SENATE BILL 291[1]: "GEORGIA DEATH WITH DIGNITY ACT"; PHYSICIAN-ASSISTED END-OF-LIFE OPTIONS FOR TERMINALLY ILL INDIVIDUALS; CREATE PROVISIONS; ENACT

Amending O.C.G.A. § 31

First signature: Senator Steve Henson (41st)

Co-Sponsor: Senator Nan Orrock (36th)

Summary: The purpose of this Bill is "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."[2] This amendment would allow adult residents of Georgia, the option to request a prescription from their physician for the purpose of self-administering "medical aid-in-dying medicine if: (1) the individual's doctor has diagnosed them with a terminal illness with a prognosis of six months or less. (2) the individual's doctor has determined the individual has mental capacity. And (3) the individual has voluntarily requested to receive an aid-in-dying medication prescription."[3] Additionally, the Bill requires both oral and written requests be provided to the physician over a minimum of fifteen days.[4] Furthermore, the patient maintains the ability to rescind their request for aid-in-dying medication at any time, and the physician must reiterate the availability of that option prior to writing the prescription.[5]

Status: Senate Read and Referred, January 15, 2020.[6]

TEXT OF SENATE BILL 291[7]

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

31-54-1.

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[1] S.B. 291, 155th Gen. Assemb., 2nd Reg. Sess. (Ga. 2020), *available at* http://www.legis.ga.gov/Legislation/20192020/187917.pdf (last visited Oct. 9, 2020).

[2] *Id.*

[3] Nelson Mullins Riley & Scarborough LLP, *Gold Dome Report*, JD SUPRA (Jan. 16, 2020). https://www.jdsupra.com/legalnews/gold-dome-report-january-2020-3-60315/ (last visited Mar. 24, 2021).

[4] *Id.*

[5] *Id.*

[6] *2019-2020 "Georgia Death with Dignity Act"; Physician-Assisted End-of-Life Options for Terminally Ill Individuals; Create Provisions; Enact*, GA. GEN. ASSEMB., *available at* https://www.legis.ga.gov/legislation/56682 (last visited Mar. 24, 2021) [hereinafter S.B. 291 Status Sheet].

[7] S.B. 291, 155th Gen. Assemb., 2nd Reg. Sess. (Ga. 2020), *available at* http://www.legis.ga.gov/Legislation/20192020/187917.pdf (last visited Oct. 9, 2020).

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.

(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 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 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 self-administered aid-in-dying medication.
(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; or

(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.

SPONSOR'S RATIONALE

Senate Minority Leader Steve Henson and Senator Nan Orrock sponsor Senate Bill 291, also known as the "Georgia Death with Dignity Act."[8] The Bill would create provisions for terminally ill adults in Georgia to request physician assistance in prescribing medication to aid in dying.[9] At present, assisted suicide is a felony that subjects physicians and "any person with actual knowledge that a person intends to commit suicide" to criminal action if they help a terminally ill patient hasten their death.[10] This Bill would remove the danger of prosecution for those hoping to support dying patients and family members in end-of-life decisions.[11] Henson aims to create a safe and private option that would allow a peaceful and tranquil death for those who wish to choose it.[12] Currently, terminally ill patients are limited to palliative care, hospice care and aggressive pain control measures.[13] If passed, this Bill would add another important alternative to the list.[14] As a safeguard, providers would be required to review all the care options available to a terminally ill patient before assisting them in carrying out a life-ending measure.[15] Lastly, the Bill provides a "humane and sensible way" to ease the pain of a patient who is dying.[16]

The idea for the Bill arose from a plea made by a constituent and pancreatic cancer patient in 2019.[17] The constituent expressed to Henson that she wanted access to medication to aid in dying.[18] This constituent is not alone, as the most common diagnosis cited for aid-in-dying requests is cancer.[19] Disease related symptoms and loss of autonomy were stated as the two most important reasons given for requesting this assistance.[20] Henson noted that the Bill would provide a common sense option for those suffering with pain related to the dying process.[21]

Henson is quick to point out that the Bill includes protective measures to ensure that those who may have ulterior motives, financial or otherwise, will not be able to pressure their loved ones

