



January 18, 2022

Wayne A. Smith
President & CEO

The Honorable Paul Baumbach
411 Legislative Avenue
Dover, DE 19901

RE: Opposition to HB 140

Dear Representative Baumbach,

*Nemours Children's
Health, Delaware*
Mark Mumford,
Executive Vice President
Chief Executive,
Nemours Delaware
Valley Operations

On behalf of Delaware's hospitals and health systems, I am writing to express our significant concern and continued opposition to HB 140, relating to End of Life Options.

HB 140 would permit a terminally ill adult resident of Delaware to request and self-administer medication prescribed by a physician or APRN to end the individual's life if certain conditions specified in the legislation are met.

Bayhealth
Terry Murphy,
President & CEO

While we appreciate the inclusion of the "opt-out" language in the bill that would allow health-care institutions to prohibit the prescribing of end-of-life medication in their facility (which, as noted below, would need to be broader to cover the full scope of health system operations in the inpatient and outpatient settings), we have serious concerns with the underlying premise of the bill, as it runs counter to the core mission of health care providers. The ultimate goal of health care providers is to improve the health of their patients. Even when a prognosis indicates a terminal illness, there is a duty to provide care for the patient that minimizes pain and maximizes comfort in a patient's last days. Notwithstanding current changes in the official positions of some of the professional physician societies, hospitals and health systems in Delaware remain firm in the position that placing the burden on physicians or APRNs to prescribe medication and assist in ending someone's life poses serious ethical issues and remains contrary to the fundamental mission of healthcare institutions. The timing and backdrop of the COVID-19 pandemic, including the current Omicron surge and present staffing constraints, also presents particular ethical and operational challenges that we believe will add to physician and provider burnout and workforce challenges at a time when we are not able to absorb them.

Beebe Healthcare
David A. Tam,
MD, MBA,
President & CEO

ChristianaCare
Janice E. Nevin,
MD, MPH
President & CEO

TidalHealth Nanticoke
Penny Short, MSM, BSN,
RN
President & CEO

Saint Francis Healthcare
James Woodward
Acting President

*Wilmington Veterans
Affairs Medical Center*
Vincent Kane
Director

In addition, some of the debate around this issue has focused on pain and discomfort experienced by patients who would qualify to end their own life under this legislation. The robust state of palliative care available in Delaware today allows pain to be addressed in a manner affording any patient comfort as they confront terminal illness. Delaware recently received a perfect 100% score in the State-by-State Report Card on Access to Palliative Care in Our Nation's Hospitals, a collaboration by the Center to Advance Palliative Care (CAPC) and the National Palliative Care Research Center (NPCRC). While we continue to make significant advancements in hospice and palliative care access and quality, Delaware has not made commensurate investments in the electronic medical records infrastructure to support hospice, palliative care and home care in a seamless continuum of care. Without better infrastructure support for measures, including but not limited to fully funding DMOST and Advance Care Directives in the Delaware Health

*Delaware Healthcare
Association*
Wayne A. Smith
President & CEO

Information Network, this legislation presents significant liability and risk to hospitals, health systems and providers.

Furthermore, we have several concerns with specific provisions in the bill. We respectfully request that you consider removing or amending the following provisions:

1. Remove 2503B (c) “failure to obtain informed consent” – This section establishes that if a physician/APRN does not provide a patient with information about medication to end their life or refer them to someone who will, that physician/APRN is “considered a failure to obtain informed consent for subsequent medical treatment.” We are concerned that this language at a minimum could be considered grounds for action at the level of the Delaware Board of Medical Licensure Discipline and could conceivably be extrapolated by an aggressive attorney to be considered malpractice. We recommend that this provision be removed in its entirety.
2. Require that the Patient be Educated on Hospice/Palliative Care Options – We recommend adding to Section 2504B that individuals must have received education on hospice and palliative care options.
3. Strengthen Delaware Residency Requirement – We recommend adding to Section 2504B (a)(1) that the individual must be a resident of the state for at least 6 months.
4. Fix Typo in Request Form - Section 2505B (f), line 133, the third word should be “consulting” APRN not “attending” APRN to be consistent with line 69 and the rest of the bill.
5. Ensure that adult has capacity to make this decision – We recommend creating a new subsection (a) for 2510B that states: “An adult individual is presumed to have capacity to make a health-care decision and to make an informed decision under this chapter.” This presumption of capacity is consistent with 16 Del. C. 2514(b) and 16 Del. C. 2518A(a); see also 16 Del. Admin. C. 4304-4.8 (“Delaware law presumes an adult has decision-making capacity unless a physician determines the patient does not.”).
6. Remove the Form Template Language--Line 112; lines 127-50—Instead of specifying that an individual’s written request for medication to end their life must contain the information specified in the statute and “use the form or be substantially similar to the form under subsection (f) of this section,” it would make more sense to give the Board of Medical Licensure and Discipline (BMLD) the *option* of developing a template form to be available on the BMLD’s website. Forms prescribed in statute have created issues in other instances (e.g. DMOST). Instead of prescribing the form, providing written guidance and templates to providers, and perhaps also offering front-end training (or optional annual training to interested providers) would be helpful. Accordingly, we recommend removing paragraph (f) beginning on lines 127-150 of the bill.
7. Lines 303-305: remove “on the health-care institution’s premises” from the paragraph authorizing a health-care institution to prohibit a physician or APRN from prescribing medication under this Chapter by adopting a policy and notifying the public.
8. Line 310: Remove the word “negligence” from the limitation of liability provision, so that paragraph (d) instead reads as follows: (d) This section does not limit civil or criminal liability for recklessness or intentional misconduct.”

We appreciate the opportunity to share our concerns with HB 140 and welcome any questions you may have. Respectfully, DHA remains opposed to HB 140 to allow for the prescribing of end of life medication.

Sincerely,



Wayne A. Smith
President & CEO

DHA represents hospitals and health care delivery systems in Delaware and provides policy and advocacy leadership in creating an excellent environment to support our members in helping every Delawarean to be as healthy as they can be.

