



WHITMAN-WALKER HEALTH

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The Honorable Yvette M. Alexander
Chair, Committee on Health and Human Services
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Comments on Bill 21-38, the “Death With Dignity Act of 2015”

Dear Chairperson Alexander:

Pursuant to the “Notice of Hearing” in this matter, Whitman-Walker Health is pleased to submit these comments and recommendations on Bill 21-38, the “Death With Dignity Act of 2015.

Whitman-Walker Health is a community based, Federally Qualified Health Center dedicated to providing holistic health and wellness services to residents of the District of Columbia, and the entire Washington, DC metropolitan area, with a special focus persons living with HIV; lesbian, gay, bisexual and transgender (LGBT) individuals and families; and others in our diverse urban community who face health challenges. We are deeply committed to patient empowerment and patient autonomy, including a patient’s right to decide how they wish to live and how they wish to die. We know suffering firsthand as we have lost hundreds of patients over the more than 40 years of service to our community. Our hearts and minds will never forget the dark days of the AIDS epidemic. During that period too many spent their last days, weeks and months in great physical and mental pain, and too many of them, and their families, friends and care providers, struggled with a health care system that prolonged their suffering.

That is why Whitman-Walker supports the fundamental intent of this bill. Yet this legislation alone will not truly advance patient empowerment and autonomy regarding end-of-life choices. Only a broader community conversation can do that. It is a conversation that is overdue. It is a conversation that Whitman-Walker Health welcomes and will actively participate in on behalf of our patients and our health care team.

Further, Whitman-Walker Health believes that the legislation as drafted warrants additional clarity or modifications to strengthen safeguards against possible abuse and to minimize disincentives for physicians to participate over time. We offer four specific modifications to the legislation as follows:

1. Strengthening Mental Health Screening/Evaluation. The bill provides, appropriately, that if the attending or consulting physician concludes that the patient requesting a life-ending prescription “may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment,” a referral for mental health counseling is required, Section 5(a), and that the mental health counselor must determine that the patient is not suffering from impaired judgment before covered medication can be prescribed, Section 5(b). We anticipate that there may be situations, however, in which an attending or consulting physician, who is not a mental health expert, may be uncomfortable making a determination as to whether a patient may have impaired judgment or be suffering from a depression or other mental health condition whose treatment may be the better option. In order to ensure that prescriptions for life-ending medications are provided only to patients whose judgment is not impaired by a psychiatric or psychological disorder or depression, we recommend the following amendments to Section 5 (new language underscored):

Sec. 5. Counseling offer and referral.

(a) Both the attending physician and the consulting physician shall offer the patient the opportunity to talk with a mental health professional about the patient’s feelings and concerns. The offers shall be documented in the patient’s record.

- (b) [former (a)] If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for required counseling by a mental health professional who is trained in caring for persons with terminal illnesses. The mental health professional shall be linguistically and culturally competent to effectively counsel the patient, and the consultation shall occur as promptly as reasonably possible.
- (c) [former (b)] No covered medication shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment, and that the patient understands all feasible options to taking a covered medication, including comfort care, hospice care, and pain control. The mental health professional's determination shall be documented in the patient's record.

2. Providing Guidelines and Documenting Best Practices. In order to ensure that the option of a life-ending drug is provided to those individuals that the bill intends to benefit, and only to those individuals, the Department of Health should be directed not only to issue regulations that address reporting requirements (Section 8) and recovery of unused drugs (Section 15), but also to provide detailed guidance to all health care providers authorized to prescribe medications (including physicians and nurse practitioners), mental health professionals, patients, and their caregivers and families on recommended procedures under the new law, including “best practices” developed in other jurisdictions with similar laws. The guidelines should include guidance on recommended drugs and their appropriate dosing, based on the best knowledge currently available, and references to national experts or other sources that a health care professional can consult to obtain updates on recommended drugs and appropriate dosing. Physicians, who are currently trained to save and to prolong life and to ease pain, generally do not have the knowledge or expertise to prescribe drugs that will promptly and painlessly end a patient’s life.

3. Offering Voluntary Training to Health Care Professionals. In addition, the bill should be amended to require the Department of Health, working with the appropriate licensing boards for physicians, nurse practitioners, and mental health professionals, to develop a training

course on the new law, and more generally on best practices for working with patients facing terminal illnesses. All licensed physicians, nurse practitioners, and mental health professionals who provide clinical care should be strongly encouraged to complete the course on at least a one-time basis, either prior to receiving their initial license or prior to renewing their current license. The Department of Health should ensure, through grants or otherwise, that the training is available free of charge or at a low cost.

4. Protecting Health Care Professionals from Undue Liability. Finally, the bill as written does not clearly resolve the question whether, and under what circumstances, a physician and consulting mental health professional might face a malpractice suit by a surviving family member, or by a patient who took a covered medication but survived. Although Section 11(a)(1)(A) states that “[n]o person shall be subject to civil ... liability ... for [p]articipating in good faith compliance with this act,” Section 11(d) states that “[n]othing in this act limits liability for civil damages resulting from negligent or intentional misconduct by any person.” Moreover, Section 11(f) states, “Nothing contained in this act shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this act.” We are concerned that this language will serve as a disincentive for many health care providers to participate, even in circumstances in which their patients would clearly benefit.

Therefore, we recommend that Section 11(d) be amended to provide:

Nothing in this act limits liability for civil damages resulting from intentional misconduct, or actions or inactions undertaken in reckless disregard of the requirements of this act, by any person.

Moreover, Section 11(d) should be amended to state:

Subject to Sections 11(a)(1)(A) and 11(d), nothing contained in this act shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this act.

Thank you for this opportunity to submit comments. If we can be of assistance in any other way, please contact me directly, or contact Daniel Bruner, Senior Director of Policy, at (202) 939-7628 or dbruner@whitman-walker.org.

Respectfully submitted,



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