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[8] *Id.*
[9] *Id.*
[10] GA. CODE ANN. §16-5-5 (2020).
[11] Beau Evans, *Right-to-Die Bill Filed in Georgia Senate*, SAVANNAH MORNING NEWS (Jan. 18, 2020, 1:28 PM), *available at* https://www.savannahnow.com/news/20200118/right-to-die-bill-filed-in-georgia-senate (last visited Apr. 8, 2021).
[12] Jessica Szilagyi, *"Death with Dignity Act" Filed in Georgia Legislature*, ALL ON GEORGIA (Jan. 23, 2020), *available at* https://allongeorgia.com/georgia-state-politics/death-with-dignity-act-filed-in-georgia-legislature/ (last visited Mar. 24, 2021).
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Evans, *supra* note 11.
[17] *Id.*
[18] *Id.*
[19] Ellen Wiebe et al., *Reasons for Requesting Medical Assistance in Dying*, 64 CAN. FAM. PHYSICIAN 674, 676 (2018), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6135145/pdf/0640674.pdf (last visited Mar 24, 2021) (reporting on data collected from patients who requested assistance with life-ending measures in British Columbia).
[20] *Id.*
[21] Evans, *supra* note 11.

to pursue life-ending measures.[22] This safeguard is evidenced by the requirement of two signatures for a request for aid-in-dying medication and where one signer is prohibited from being a "relative, spouse, heir to an inheritance or someone with power of attorney."[23] Henson understands that this is a "complex and emotional issue" that may require time and education before it gains wide acceptance.[24]

At present, some special interest groups have expressed their support for the proposed legislation, such as Compassion and Choices, a group that promotes end-of-life empowerment.[25] The group lauded the Henson bill, extoling the courage of introducing it in this political climate.[26] Likewise, Death with Dignity, a nonprofit organization whose purpose includes promoting choice for the terminally ill and improving end of life care, actively promotes laws such as Senate Bill 291, that are modeled after the original Oregon Death with Dignity Act of 1997.[27]

If the Bill passes, Georgia would join seven states and the District of Columbia in providing death with dignity statutes and two states that mandate it by court ruling.[28] Several other states are considering or have proposed legislation in 2020.[29] Nationally, Americans are receptive to the idea with 74% stating that end-of-life options should be available.[30]

Georgia Governor Brian Kemp has made no comment on whether he would support the "Georgia Death with Dignity Act" as his office stated that he typically refrains from commenting on pending legislation.[31]

OPPOSITION'S RATIONALE

The Catholic Archdiocese of Atlanta has expressed their opposition to the "Georgia Death with Dignity Act."[32] In a statement released by the Bishops of Georgia who represent the opinions of Catholic leadership, the fear is that the Bill "targets vulnerable members of society, including the elderly and persons with disabilities, suggesting that their lives are not worth living. We must uphold the dignity of all human life, cherish the lives of all human beings, and work to prevent all

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[22] *Id.*
[23] *Id.*
[24] Katie Filling, *'Death with Dignity Act' Filed in Ga, Would Allow Terminally Ill to End Their Life*, FOX28 MEDIA (Jan. 24, 2020), *available at* https://fox28media.com/news/local/death-with-dignity-act-filed-in-ga-would-allow-terminally-ill-to-end-their-life (last visited Mar. 24, 2021).
[25] David Cook, *Thank Sen. Steve Henson and Sen. Nan Orrock*!, COMPASSION AND CHOICES, *available at* https://compassionandchoices.org/survey/thank-sen-steve-henson-and-sen-nan-orrock/ (last visited Mar. 24, 2021).
[26] *Id.*
[27] *About Us*, *Death with Dignity National Center,* DEATH WITH DIGNITY, *available at* https://www.deathwithdignity.org/about/ (last visited Mar. 24, 2021).
[28] CNN Editorial Research, *Physician-Assisted Suicide Fast Facts*, CNN (June 11, 2020), *available at* https://www.cnn.com/2014/11/26/us/physician-assisted-suicide-fast-facts/index.html (last visited Mar. 24, 2021).
[29] *Legislative Activity on Aid in Dying Ramps Up Around the U.S.*, DEATH WITH DIGNITY (Feb. 14, 2020), *available at* https://www.deathwithdignity.org/news/2020/02/weeks-6-7-2020-in-the-death-with-dignity-movement/ (last visited Apr. 8, 2021).
[30] Danielle Zoellner, *The Case Against Medical Aid in Dying: Insurance Firms, Doctors and Hollywood Among Those Accused of Pushing "Assisted Suicide,"* INDEPENDENT (Oct. 22, 2020, 17:26), *available at* https://www.independent.co.uk/news/world/americas/medical-aid-in-dying-assisted-suicide-opposition-right-to-die-b1186312.html (last visited Mar. 24, 2021) (evaluating Gallup poll data from 2020).
[31] Szilagyi, *supra* note 12.
[32] *Take action on HB 702 and SB 291*, GEORGIA BULLETIN (Jan. 23, 2020), *available at* https://georgiabulletin.org/news/2020/01/take-action-on-hb-702-and-sb-291/ (last visited Mar. 24, 2021).

