

Memo

To: Right to Life of Nevada

Re: Significant legal issues with Senate Bill 239, the Nevada assisted suicide bill, will put vulnerable populations at risk.

From: Jennifer Popik, J.D. Legislative Director National Right to Life

Senate Bill 239 authorizes an individual with a terminal condition to request lethal medication (from physicians, advanced nurse practitioners, and physician's assistants) intended to hasten the individual's death. This legislation is riddled with legal issues and puts vulnerable populations at risk.

However, due to the significant legal issues with this bill, the so-called safeguards are inadequate, and have failed in other states. While there are other numerous concerns, a handful of the major problems will be addressed below.

- **The definition of terminal condition is drafted to include non-terminally ill persons with chronic, treatable conditions.**
- **This legislation creates a dangerous double standard for suicide intervention.**
- **There is no residency requirement, leaving Nevada open to becoming a suicide tourism state.**
- **There is nothing to prevent health insurers from steering patients away from costly treatment in favor of hastening death.**
- **Once the drugs are released to the patient, there is no oversight.**

1) **Similar definitions of “terminal illness” (from states where legal) include those with treatable conditions, and even mental illness.**

Proponents claim this legislation will only apply to those with “terminal conditions.” However, the language used in the Nevada bill is broad, unenforceable, and applies to populations who could live for years and even decades with the provision of treatment.

SB 239 defines terminal illness or terminal condition as “an incurable and irreversible condition that will, in accordance with reasonable medical judgment, result in death within 6 months.”

The way that SB 239 is drafted, there is very little explanation about what terminal illness means, other than the above definition. Numerous conditions are incurable and irreversible, but treatable and manageable.

Similar state definitions (in states with legal assisted suicide) have led to routine prescribing to people with *treatable* medical issues. In Oregon, the State Health Authority March 8, 2023 report shows that diabetics and those with HIV are getting lethal drugs.¹ In Colorado, a diagnosis

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<https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year25.pdf>

of anorexia yielded at least three prescriptions for lethal drugs.² It is disturbing that a state would be seeking to legalize assisted suicide, rather than focus on protecting vulnerable groups.

2) **Under SB 239, lethal medications can be prescribed to those with diagnosable mental illness and depression.**

Prior to obtaining a lethal prescription, a patient does not need to have any psychological or psychiatric evaluation unless a doctor thinks that the patient is suffering from a psychological or psychiatric disorder or depression that may impair his or her ability to make informed decisions. Even if a counseling referral is made, it may mean only one meeting between a patient and mental health professional.

In practice, under the proposed language, a mental health professional can determine that yes, a patient does suffer from a mental disorder or depression, but if they believe the person still has decision-making ability, or capacity, they can receive the lethal prescription.

This provision is virtually identical to the one contained in Oregon law where, at least one year, no one was referred for an evaluation, and in 2022, only three of the patients who died (1.1% of total) were referred for formal psychiatric or psychological evaluation.³

States who have taken the misguided step of legalizing assisted suicide are creating a dangerous double standard for suicide intervention, and abandoning patients.

3) **Under SB 239, Nevada could become a suicide tourism destination.**

Oregon very recently abandoned their residency requirement, and according to the March 2023 report, people have already traveled to Oregon to obtain the lethal drugs.⁴

The abandonment of the residency requirement will set up a dangerous scenario where people from other states can travel to Nevada to die, or take these drugs, unmonitored, out of the state. Numerous legal observers have sounded the alarm not only in regards to the lack of civil or criminal accountability in Oregon, but the impact this will have on residents of other jurisdictions where assisting a suicide is not legal. Nevada will have the same potential issues.

4) **Under SB 239, health care providers can encourage and suggest that vulnerable patients request the lethal drugs, and insurers can cover the relatively cheap cost of the drugs.**

SB 239 does not prohibit anyone from suggesting or encouraging a patient to request lethal drugs. Victims of elder abuse, those with disabilities who are seen as having a “low quality of life,” and at-risk populations tend to be either unable or unlikely to share their fears with outsiders or to reveal that they are being pressured by caregivers or family to request suicide.

² <https://coloradosun.com/2022/03/14/denver-doctor-gaudiani-aid-in-dying-anorexia-patients/>

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<https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year25.pdf>

⁴ Id.

Looking at just one population, the elderly, a recent analysis by WalletHub which compared the 50 states and Washington, D.C., on indicators of elder-abuse protection, Nevada ranked No. 44 in the analysis.⁵ It is not a stretch to see how SB 239 could put these abused patients at risk of being persuaded to request lethal drugs.

As written, insurance companies are able to cover the lethal drugs, which are inexpensive. In California, when a woman's insurance company would not cover her prescribed chemotherapy treatment, she inquired if assisted suicide was covered under her plan. She was told, "Yes, we do provide that to our patients, and you would only have to pay \$1.20 for the medication."⁶

5) Under SB 239, after the prescription is filled, there is nothing to protect patients.

This legislation only addresses the circumstances surrounding the writing of the lethal prescription to the patient. There are no provisions dealing with competency at the time of ingestion. Many patients wait weeks and months, holding on to the prescription in Oregon and Washington states, which the Nevada legislation also allows.

Looking at one example, someone set to inherit from the patient's will could trick or force a person into taking the lethal dose. No health care professional is required to be present at the time of death. A patient with early onset dementia might worsen over the months they hold on to a lethal prescription. What happens to them? This legislation puts patients who might change their minds or become incompetent at enormous risk.

Additionally, under the proposed legislation, the family of the patient does not need to be notified that the patient is requesting a lethal prescription.

Conclusion:

This law is simply too dangerous. Those with mental illness and depression can qualify for lethal prescriptions as could those who could live for years with basic treatments. While proponents claim this law is about simply one more option, the disabled, those at risk for elder abuse, and those with mental illness will get swept away with this law. SB 239 will put vulnerable populations at risk.

***Note:**

This bill is more radical than those enacted in other states, as non-physician could diagnose a patient and prescribe the lethal drugs. Not only is the definition of terminal illness extraordinarily permissive, but the determination of a patient's expected length of life can be made by any "attending health care provider."

⁵ <https://wallethub.com/edu/states-with-best-elder-abuse-protection/28754>

⁶ Bradford Richardson, "Assisted-suicide law prompts insurance company to deny coverage to terminally ill California woman," *Washington Times*, October 20, 2016. Available at: <http://www.washingtontimes.com/news/2016/oct/20/assisted-suicide-law-prompts-insurance-company-den>. (Last accessed 3/6/21.)