S T A T E O F N E W Y O R K

9360

I N A S S E M B L Y

February 22, 2012

Introduced by M. of A. STEVENSON -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing "the death with dignity act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as "the death with dignity act."

S 2. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F

DEATH WITH DIGNITY ACT

SECTION 2899-D. DEFINITIONS.
2899-E. WRITTEN REQUEST FOR MEDICATION.
2899-F. FORM OF THE WRITTEN REQUEST.
2899-G. ATTENDING PHYSICIAN RESPONSIBILITIES.
2899-H. CONSULTING PHYSICIAN CONFIRMATION.
2899-I. COUNSELING REFERRAL.
2899-J. INFORMED DECISION.
2899-K. FAMILY NOTIFICATION.
2899-L. WRITTEN AND ORAL REQUESTS.
2899-M. RIGHT TO RESCIND REQUEST.
2899-N. WAITING PERIODS.
2899-O. MEDICAL RECORD DOCUMENTATION REQUIREMENTS.
2899-P. RESIDENCY REQUIREMENT.
2899-Q. REPORTING REQUIREMENTS.
2899-R. EFFECT ON CONSTRUCTION OF WILLS, CONTRACTS AND STATUTES.
2899-S. INSURANCE OR ANNUITY POLICIES.
2899-T. CONSTRUCTION.
2899-U. IMMUNITIES; BASIS FOR PROHIBITING HEALTH CARE PROVIDER FROM PARTICIPATION; NOTIFICATION; PERMISSIBLE SANCTIONS.
2899-V. LIABILITIES.
2899-W. CLAIMS BY GOVERNMENTAL ENTITY FOR COSTS INCURRED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2899-X. FORM OF THE REQUEST.
2899-Y. PENALTIES.
2899-Z. SEVERABILITY.

S 2899-D. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANINGS:

1. "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER.

2. "ATTENDING PHYSICIAN" MEANS THE PHYSICIAN WHO HAS PRIMARY RESPONSIBILITY FOR THE CARE OF THE PATIENT AND TREATMENT OF THE PATIENT'S TERMINAL DISEASE.

3. "CAPABLE" MEANS THAT IN THE OPINION OF A COURT OR IN THE OPINION OF THE PATIENT'S ATTENDING PHYSICIAN OR CONSULTING PHYSICIAN, PSYCHIATRIST OR PSYCHOLOGIST, A PATIENT HAS THE ABILITY TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS TO HEALTH CARE PROVIDERS, INCLUDING COMMUNICATION THROUGH PERSONS FAMILIAR WITH THE PATIENT'S MANNER OF COMMUNICATING IF THOSE PERSONS ARE AVAILABLE.

4. "CONSULTING PHYSICIAN" MEANS A PHYSICIAN WHO IS QUALIFIED BY SPECIALTY OR EXPERIENCE TO MAKE A PROFESSIONAL DIAGNOSIS AND PROGNOSIS REGARDING THE PATIENT'S DISEASE.

5. "COUNSELING" MEANS ONE OR MORE CONSULTATIONS AS NECESSARY BETWEEN A STATE LICENSED PSYCHIATRIST OR PSYCHOLOGIST AND A PATIENT FOR THE PURPOSE OF DETERMINING THAT THE PATIENT IS CAPABLE AND NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.

6. "HEALTH CARE PROVIDER" MEANS A PERSON LICENSED, CERTIFIED OR OTHERWISE AUTHORIZED OR PERMITTED BY THE LAWS OF THIS STATE TO ADMINISTER HEALTH CARE OR DISPENSE MEDICATION IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION, AND INCLUDES A HEALTH CARE FACILITY.

7. "INFORMED DECISION" MEANS A DECISION BY A QUALIFIED PATIENT, TO REQUEST AND OBTAIN A PRESCRIPTION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER, THAT IS BASED ON AN APPRECIATION OF THE RELEVANT FACTS AND AFTER BEING FULLY INFORMED BY THE ATTENDING PHYSICIAN OF:

(A) HIS OR HER MEDICAL DIAGNOSIS;

(B) HIS OR HER PROGNOSIS;

(C) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICATION TO BE PRESCRIBED;

(D) THE PROBABLE RESULT OF TAKING THE MEDICATION TO BE PRESCRIBED; AND

(E) THE FEASIBLE ALTERNATIVES, INCLUDING, BUT NOT LIMITED TO, COMFORT CARE, HOSPICE CARE AND PAIN CONTROL.

8. "MEDICALLY CONFIRMED" MEANS THE MEDICAL OPINION OF THE ATTENDING PHYSICIAN HAS BEEN CONFIRMED BY A CONSULTING PHYSICIAN WHO HAS EXAMINED THE PATIENT AND THE PATIENT'S RELEVANT MEDICAL RECORDS.