suicides."[33] The Bishops consider physician assisted suicide a "cruel practice" and prefer to promote "comprehensive medical and palliative care instead of a facilitated suicide."[34]

The Georgia Life Alliance (GLA), a pro-life group, fears that the sick, elderly and infirm will see it as a duty to die so as not to be a burden on their families.[35] GLA sees no dignity in assisting a loved one in killing themselves but rather finds compassion in caring for those at the end of life.[36] This sentiment is echoed by the national disability rights group Not Dead Yet (NDY), a vocal opponent to aid-in-dying legislation.[37] NDY regional director John Kelly rejects the concept that "personal autonomy should be regarded above anything else."[38] He points out that society perpetuates these themes resulting in those with terminal illness thinking "their life is no longer worth living."[39]

The American Medical Association (AMA) statement on the issue, noted the diverging views on the topic of physician assisted suicide within their membership, and encouraged members to come to their own personal, ethical conclusions.[40] AMA members who oppose physician assisted suicide assert that "suicide is fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks."[41] In states where aid-in-dying legislation has passed, state AMA chapters have asserted neutral positions on the subject.[42]

As the Bill at issue stands to modify O.C.G.A. §16-5-5 sponsored by Representative Ed Setzler (35th)[43] and enacted in 2012, Setzler is a likely opponent.[44] Setzler's bill making assisted suicide a felony passed both the Georgia House and Senate by a wide margin.[45]

IMPLICATIONS IN GEORGIA

If passed, this bill would legalize physician assisted suicide by self-administration of prescription medication to aid in dying.[46] If Oregon[47] is any indication of what Georgia can expect, a JAMA Oncology report that looks at the data from physician assisted suicide from 1998 to 2015

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[33] *Id.*
[34] *Id.*
[35] Elizabeth Reed, *Georgia Senators Targeting the Elderly with Profoundly Immoral New Bill*, GEORGIA LIFE ALLIANCE (Jan. 21, 2020), *available at* https://georgialifealliance.com/georgia-senators-targeting-the-elderly-with-profoundly-immoral-new-bill/ (last visited Mar. 24, 2021).
[36] *Id.*
[37] NOT DEAD YET, *available at* https://notdeadyet.org/ (last visited Mar. 24, 2021).
[38] Zoellner, *supra* note 30 (interview with John Kelly).
[39] *Id.*
[40] *Physician-Assisted Suicide*, AMERICAN MEDICAL ASSOCIATION, *available at* https://www.ama-assn.org/delivering-care/ethics/physician-assisted-suicide (last visited Mar. 24, 2021).
[41] *Id.*
[42] Zoellner, *supra* note 30.
[43] Representative Setzler was unavailable for comment following email requests to both Setzler and his assistant.
[44] *2011-2012; Homicide; Offering to Assist in Commission of Suicide; Repeal Certain Provisions,* GA. GEN. ASSEMB., *available at* https://www.legis.ga.gov/legislation/36366 (last visited Apr. 8, 2021).
[45] *Id*. (House votes 115 yeas to 53 nays and Senate votes 38 yeas to 11 nays).
[46] Jennifer Fass & Andrea Fass, *Physician-Assisted Suicide*, 68 AM. J. HEALTH-SYS. PHARMACY 846, 846 (2011), *available at* https://www.medscape.com/viewarticle/742070_3 (last visited Mar. 24, 2021) (indicating that in Oregon, the medication prescribed is a 9-gram capsules of secobarbital).
[47] *Quick Facts Oregon 2019,* UNITED STATES CENSUS BUREAU, *available at* https://www.census.gov/quickfacts/OR (last visited Mar. 24, 2021) (stating Oregon population 4.2 million according to U.S. Census data from 2019).

