the right to rescind the request at any time.

A physician must document certain information in the medical record, and health care providers must file medication dispensing records with the Oregon Health Authority (OHA). OHA reviews a sample of medical records, reports annually with statistical information, and refers any instances of noncompliance with the Act to the applicable licensing authority. Physicians receive certain immunities and legal protections for services provided under the Act. In a March 2022 settlement agreement, OHA, the Oregon Medical Board, and the Multnomah County District Attorney's Office agreed not to enforce the Oregon residency requirement for Death with Dignity patients against physicians. *Gideonse v. Brown, et al.*, Case No. 3:21-cv-01568-AR (D. Or., March 28, 2022).

Senate Bill 891 MRA requires proposed changes to the Death with Dignity Act be submitted to the people for their approval or rejection at the next general statewide election. If approved, the measure allows physician assistants and nurse practitioners to provide services under the Death with Dignity Act, shortens certain waiting periods before life-ending medication can be prescribed, removes the Oregon residency requirement, and permits electronic submission of prescriptions and health records.