Protection of Conscience Project
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Indiana assisted suicide bill fails to protect objecting practitioners

Assisted suicide evolves from "assistance" to "medical care"

Sean Murphy, Administrator
Protection of Conscience Project

Introduction

On 7 January, 2020, Representative Matt Pierce introduced HB1020: End of life options in the Indiana General Assembly.[1]1 HB1020 is the fourth assisted suicide bill introduced by Pierce since 2017; three previous bills died in committee without hearings.[2,3,4,5,6] Parts of HB1020 relevant to protection of conscience are reproduced on the Project website.[7]

Overview

The bill permits physician assisted suicide for Indiana residents 18 years of age and older who have been diagnosed with a terminal illness likely to cause death within six months. Candidates must be competent to make health care decisions and must apply in writing for a lethal prescription; the application must be witnessed by two independent witnesses. Lethal medication can be prescribed or dispensed by an attending physician after a fifteen day waiting period if the patient is acting voluntarily and making an informed decision.

Neither the attending physician nor any other person need be present when the lethal medication is taken, though the attending physician must tell the patient that someone else should be present. The lethal medication must be self-administered. If the medication does not cause death, no one is authorized to kill the patient.

HB1020 imposes obligations upon "attending physicians"[8] and "consulting physicians"[9] and it assumes the cooperation of pharmacists in dispensing lethal medication.

There is some ambiguity in the description of what is expected of attending physicians. Section 4(a)(13) makes provision or prescription of lethal medication an absolute obligation if all of the conditions specified in the bill are met (". . .the attending physician shall. . ."). On the other hand, Section 4(c) seems to leave some discretion to the attending physician to refuse, even if the conditions are met (". . . the attending physician may . . ."). A later protective provision indicates that an attending physician can refuse, but the ambiguity in the wording of Section 4 remains.

Protective provisions: biased, insufficient and conflicting

The bill makes no reference to freedom of conscience or religion, but Section 12 offers some protection for "health care providers."

Under Section 12(d) a hospital (health care provider) can prohibit physicians (individual health care providers) from participating in assisted suicide on its premises, and, provided it has notified them in advance, can take action against those who defy the prohibition. This would seem to be broad enough to include a prohibition against assessing patients and arranging for assisted suicide elsewhere.

However, Section 12(e) pits health care "facilities" against health care "providers." A facility cannot prevent a physician from "providing services consistent with the applicable standard of medical care." This includes at least providing information about assisted suicide, being present at a suicide, and referring a patient for assisted suicide. What is not clear is whether or not this includes doing so on the facility's premises, notwithstanding a facility prohibition of participation in assisted suicide.

Unfortunately, HB1020 does not explain the distinction between a health care "provider" and a health care "facility." And while the *Indiana Code* defines both terms, it offers three different definitions of "health care facility"[10] and five differing and very lengthy definitions of "health care provider."[11] The latter can include individuals (thus covering attending physicians) but also health facilities and incorporated entities. This further complicates interpretation of Section 12(e).

Section 12(a) provides immunity against professional, criminal and civil liability, but only for those who prescribe or dispense assisted suicide medication or are present when it is taken. Those who refuse are unprotected. The bias in favour of assisted suicide practitioners and disadvantage imposed upon those unwilling to provide the service is obvious.

Section 12(b) protects both health care providers who participate and those who refuse to participate in assisted suicide against private disciplinary or punitive actions by professional associations, organizations and other health care providers. It offers the same protection for health care providers who provide "scientific and accurate information" about the service — but not those who refuse to do so.

Section 12(c) states that a health care provider cannot be required to participate in "the dispensing or providing of medication", but this does not clearly protect objecting physicians from demands that they do everything but dispense or prescribe lethal drugs.

Assisted suicide evolves from "assistance" to "medical care"

In 2017, HB1561 Section 12(a) described participation in assisted suicide as "provid[ing] assistance in the completion of a request for medication." It granted professional, civil and criminal immunity to those providing "assistance."

The following year, HB1157 Section 12(a) used the same phrase to describe participation. It conferred immunity upon those providing such "care."