could provide insight.[48] A total of 1545 prescriptions were written and 991 patients actually took the lethal medication and subsequently died as a result.[49] These numbers represent a small percentage of overall death at 38.6 per 10,000 totals deaths.[50] Extrapolating from Oregon's statistics, Georgia could expect approximately 50 people per year to choose to obtain the medication, administer it to themselves, and ultimately die.[51]

Senior Policy Analyst for the Health and Human Services Subcommittee, James Beal commented on the unresolved issues he sees for Georgians.[52] Mr. Beal pointed out that "an issue may arise from state policy affording a 'right' [to aid-in-dying medication] but provider unwillingness[53] or facility policy prohibiting it. Also, who pays for it? Will Medicaid or Medicare[54] cover costs?"[55] Ultimately, Georgia legislators may adopt a payment option similar to other states that have authorized state public funds for aid-in-dying medications in addition to coverage available through private insurance.[56] Under Federal law, federal funds may not be used for the purpose of assisting suicide.[57]

LEGISLATIVE GENEALOGY

This Bill was introduced in the Senate hopper on January 14, 2020.[58] It had its first reading in the Senate on January 15, 2020 where it was then referred.[59]

Prepared by: *Naja MacIntosh*

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[48] Charles Blanke et al., *Characterizing 18 Years of the Death with Dignity Act in Oregon*, 3 JAMA ONCOLOGY 1403, 1403 (2017), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5824315/ (last visited Mar. 24, 2021).
[49] *Id.*
[50] *Id.*
[51] *See Georgia: Death Rate From 2008 to 2018*, STATISTA (Oct. 14, 2020), *available at* https://www.statista.com/statistics/580129/death-rate-in-georgia/ (last visited Mar. 24, 2021) (noting Georgia population in 2018 was 10.5 million, with 12,850 deaths recorded).
[52] E-mail interview response from James Beal, Senior Policy Analyst for the Georgia Assembly Health and Human Services Subcommittee, to Naja MacIntosh, Staff Member, Atlanta's John Marshall Law Journal (Sept. 21, 2020 at 4:43 PM) (on file with the Atlanta's John Marshall Law Journal).
[53] *See* Kimberly Leonard, *Californians Can Choose to Die – With the Help of Taxpayers*, U.S. NEWS WORLD REP. (Mar. 21, 2016), *available at* https://www.usnews.com/news/articles/2016-03-21/in-california-government-to-pick-up-the-tab-for-death-with-dignity (last visited Mar. 24, 2021) (clarifying that "California's aid-in-dying law contains a provision allowing doctors and hospitals to opt out of helping terminally ill patients access medications that would help them hasten their deaths").
[54] *Id.* (explaining California and Oregon cover aid-in-dying prescriptions using public state funds. Federal funds such as those allocated to Medicare are not eligible for use in this class of medications. Costs for the medication range from $5,000 for Seconal to $400 for a three-part drug cocktail made in a compounding pharmacy).
[55] *Id.*
[56] *Id.*
[57] 42 U.S.C.S. §14401 – 14402 (LexisNexis, Lexis Advance through Public Law 116-344, approved January 13, 2021, with gaps of Public Laws 116-260, 116-283, and 116-315) (outlining restrictions on use of federal funds for the purpose of causing or assisting in causing death, assisted suicide, euthanasia, or mercy killing. Programs to which restriction applies include Medicare, Medicaid, Veterans medical care, Federal prisoner medical care and others).
[58] S.B. 291 Status Sheet, *supra* note 6.
[59] *Id.*