9. "PATIENT" MEANS A PERSON WHO IS UNDER THE CARE OF A PHYSICIAN.

10. "PHYSICIAN" MEANS A DOCTOR OF MEDICINE OR OSTEOPATHY LICENSED TO PRACTICE MEDICINE BY THE STATE BOARD FOR MEDICINE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THE EDUCATION LAW.

11. "QUALIFIED PATIENT" MEANS A CAPABLE ADULT WHO IS A RESIDENT OF THIS STATE AND HAS SATISFIED THE REQUIREMENTS OF THIS ARTICLE IN ORDER TO OBTAIN A PRESCRIPTION FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER.

12. "TERMINAL DISEASE" MEANS AN INCURABLE AND IRREVERSIBLE DISEASE THAT HAS BEEN MEDICALLY CONFIRMED AND WILL, WITHIN REASONABLE MEDICAL JUDGMENT, PRODUCE DEATH WITHIN SIX MONTHS.

S 2899-E. WRITTEN REQUEST FOR MEDICATION. 1. AN ADULT WHO IS CAPABLE, IS A RESIDENT OF THIS STATE AND HAS BEEN DETERMINED BY THE ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO BE SUFFERING FROM A TERMINAL DISEASE, AND WHO HAS VOLUNTARILY EXPRESSED HIS OR HER WISH TO DIE, MAY

MAKE A WRITTEN REQUEST FOR MEDICATION FOR THE PURPOSE OF ENDING HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

2. NO PERSON SHALL QUALIFY UNDER THE PROVISIONS OF THIS ARTICLE SOLELY BECAUSE OF AGE OR DISABILITY.

S 2899-F. FORM OF THE WRITTEN REQUEST. 1. A VALID REQUEST FOR MEDICATION UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE IN SUBSTANTIALLY THE FORM DESCRIBED IN SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-X OF THIS ARTICLE SIGNED AND DATED BY THE PATIENT AND WITNESSED BY AT LEAST TWO INDIVIDUALS WHO, IN THE PRESENCE OF THE PATIENT, ATTEST THAT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF THE PATIENT IS CAPABLE, ACTING VOLUNTARILY, AND IS NOT BEING COERCED TO SIGN THE REQUEST.

2. ONE OF THE WITNESSES SHALL BE A PERSON WHO IS NOT:

(A) A RELATIVE OF THE PATIENT BY BLOOD, MARRIAGE OR ADOPTION;

(B) A PERSON WHO AT THE TIME THE REQUEST IS SIGNED WOULD BE ENTITLED TO ANY PORTION OF THE ESTATE OF THE QUALIFIED PATIENT UPON DEATH UNDER ANY WILL OR BY OPERATION OF LAW; OR

(C) AN OWNER, OPERATOR OR EMPLOYEE OF A HEALTH CARE FACILITY WHERE THE QUALIFIED PATIENT IS RECEIVING MEDICAL TREATMENT OR IS A RESIDENT.

3. THE PATIENT'S ATTENDING PHYSICIAN AT THE TIME THE REQUEST IS SIGNED SHALL NOT BE A WITNESS.

4. IF THE PATIENT IS A PATIENT IN A LONG TERM CARE FACILITY AT THE TIME THE WRITTEN REQUEST IS MADE, ONE OF THE WITNESSES SHALL BE AN INDIVIDUAL DESIGNATED BY THE FACILITY.

S 2899-G. ATTENDING PHYSICIAN RESPONSIBILITIES. 1. THE ATTENDING PHYSICIAN SHALL:

(A) MAKE THE INITIAL DETERMINATION OF WHETHER A PATIENT HAS A TERMINAL DISEASE, IS CAPABLE, AND HAS MADE THE REQUEST VOLUNTARILY;

(B) REQUEST THAT THE PATIENT DEMONSTRATE NEW YORK STATE RESIDENCY;

(C) TO ENSURE THAT THE PATIENT IS MAKING AN INFORMED DECISION, INFORM THE PATIENT OF:

(I) HIS OR HER MEDICAL DIAGNOSIS;

(II) HIS OR HER PROGNOSIS;

(III) THE POTENTIAL RISKS ASSOCIATED WITH TAKING THE MEDICATION TO BE PRESCRIBED;

(IV) THE PROBABLY RESULT OF TAKING THE MEDICATION TO BE PRESCRIBED; AND

(V) THE FEASIBLE ALTERNATIVES, INCLUDING, BUT NOT LIMITED TO, COMFORT CARE, HOSPICE CARE AND PAIN CONTROL;

(D) REFER THE PATIENT TO A CONSULTING PHYSICIAN FOR MEDICAL CONFIRMATION OF THE DIAGNOSIS, AND FOR A DETERMINATION THAT THE PATIENT IS CAPABLE AND ACTING VOLUNTARILY;

