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PROFESSION

2 physician-assisted suicide bills face off in Montana

The state Supreme Court ruled that no law prohibits doctor-aided death. Now legislators will debate whether to regulate the practice or ban it.

By KEVIN B. O'REILLY, *amednews* staff. Posted Feb. 9, 2011.

Hearings scheduled for Feb. 9 before the Montana Senate Judiciary Committee will examine two competing bills aimed at clarifying the legality of practicing physician-assisted suicide in the state.

The legislative proposals -- one would ban aid-in-dying, while the other would regulate it -- come on the heels of a December 2009 Montana Supreme Court ruling that doctors who prescribe life-ending medications for patients with terminal illnesses are not subject to state homicide statutes. The ruling left unclear whether physicians who provide aid in dying would be risking a medical liability suit or jeopardizing their license to practice medicine.

The court did not rule that Montanans have a constitutional right to doctor-aided death, so it can be overturned with a simple statutory change. The Montana Legislature -- where power is split, with Republicans controlling the Senate and Democrats holding the House -- reconvened in early January for the first time since the Supreme Court decision.

The bill to regulate the practice comes from Democratic Sen. Anders Blewett and largely hews to the legal standards adopted in Oregon and Washington, the only two states with laws that explicitly authorize and regulate aid-in-dying (data.opi.mt.gov/bills/2011/billhtml/SB0167.htm).

"My legislation is simply seeking to implement the [Supreme Court] decision and to ensure that doctors who honor patients' end-of-life medical decisions can do so without fear of prosecution, without fear of civil liability and without fear of being professionally sanctioned," Blewett said. "I don't think the current legal system is ideal for physicians and that's why I'm bringing forth this bill."

Blewett's proposal would require mentally competent adult patients with diagnosed terminal illnesses to make oral and written requests for physician-assisted suicide and administer the deadly cocktail themselves.

Worries about abuse

There are differences between the Montana proposal and the laws in Oregon and Washington. Blewett's bill, which does not require a waiting period, says the doctor fulfilling the request could waive a requirement to get a consulting physician's OK if "it would result in an undue hardship for the patient."

Physicians would not be required to report aid-in-dying cases to the state for public reporting as is mandated in Oregon and Washington. More than 650 patients with terminal illnesses have used the death-with-dignity laws in those states to end their lives.

The American Medical Association has policy that "strongly opposes any bill to legalize physician-assisted suicide" because the practice is "fundamentally inconsistent with the physician's role as healer."

The Montana Medical Assn.'s policy says it "does not condone the deliberate act of precipitating the death of a patient." However, the association is taking no position on Blewett's bill and opposes the physician-assisted suicide ban proposed by Republican Sen. Greg Hinkle, also a member of the Senate Judiciary Committee (data.opi.mt.gov/bills/2011/billhtml/SB0116.htm).

At this article's deadline, Hinkle had not responded to an interview request. He told the *Billings Gazette* last year that legalizing physician-assisted suicide "opens a Pandora's box" and would lead to abuse of elderly patients. Hinkle also authored another bill to enhance criminal penalties for people who assist suicides (data.opi.mt.gov/bills/2011/billhtml/SB0169.htm). The Montana Medical Assn. said it opposes the provisions of that bill that apply to physicians.

Six in 10 Montanans surveyed in March 2010 voiced support for "allowing dying patients in severe distress to make their own end-of-life choice to receive a prescription for life-ending medication," according to a poll of 600 likely voters conducted on behalf of aid-in-dying advocates.

"The history and the culture of Montana shows that we want to keep the government out of the doctor's office," Blewett said.

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