In 2019, HB1184 Section 12(a) evolved further, so that participation in assisted suicide is described in HB1020 as the provision of "medical care," including prescribing or dispensing lethal medication

and being present at a patient's suicide. The addition of Section 12(e) in HB1020 reflects and reinforces this evolution when it refers to participation in assisted suicide that conforms to "the applicable standard of medical care."

Now, in 2019 the American Medical Association (AMA) reaffirmed its rejection euthanasia and assisted suicide as contrary to medical ethics,[12] so the AMA would presumably reject the bill's supposition that there can be a "medical standard of care" for either procedure. In this respect, the author of HB1020 may be looking to a future in which a medical standard of care is developed as a result of the legalization of physician assisted suicide.

When assisted suicide becomes "medical care"

Seven Canadian physicians have described what that future looks like.

"For refusing to collaborate in killing our patients," they write, "many of us now risk discipline and expulsion from the medical profession," are accused of human rights violations and "even called bigots."[13]

How did this come about?

An important part of the explanation is the Canadian Medical Association's (CMA) classification of assisted suicide and euthanasia as "*therapeutic* service[s]"[14] and "legally permissible *medical* service[s]."[15]

Since there is no dispute that physicians have a professional obligation to provide or arrange for therapeutic medical services for their patients, the change in CMA policy implicitly made participation normative for the medical profession (and, by extension, for other health care workers and institutions). From that perspective, as the Canadian physicians note, refusing to provide or arrange for euthanasia and assisted suicide services for legally eligible patients "became an exception requiring justification or excuse." Hence, discussion in Canada is now largely about "whether or under what circumstances physicians and institutions should be allowed to refuse to provide or collaborate in homicide and suicide."[13]

The seven Canadian physicians authors can't be dismissed as outlying cranks. Almost 60 Canadian physicians from across the country endorsed the article, which appeared in the World Medical Association's professional journal. Signatories included a Canadian Medical Hall of Fame member known as the father of palliative care in North America,[16,17] a member of an expert advisory group on euthanasia and assisted suicide convened by Canadian provinces and territories,[18] and a regional director of palliative care who resigned when a health authority demanded that objecting hospices permit euthanasia and assisted suicide on their premises.[19]

Thus, in the long term, statutory affirmation that assisted suicide is not only permitted but is a form of "medical care" would likely have serious adverse consequences for objecting Indiana physicians.

Notes

1. US, HB 1020, End of life options, 121st Gen Assembly, 2nd Reg Sess, Ind, 2020 [Internet]. Indianapolis: Indiana General Assembly; 2020 Jan 7 [cited 2020 Jan 14]. Available from: http://iga.in.gov/legislative/2020/bills/house/1020#document-cf8c781f.

2. US, HB 1561, End of life options, 120th Gen Assembly, 1st Reg Sess, Ind, 2017 [Internet]. Indianapolis: Indiana General Assembly; 2017 Jan 23 [cited 2020 Jan 14]. Available from: http://iga.in.gov/legislative/2017/bills/house/1561#document-742d2e0f.

3. US, HB 1157, End of life options, 120th Gen Assembly, 2nd Reg Sess, Ind, 2018 [Internet]. Indianapolis: Indiana General Assembly; 2018 Jul 1 [cited 2020 Jan 14]. Available from: http://iga.in.gov/legislative/2018/bills/house/1157#document-175a87c5.

4. US, HB 1184, End of life options, 121st Gen Assembly, 1st Reg Sess, Ind, 2019 [Internet]. Indianapolis: Indiana General Assembly; 2019 Jul 1 [cited 2020 Jan 14]. Available from: http://iga.in.gov/legislative/2019/bills/house/1184#document-4cf85df6.

5. Hussein F. Indiana lawmaker proposes assisted suicide bill. Indianapolis Star [Internet]. 2018 Jan 4 [cited 2020 Jan 14]. Available from: https://www.indystar.com/story/news/2018/01/04/indiana-lawmaker-proposes-assisted-suicide-bill/1002554001/.