(E) REFER THE PATIENT FOR COUNSELING IF APPROPRIATE PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-I OF THIS ARTICLE;

(F) RECOMMEND THAT THE PATIENT NOTIFY NEXT OF KIN;

(G) COUNSEL THE PATIENT ABOUT THE IMPORTANCE OF HAVING ANOTHER PERSON PRESENT WHEN THE PATIENT TAKES THE MEDICATION PRESCRIBED PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND OF NOT TAKING THE MEDICATION IN A PUBLIC PLACE;

(H) INFORM THE PATIENT THAT HE OR SHE HAS AN OPPORTUNITY TO RESCIND THE REQUEST AT ANY TIME AND IN ANY MANNER, AND OFFER THE PATIENT AN OPPORTUNITY TO RESCIND AT THE END OF THE FIFTEEN DAY WAITING PERIOD PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-L OF THIS ARTICLE;

(I) VERIFY, IMMEDIATELY PRIOR TO WRITING THE PRESCRIPTION FOR MEDICATION UNDER THE PROVISIONS OF THIS ARTICLE, THAT THE PATIENT IS MAKING AN INFORMED DECISION;

(J) FULFILL THE MEDICAL RECORD DOCUMENTATION REQUIREMENTS OF SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-O OF THIS ARTICLE;

(K) ENSURE THAT ALL APPROPRIATE STEPS ARE CARRIED OUT IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE PRIOR TO WRITING A PRESCRIPTION FOR MEDICATION TO ENABLE A QUALIFIED PATIENT TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER; AND

(L) (I) DISPENSE MEDICATIONS DIRECTLY, INCLUDING ANCILLARY MEDICATIONS INTENDED TO FACILITATE THE DESIRED EFFECT TO MINIMIZE THE PATIENT'S DISCOMFORT, PROVIDED THE ATTENDING PHYSICIAN, HAS A CURRENT DRUG ENFORCEMENT ADMINISTRATION CERTIFICATE AND COMPLIES WITH ANY APPLICABLE RULE OR REGULATION; OR

(II) WITH THE PATIENT'S WRITTEN CONSENT:

(A) CONTACT A PHARMACIST AND INFORM THE PHARMACIST OF THE PRESCRIPTION; AND

(B) DELIVER THE WRITTEN PRESCRIPTION PERSONALLY OR BY MAIL TO THE PHARMACIST, WHO WILL DISPENSE THE MEDICATIONS TO EITHER THE PATIENT, THE ATTENDING PHYSICIAN OR AN EXPRESSLY IDENTIFIED AGENT OF THE PATIENT.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE ATTENDING PHYSICIAN MAY SIGN THE PATIENT'S DEATH CERTIFICATE.

S 2899-H. CONSULTING PHYSICIAN CONFIRMATION. BEFORE A PATIENT IS QUALIFIED UNDER THE PROVISIONS OF THIS ARTICLE, A CONSULTING PHYSICIAN SHALL EXAMINE THE PATIENT AND HIS OR HER RELEVANT MEDICAL RECORDS AND CONFIRM, IN WRITING, THE ATTENDING PHYSICIAN'S DIAGNOSIS THAT THE PATIENT IS SUFFERING FROM A TERMINAL DISEASE, AND VERIFY THAT THE PATIENT IS CAPABLE, IS ACTING VOLUNTARILY AND HAS MADE AN INFORMED DECISION.

S 2899-I. COUNSELING REFERRAL. IF IN THE OPINION OF THE ATTENDING PHYSICIAN OR THE CONSULTING PHYSICIAN A PATIENT MAY BE SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT, EITHER PHYSICIAN SHALL REFER THE PATIENT FOR COUNSELING. NO MEDICATION TO END A PATIENT'S LIFE IN A HUMANE AND DIGNIFIED MANNER SHALL BE PRESCRIBED UNTIL THE PERSON PERFORMING THE COUNSELING DETERMINES THAT THE PATIENT IS NOT SUFFERING FROM A PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR DEPRESSION CAUSING IMPAIRED JUDGMENT.

S 2899-J. INFORMED DECISION. NO PERSON SHALL RECEIVE A PRESCRIPTION FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER UNLESS HE OR SHE HAS MADE AN INFORMED DECISION AS DEFINED IN SUBDIVISION SEVEN OF SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-D OF THIS ARTICLE. IMMEDIATELY PRIOR TO WRITING A PRESCRIPTION FOR MEDICATION UNDER THE PROVISIONS OF THIS ARTICLE, THE ATTENDING PHYSICIAN SHALL VERIFY THAT THE PATIENT IS MAKING AN INFORMED DECISION.

