PATIENTS RIGHTS ACTION FUND

Review of Delaware House Bill 140

***Overview*:**

Neither the Delaware constitution nor the U.S. Constitution contains a right to assisted suicide; therefore, no individual has the right to authorize another to kill him or her in violation of federal and state criminal laws. *Washington v. Glucksberg*, 521 U.S. 702, 735 (1997). To the contrary, Delaware has an "unqualified interest in the preservation of human life." *Id.* at 728. Delaware's current statutory "prohibition on assisted suicide, like all homicide laws, both reflects and advances its commitment to [preserving and protecting human life]." *Id.* at 735.

Importantly, suicide, including healthcare provider-assisted suicide, is not a typical reaction to an acute problem or life circumstance, and many individuals who contemplate suicide, including the terminally ill, suffer from clinical depression or other treatable emotional or mental issues, which frequently go undiagnosed and untreated by physicians. *See, e.g.*, New York State Task Force on Life and the Law, WHEN DEATH IS SOUGHT: ASSISTED SUICIDE AND EUTHANASIA IN THE MEDICAL CONTEXT 77-82 (May 1994). For this reason and many others, the medical profession as a whole opposes healthcare provider-assisted suicide because it is contrary to the medical profession's role as healer and undermines the provider-patient relationship. *Washington v. Glucksberg*, 521 U.S. at 731.

Delaware House Bill (HB) 140 seeks to obliterate the State's "unqualified interest" in protecting and preserving human life, including the lives of the vulnerable, sick, and disabled. Instead, the bill erroneously accepts a "sliding-scale approach" that claims certain "qualities of life" are not worthy of equal legal protection. *Id.* at 729.

Maintaining Delaware's existing prohibition on assisted suicide, including healthcare provider-assisted suicide, is the only way to protect vulnerable citizens. *Id.* at 732.

***Specific Concerns with HB 140*:**

HB 140, also known as "The Ron Silverio/Heather Block End of Life Options Law," purports to provide a legal mechanism under which certain patients are able to request assistance from a healthcare provider in committing suicide. This usually involves the prescription of lethal medications that patients will "self-administer." There are significant problems with the bill's language that endanger the vulnerable, sick, and disabled.

* HB 140 Compromises Freedom of Conscience and Other Constitutional Rights: Section 2503B(b) provides that "[a]n attending physician or attending APRN ***must*** provide sufficient information to an individual with a terminal illness regarding ***all*** available treatment options, and the alternatives and the foreseeable risks and benefits of each, so that the individual can make an independent decision regarding the individual's end of life health care." The bill mandates that all healthcare providers—even those who have religious or other objections to assisting suicide—counsel terminally ill patients on the availability of lethal medications. This requirement violates the fundamental freedom of medical conscience.

Further, Section 2513B(a) provides "[a] person acting in good faith and in accordance with generally accepted health-care standards is not subject to … loss of membership, or any other penalty for providing medical care in good faith compliance with" the provisions of the HB 140. A professional organization or association will not be able to limit its membership to those who do not support or participate in assisted suicide or require that its members affirm its opposition to the practice. Under this provision, for example, a Catholic medical association that publicly holds to the Church's teaching on the sanctity of life cannot exclude from membership physicians who actively participate in assisted suicides. This provision violates the First Amendment right to free association.

* Dangerous Policy Decision to Decriminalize Physician-Assisted Suicide: Recognizing its "unqualified interest" in preserving and protecting all human life, Delaware law currently classifies assisted suicide as a crime. DEL. CODE ANN. tit. 16, §2512. HB 140 specifically decriminalizes healthcare provider-assisted suicide, deceptively reclassifying it as accepted medical treatment or simply another "palliative care" option for those at the end of life.

* No Requirement for In-Person Requests: HB 140 does not require that the requests for assisted suicide or any "evaluation of the individual's decision-making capacity" take place during in-person consultations. This opens the door to the inappropriate use of "telemedicine" for these requests and evaluations, increasing opportunities for coercion of the patient and for abuse of the process.

* Lack of Meaningful Mental Health Evaluation: While the "attending physician" or "attending APRN (advance practice registered nurse)" may refer a patient for an evaluation of his or her "decision-making capacity," there is no affirmative requirement that any patient requesting assisted suicide undergo a mental health evaluation or be screened for treatable conditions such as depression.

A psychiatrist or psychologist must simply make a determination as to the patient's "decision-making capacity" and communicate that determination in writing to the attending healthcare provider. There is no affirmative requirement that the psychiatrist or psychologist actually meet the patient in-person or review any specific

medical records. In fact, HB 140 provides no guidance as to how the "decision-making capacity" evaluation is to be made.

Evidence suggests that many patients whose mental health concerns are properly diagnosed and treated change their minds about suicide. For example, in one study of assisted suicide in Oregon, 46 percent of patients seeking assisted suicide changed their minds when their physicians intervened and appropriately addressed suicidal ideations by treating their pain, depression, and/or other medical problems. Linda Ganzini et al., "Physicians' Experiences with the Oregon Death with Dignity Act," 342 NEW ENG. J. MED. 557, 557 (2000).

* Broad Definition of "Terminal Illness": To qualify for healthcare provider-assisted suicide under HB 140, a patient must have a "terminal illness." However, the bill's definition of "terminal illness" is incredibly broad. For example, it does not differentiate between situations where death will occur within six months even with treatment from situations where death would not likely occur if the patient sought and received treatment. This means that someone who has a treatable disease or condition (*e.g.*, diabetes) who refuses treatment or who is denied insurance coverage for certain treatments is eligible to request and receive lethal medication.

* Specific Concerns with Process for Requesting Lethal Medication:

  * *Bill Does Not Adequately Protect Against Coercion or Undue Influence*: While the bill purports to require a determination that a request for assisted suicide is not a result of coercion or undue influence, it does not define these terms or provide adequate guidance for making such determinations. These failures leave vulnerable patients susceptible to the very coercion and intimidation from which they must be protected.

  * *Bill Expands Who May Prescribe Lethal Medication*: HB 140 permits licensed physicians and advance practice registered nurses (APRN) to prescribe lethal medications. In contrast, most other states that passed or even considered healthcare provider-assisted suicide limit prescriptive authority to licensed physicians.

  * *Witnesses to Written Request Can Have Conflicts of Interest*: The bill requires that the patient's written request for assisted suicide be witnessed by two persons. One of the witnesses can be a relative, heir, or someone with a claim to the patient's estate. There are no requirements that the second witness (who is not a relative or heir) be completely independent and unrelated to either the patient or the other witness. This could easily result in abuses. For example, the second witness could be a friend of a person who stands to benefit financially from the patient's death.

  * *No Oversight of Lethal Drug Administration:* The bill does not require that the "attending physician" or "attending APRN" be present when the lethal

medication is ingested to ensure the patient's voluntary decision/action or to deal with possible complications. In fact, there is no requirement that any witness attest to the patient's physical or mental capacity when the drugs are ingested, to confirm that the drugs were actually self-administered (as required), or to confirm that the patient's decision was voluntary.

* HB 140 Perpetuates Dangerous Falsehoods: Attempting to maintain the fiction that healthcare provider-assisted suicide is legitimate medical treatment, the bill asserts that requesting, prescribing, or dispensing lethal medication does not "constitute elder abuse, suicide, assisted-suicide, homicide, or euthanasia."