6. Arthur V. Assisted suicide legislation stalls in Indiana. Today's Catholic (Fort Wayne, IN) [Internet]. 2019 Apr 4 [cited 2020 Jan 14]. Available from: https://todayscatholic.org/assisted-suicide-legislation-stalls-in-indiana/.

7. Indiana: House Bill 1020 (2020): End of life options [Internet]. Powell River (BC): Protection of Conscience Project; 2020 Jan 14 [cited 2020 Jan 14]. Available from: https://www.consciencelaws.org/proposed/usa-indiana-006.aspx.

8. "'Attending physician' means the licensed physician who has the primary responsibility for the treatment and care of the patient. For purposes of IC 16-36-5, the term includes a physician licensed in another state." IN Code § 16-18-2-29 (2018) [Internet]. Mountainview, CA: Justia [cited 2020 Jan 14]. Available from: https://law.justia.com/codes/indiana/2018/title-16/article-18/chapter-2/section-16-18-2-29/.

9. The term is undefined, so it appears to refer to any licensed physician.

10. For "health care facility" see IN Code § 16-18-2-161 (2018) [Internet]. Mountainview, CA: Justia [cited 2020 Jan 14]. Available from: https://law.justia.com/codes/indiana/2018/title-16/article-18/chapter-2/section-16-18-2-161/.

11. For "health care provider" see IN Code § 16-18-2-163 (2018) [Internet]. Mountainview, CA: Justia [cited 2020 Jan 14]. Available from: https://law.justia.com/codes/indiana/2018/title-16/article-18/chapter-2/section-16-18-2-163/.

12. Frellick M. AMA Reaffirms Stance Against Physician-Aided Death. Medscape [Internet]. 2019 Jun 11 [cited 2020 Jan 14]. Available from: https://www.medscape.com/viewarticle/914231.

13. Leiva R, Cottle MM, Ferrier C, Harding SR, Lau T, Scott JF. Euthanasia in Canada: A Cautionary Tale. WMJ 2018 Sep [cited 2020 Jan 14]; 64:3 17-23. Available from: https://www.wma.net/wp-content/uploads/2018/10/WMJ_3_2018-1.pdf#page=19.

14. Doctor-assisted suicide a therapeutic service, says Canadian Medical Association [Internet]. CBC News; 2015 Feb 06 [cited 2020 Jan 14]. Emphasis added. Available from: http://www.cbc.ca/news/health/doctor-assisted-suicide-a-therapeutic-service-says-canadian-medical-association-1.2947779.

15. CMA Policy: Medical Assistance in Dying [Internet]. Canadian Medical Association; 2017 May [cited 2020 Jan 14]. Emphasis added. Available from: http://policybase.cma.ca/dbtw-wpd/Policypdf/PD17-03.pdf.

16. (Dr. Balfour Mount). Phillips D. Balfour Mount [Internet]. Montreal (Quebec): McGill University; 2016 May 03 [cited 2020 Jan 14]. Available from: https://www.mcgill.ca/palliativecare/portraits-0/balfour-mount.

17. The Canadian Medical Hall of Fame. Dr. Balfour Mount, 2018 Inductee [Internet]. [cited 2020 Jan 14]. Available from: http://www.cdnmedhall.org/inductee/balfourmount.

18. (Dr. Nuala Kenny). Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying. Final Report [Internet]. Toronto (Ont): Government of Ontario, Ministry of Health and Long Term Care; 2015 Nov 30 [cited 2020 Jan 14]. Available from: http://www.health.gov.on.ca/en/news/bulletin/2015/docs/eagreport_20151214_en.pdf.

19. (Dr. Dr. Neil Hilliard). Fayerman P. Delta hospice rebels against Fraser Health's mandate to provide medical assistance in dying [Internet]. Vancouver Sun; 2018 Feb 06 [2020 Jan 14]. Available from: https://vancouversun.com/news/local-news/delta-hospice-rebels-against-fraser-healths-mandate-to-provide-medical-assistance-in-dying.