S 2899-K. FAMILY NOTIFICATION. THE ATTENDING PHYSICIAN SHALL RECOMMEND THAT THE PATIENT NOTIFY THE NEXT OF KIN OF HIS OR HER REQUEST FOR MEDICATION PURSUANT TO THE PROVISIONS OF THIS ARTICLE. A PATIENT WHO DECLINES OR IS UNABLE TO NOTIFY NEXT OF KIN SHALL NOT HAVE HIS OR HER REQUEST DENIED FOR THAT REASON.

S 2899-L. WRITTEN AND ORAL REQUESTS. IN ORDER TO RECEIVE A PRESCRIPTION FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER, A QUALIFIED PATIENT SHALL HAVE MADE AN ORAL REQUEST AND A WRITTEN REQUEST, AND REITERATE THE ORAL REQUEST TO HIS OR HER ATTENDING PHYSICIAN NO LESS THAN FIFTEEN DAYS AFTER MAKING THE INITIAL ORAL REQUEST. AT THE TIME THE QUALIFIED PATIENT MAKES HIS OR HER SECOND ORAL REQUEST, THE ATTENDING PHYSICIAN SHALL OFFER THE PATIENT AN OPPORTUNITY TO RESCIND THE REQUEST.

S 2899-M. RIGHT TO RESCIND REQUEST. A PATIENT MAY RESCIND HIS OR HER REQUEST AT ANY TIME AND IN ANY MANNER WITHOUT REGARD TO HIS OR HER MENTAL STATE. NO PRESCRIPTION FOR MEDICATION UNDER THE PROVISIONS OF

THIS ARTICLE MAY BE WRITTEN WITHOUT THE ATTENDING PHYSICIAN OFFERING THE QUALIFIED PATIENT AN OPPORTUNITY TO RESCIND THE REQUEST.

S 2899-N. WAITING PERIODS. NO LESS THAN FIFTEEN DAYS SHALL ELAPSE BETWEEN THE PATIENT'S INITIAL ORAL REQUEST AND THE WRITING OF A PRESCRIPTION UNDER THE PROVISIONS OF THIS ARTICLE. NO LESS THAN FORTY-EIGHT HOURS SHALL ELAPSE BETWEEN THE PATIENT'S WRITTEN REQUEST AND THE WRITING OF A PRESCRIPTION UNDER THE PROVISIONS OF THIS ARTICLE.

S 2899-O. MEDICAL RECORD DOCUMENTATION REQUIREMENTS. THE FOLLOWING SHALL BE DOCUMENTED OR FILED IN THE PATIENT'S MEDICAL RECORD:

1. ALL ORAL REQUESTS BY A PATIENT FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER;

2. ALL WRITTEN REQUESTS BY A PATIENT FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER;

3. THE ATTENDING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, DETERMINATION THAT THE PATIENT IS CAPABLE, ACTING VOLUNTARILY AND HAS MADE AN INFORMED DECISION;

4. THE CONSULTING PHYSICIAN'S DIAGNOSIS AND PROGNOSIS, AND VERIFICATION THAT THE PATIENT IS CAPABLE, ACTING VOLUNTARILY AND HAS MADE AN INFORMED DECISION;

5. A REPORT OF THE OUTCOME AND DETERMINATIONS MADE DURING COUNSELING, IF PERFORMED;

6. THE ATTENDING PHYSICIAN'S OFFER TO THE PATIENT TO RESCIND HIS OR HER REQUEST AT THE TIME OF THE PATIENT'S SECOND ORAL REQUEST PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-I OF THIS ARTICLE; AND

7. A NOTE BY THE ATTENDING PHYSICIAN INDICATING THAT ALL REQUIREMENTS UNDER THE PROVISIONS OF THIS ARTICLE HAVE BEEN MET AND INDICATING THE STEPS TAKEN TO CARRY OUT THE REQUEST, INCLUDING A NOTATION OF THE MEDICATION PRESCRIBED.

S 2899-P. RESIDENCY REQUIREMENT. ONLY REQUESTS MADE BY NEW YORK STATE RESIDENTS UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE GRANTED. FACTORS DEMONSTRATING NEW YORK STATE RESIDENCY SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

1. POSSESSION OF A NEW YORK STATE DRIVER'S LICENSE;

2. REGISTRATION TO VOTE IN NEW YORK STATE;

3. EVIDENCE THAT THE PERSON OWNS OR LEASES PROPERTY IN NEW YORK STATE; OR

4. FILING OF A NEW YORK STATE TAX RETURN FOR THE MOST RECENT TAX YEAR.

S 2899-Q. REPORTING REQUIREMENTS. 1. (A) THE STATE BOARD FOR MEDICINE SHALL ANNUALLY REVIEW A SAMPLE OF RECORDS MAINTAINED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

(B) THE STATE BOARD FOR MEDICINE SHALL REQUIRE ANY HEALTH CARE PROVIDER UPON DISPENSING MEDICATION PURSUANT TO THE PROVISIONS OF THIS ARTICLE TO FILE A COPY OF THE DISPENSING RECORD WITH THE STATE BOARD FOR MEDICINE.

2. THE STATE BOARD FOR MEDICINE SHALL MAKE RULES TO FACILITATE THE COLLECTION OF INFORMATION REGARDING COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE. EXCEPT AS OTHERWISE REQUIRED BY LAW, THE INFORMATION COLLECTED SHALL NOT BE A PUBLIC RECORD AND MAY NOT BE MADE AVAILABLE FOR INSPECTION BY THE PUBLIC.

3. THE STATE BOARD FOR MEDICINE SHALL GENERATE AND MAKE AVAILABLE TO THE PUBLIC AN ANNUAL STATISTICAL REPORT OF INFORMATION COLLECTED UNDER SUBDIVISION TWO OF THIS SECTION.

S 2899-R. EFFECT ON CONSTRUCTION OF WILLS, CONTRACTS AND STATUTES. 1. NO PROVISION IN A CONTRACT, WILL OR OTHER AGREEMENT, WHETHER WRITTEN OR ORAL, TO THE EXTENT THE PROVISION WOULD AFFECT WHETHER A PERSON MAY MAKE

OR RESCIND A REQUEST FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER, SHALL BE VALID.

2. NO OBLIGATION OWING UNDER ANY CURRENTLY EXISTING CONTRACT SHALL BE CONDITIONED OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST, BY A PERSON, FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER.

S 2899-S. INSURANCE OR ANNUITY POLICIES. THE SALE, PROCUREMENT, OR ISSUANCE OF ANY LIFE, HEALTH, OR ACCIDENT INSURANCE OR ANNUITY POLICY OR THE RATE CHARGED FOR ANY POLICY SHALL NOT BE CONDITIONED UPON OR AFFECTED BY THE MAKING OR RESCINDING OF A REQUEST, BY A PERSON, FOR MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER. NEITHER SHALL A QUALIFIED PATIENT'S ACT OF INGESTING MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER HAVE AN EFFECT UPON A LIFE, HEALTH, OR ACCIDENT INSURANCE OR ANNUITY POLICY.

S 2899-T. CONSTRUCTION. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO AUTHORIZE A PHYSICIAN OR ANY OTHER PERSON TO END A PATIENT'S LIFE BY LETHAL INJECTION, MERCY KILLING OR ACTIVE EUTHANASIA. ACTIONS TAKEN IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE SHALL NOT, FOR ANY PURPOSE, CONSTITUTE SUICIDE, ASSISTED SUICIDE, MERCY KILLING OR HOMICIDE, UNDER THE LAW.

S 2899-U. IMMUNITIES; BASIS FOR PROHIBITING HEALTH CARE PROVIDER FROM PARTICIPATION; NOTIFICATION; PERMISSIBLE SANCTIONS. 1. NO PERSON SHALL BE SUBJECT TO CIVIL OR CRIMINAL LIABILITY OR PROFESSIONAL DISCIPLINARY ACTION FOR PARTICIPATING IN GOOD FAITH COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE. THIS INCLUDES BEING PRESENT WHEN A QUALIFIED PATIENT TAKES THE PRESCRIBED MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER.

2. NO PROFESSIONAL ORGANIZATION OR ASSOCIATION, OR HEALTH CARE PROVIDER, MAY SUBJECT A PERSON TO CENSURE, DISCIPLINE, SUSPENSION, LOSS OF LICENSE, LOSS OF PRIVILEGES, LOSS OF MEMBERSHIP OR OTHER PENALTY FOR PARTICIPATING OR REFUSING TO PARTICIPATE IN GOOD FAITH COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

3. NO REQUEST BY A PATIENT FOR OR PROVISION BY AN ATTENDING PHYSICIAN OF MEDICATION IN GOOD FAITH COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE SHALL CONSTITUTE NEGLECT FOR ANY PURPOSE OF LAW OR PROVIDE THE SOLE BASIS FOR THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR.

4. NO HEALTH CARE PROVIDER SHALL BE UNDER ANY DUTY, WHETHER BY CONTRACT, BY STATUTE OR BY ANY OTHER LEGAL REQUIREMENT TO PARTICIPATE IN THE PROVISION TO A QUALIFIED PATIENT OF MEDICATION TO END HIS OR HER LIFE IN A HUMANE AND DIGNIFIED MANNER. IF A HEALTH CARE PROVIDER IS UNABLE OR UNWILLING TO CARRY OUT A PATIENT'S REQUEST UNDER THE PROVISIONS OF THIS ARTICLE, AND THE PATIENT TRANSFERS HIS OR HER CARE TO A NEW HEALTH CARE PROVIDER, THE PRIOR HEALTH CARE PROVIDER SHALL TRANSFER, UPON REQUEST, A COPY OF THE PATIENT'S RELEVANT MEDICAL RECORDS TO THE NEW HEALTH CARE PROVIDER.

5. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A HEALTH CARE PROVIDER MAY PROHIBIT ANOTHER HEALTH CARE PROVIDER FROM PARTICIPATING IN THE PROVISIONS OF THIS ARTICLE ON THE PREMISES OF THE PROHIBITING PROVIDER IF THE PROHIBITING PROVIDER HAS NOTIFIED THE HEALTH CARE PROVIDER OF THE PROHIBITING PROVIDER'S POLICY REGARDING PARTICIPATING IN THE PROVISIONS OF THIS ARTICLE. NOTHING IN THIS SUBDIVISION PREVENTS A HEALTH CARE PROVIDER FROM PROVIDING HEALTH CARE SERVICES TO A PATIENT THAT DO NOT CONSTITUTE PARTICIPATION IN THE PROVISIONS OF THIS ARTICLE.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS ONE, TWO, THREE AND FOUR OF THIS SECTION, A HEALTH CARE PROVIDER MAY SUBJECT ANOTHER HEALTH CARE PROVIDER TO THE SANCTIONS STATED IN THIS SUBDIVISION IF THE SANC-

TIONING HEALTH CARE PROVIDER HAS NOTIFIED THE SANCTIONED PROVIDER PRIOR TO PARTICIPATION IN THE PROVISIONS OF THIS ARTICLE THAT IT PROHIBITS PARTICIPATION IN THE PROVISIONS OF THIS ARTICLE.

(I) LOSS OF PRIVILEGES, LOSS OF MEMBERSHIP OR OTHER SANCTION PROVIDED PURSUANT TO THE MEDICAL STAFF BYLAWS, POLICIES AND PROCEDURES OF THE SANCTIONING HEALTH CARE PROVIDER IF THE SANCTIONED PROVIDER IS A MEMBER OF THE SANCTIONING PROVIDER'S MEDICAL STAFF AND PARTICIPATES IN THE PROVISIONS OF THIS ARTICLE WHILE ON THE HEALTH CARE FACILITY PREMISES, OF THE SANCTIONING HEALTH CARE PROVIDER, BUT NOT INCLUDING THE PRIVATE MEDICAL OFFICE OF A PHYSICIAN OR OTHER PROVIDER;

(II) TERMINATION OF LEASE OR OTHER PROPERTY CONTRACT OR OTHER NONMONETARY REMEDIES PROVIDED BY LEASE CONTRACT, NOT INCLUDING LOSS OR RESTRICTION OF MEDICAL STAFF PRIVILEGES OR EXCLUSION FROM A PROVIDER PANEL, IF THE SANCTIONED PROVIDER PARTICIPATES IN THE PROVISIONS OF THIS ARTICLE WHILE ON THE PREMISES OF THE SANCTIONING HEALTH CARE PROVIDER OR ON PROPERTY THAT IS OWNED BY OR UNDER THE DIRECT CONTROL OF THE SANCTIONING HEALTH CARE PROVIDER; OR

(III) TERMINATION OF CONTRACT OR OTHER NONMONETARY REMEDIES PROVIDED BY CONTRACT IF THE SANCTIONED PROVIDER PARTICIPATES IN THE PROVISIONS OF THIS ARTICLE WHILE ACTING IN THE COURSE AND SCOPE OF THE SANCTIONED PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF THE SANCTIONING HEALTH CARE PROVIDER. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PREVENT:

(A) A HEALTH CARE PROVIDER FROM PARTICIPATING IN THE PROVISIONS OF THIS ARTICLE WHILE ACTING OUTSIDE THE COURSE AND SCOPE OF THE PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR; OR

(B) A PATIENT FROM CONTRACTING WITH HIS OR HER ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO ACT OUTSIDE THE COURSE AND SCOPE OF THE PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF THE SANCTIONING HEALTH CARE PROVIDER.

(C) A HEALTH CARE PROVIDER THAT IMPOSES SANCTIONS PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION MUST FOLLOW ALL DUE PROCESS AND OTHER PROCEDURES THE SANCTIONING HEALTH CARE PROVIDER MAY HAVE THAT ARE RELATED TO THE IMPOSITION OF SANCTIONS ON ANOTHER HEALTH CARE PROVIDER.

(D) FOR PURPOSES OF THIS SUBDIVISION:

(I) "NOTIFY" MEANS A SEPARATE STATEMENT IN WRITING TO THE HEALTH CARE PROVIDER SPECIFICALLY INFORMING THE HEALTH CARE PROVIDER PRIOR TO THE PROVIDER'S PARTICIPATION IN THE PROVISIONS OF THIS ARTICLE OF THE SANCTIONING HEALTH CARE PROVIDER'S POLICY ABOUT PARTICIPATION IN ACTIVITIES COVERED BY THE PROVISIONS OF THIS ARTICLE.

(II) "PARTICIPATE IN DEATH WITH DIGNITY ACT" MEANS TO PERFORM THE DUTIES OF AN ATTENDING PHYSICIAN PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-G OF THIS ARTICLE; THE CONSULTING PHYSICIAN FUNCTION PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-H OF THIS ARTICLE, OR THE COUNSELING FUNCTION PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-I OF THIS ARTICLE. "PARTICIPATE IN DEATH WITH DIGNITY ACT" DOES NOT INCLUDE:

(A) MAKING AN INITIAL DETERMINATION THAT A PATIENT HAS A TERMINAL DISEASE AND INFORMING THE PATIENT OF THE MEDICAL PROGNOSIS;

(B) PROVIDING INFORMATION ABOUT THE DEATH WITH DIGNITY ACT TO A PATIENT UPON THE REQUEST OF THE PATIENT;

(C) PROVIDING A PATIENT, UPON THE REQUEST OF THE PATIENT, WITH A REFERRAL TO ANOTHER PHYSICIAN; OR

(D) A PATIENT CONTRACTING WITH HIS OR HER ATTENDING PHYSICIAN AND CONSULTING PHYSICIAN TO ACT OUTSIDE OF THE COURSE AND SCOPE OF THE

PROVIDER'S CAPACITY AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR OF THE SANCTIONING HEALTH CARE PROVIDER.

6. ACTION TAKEN PURSUANT TO SECTION TWENTY-EIGHT HUNDRED NINETY-NINE-F, TWENTY-EIGHT HUNDRED NINETY-NINE-G, TWENTY-EIGHT HUNDRED NINETY-NINE-H, OR TWENTY-EIGHT HUNDRED NINETY-NINE-I SHALL NOT BE THE SOLE BASIS FOR A REPORT OF UNPROFESSIONAL OR DISHONORABLE CONDUCT UNDER ARTICLE ONE HUNDRED THIRTY-ONE-A OF THE EDUCATION LAW.

7. NO PROVISION OF THE PROVISIONS OF THIS ARTICLE SHALL BE CONSTRUED TO ALLOW A LOWER STANDARD OF CARE FOR PATIENTS IN THE COMMUNITY WHERE THE PATIENT IS TREATED OR A SIMILAR COMMUNITY.

S 2899-V. LIABILITIES. 1. A PERSON WHO WITHOUT AUTHORIZATION OF THE PATIENT WILLFULLY ALTERS OR FORGES A REQUEST FOR MEDICATION OR CONCEALS OR DESTROYS A RESCISSION OF THAT REQUEST WITH THE INTENT OR EFFECT OF CAUSING THE PATIENT'S DEATH SHALL BE GUILTY OF A CLASS A FELONY.

2. A PERSON WHO COERCES OR EXERTS UNDUE INFLUENCE ON A PATIENT TO REQUEST MEDICATION FOR THE PURPOSE OF ENDING THE PATIENT'S LIFE, OR TO DESTROY A RESCISSION OF SUCH A REQUEST, SHALL BE GUILTY OF A CLASS A FELONY.

3. NOTHING IN THE PROVISIONS OF THIS ARTICLE LIMITS FURTHER LIABILITY FOR CIVIL DAMAGES RESULTING FROM OTHER NEGLIGENT CONDUCT OR INTENTIONAL MISCONDUCT BY ANY PERSON.

4. THE PENALTIES IN THE PROVISIONS OF THIS ARTICLE DO NOT PRECLUDE CRIMINAL PENALTIES APPLICABLE UNDER OTHER LAW FOR CONDUCT WHICH IS INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

S 2899-W. CLAIMS BY GOVERNMENTAL ENTITY FOR COSTS INCURRED. ANY GOVERNMENTAL ENTITY THAT INCURS COSTS RESULTING FROM A PERSON TERMINATING HIS OR HER LIFE PURSUANT TO THE PROVISIONS OF THIS ARTICLE IN A PUBLIC PLACE SHALL HAVE A CLAIM AGAINST THE ESTATE OF THE PERSON TO RECOVER SUCH COSTS AND REASONABLE ATTORNEY FEES RELATED TO ENFORCING THE CLAIM.

S 2899-X. FORM OF THE REQUEST. A REQUEST FOR A MEDICATION AS AUTHORIZED BY THE PROVISIONS OF THIS ARTICLE SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:

REQUEST FOR MEDICATION
TO END MY LIFE IN A HUMANE
AND DIGNIFIED MANNER

I, _____, AM AN ADULT OF SOUND MIND.

I AM SUFFERING FROM _____, WHICH MY ATTENDING PHYSICIAN HAS DETERMINED IS A TERMINAL DISEASE AND WHICH HAS BEEN MEDICALLY CONFIRMED BY A CONSULTING PHYSICIAN.

I HAVE BEEN FULLY INFORMED OF MY DIAGNOSIS, PROGNOSIS, THE NATURE OF MEDICATION TO BE PRESCRIBED AND POTENTIAL ASSOCIATED RISKS, THE EXPECTED RESULT, AND THE FEASIBLE ALTERNATIVES, INCLUDING COMFORT CARE, HOSPICE CARE AND PAIN CONTROL.

I REQUEST THAT MY ATTENDING PHYSICIAN PRESCRIBE MEDICATION THAT WILL END MY LIFE IN A HUMANE AND DIGNIFIED MANNER.

INITIAL ONE:

___ I HAVE INFORMED MY FAMILY OF MY DECISION AND TAKEN THEIR OPINIONS INTO CONSIDERATION.

___ I HAVE DECIDED NOT TO INFORM MY FAMILY OF MY DECISION.

___ I HAVE NO FAMILY TO INFORM OF MY DECISION.

I UNDERSTAND THAT I HAVE THE RIGHT TO RESCIND THIS REQUEST AT ANY TIME.

I UNDERSTAND THE FULL IMPORT OF THIS REQUEST AND I EXPECT TO DIE WHEN I TAKE THE MEDICATION TO BE PRESCRIBED. I FURTHER UNDERSTAND THAT ALTHOUGH MOST DEATHS OCCUR WITHIN THREE HOURS, MY DEATH MAY TAKE LONGER AND MY PHYSICIAN HAS COUNSELED ME ABOUT THIS POSSIBILITY.

I MAKE THIS REQUEST VOLUNTARILY AND WITHOUT RESERVATION, AND I ACCEPT FULL MORAL RESPONSIBILITY FOR MY ACTIONS.

SIGNED: _____

DATED: _____

DECLARATION OF WITNESSES

WE DECLARE THAT THE PERSON SIGNING THIS REQUEST:

(A) IS PERSONALLY KNOWN TO US OR HAS PROVIDED PROOF OF IDENTIFY;

(B) SIGNED THIS REQUEST IN OUR PRESENCE;

(C) APPEARS TO BE OF SOUND MIND AND NOT UNDER DURESS, FRAUD OR UNDUE INFLUENCE;

(D) IS NOT A PATIENT FOR WHOM EITHER OF US IS ATTENDING PHYSICIAN.

_____ WITNESS 1/DATE

_____ WITNESS 2/DATE

NOTE: ONE WITNESS SHALL NOT BE A RELATIVE (BY BLOOD, MARRIAGE OR ADOPTION) OF THE PERSON SIGNING THIS REQUEST, SHALL NOT BE ENTITLED TO ANY PORTION OF THE PERSON'S ESTATE UPON DEATH AND SHALL NOT OWN, OPERATE OR BE EMPLOYED AT A HEALTH CARE FACILITY WHERE THE PERSON IS A PATIENT OR RESIDENT. IF THE PATIENT IS AN INPATIENT AT A HEALTH CARE FACILITY, ONE OF THE WITNESSES SHALL BE AN INDIVIDUAL DESIGNATED BY THE FACILITY.

S 2899-Y. PENALTIES. 1. IT SHALL BE A CLASS A FELONY FOR A PERSON WITHOUT AUTHORIZATION OF THE PRINCIPAL TO WILLFULLY ALTER, FORGE, CONCEAL OR DESTROY AN INSTRUMENT, THE REINSTATEMENT OR REVOCATION OF AN INSTRUMENT OR ANY OTHER EVIDENCE OR DOCUMENT REFLECTING THE PRINCIPAL'S DESIRES AND INTERESTS, WITH THE INTENT AND EFFECT OF CAUSING A WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING PROCEDURES OR OF ARTIFICIALLY ADMINISTERED NUTRITION AND HYDRATION WHICH HASTENS THE DEATH OF THE PRINCIPAL.

2. EXCEPT AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, IT SHALL BE A CLASS A MISDEMEANOR FOR A PERSON WITHOUT AUTHORIZATION OF THE PRINCIPAL TO WILLFULLY ALTER, FORGE, CONCEAL OR DESTROY AN INSTRUMENT, THE REINSTATEMENT OR REVOCATION OF AN INSTRUMENT, OR ANY OTHER EVIDENCE OR DOCUMENT REFLECTING THE PRINCIPAL'S DESIRES AND INTERESTS WITH THE INTENT OR EFFECT OF AFFECTING A HEALTH CARE DECISION.

S 2899-Z. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART THEREOF, DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGEMENT SHALL HAVE BEEN RENDERED.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.