

STATE OF NEW YORK

3598

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

Introduced by M. of A. ROSENTHAL, GOTTFRIED, STECK, HOOPER, ORTIZ, HEVE-SI -- Multi-Sponsored by -- M. of A. ARROYO -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the "New York end of life options 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 "New York end of life options act".

§ 2. The public health law is amended by adding a new article 29-CCCC to read as follows:

ARTICLE 29-CCCC

NEW YORK END OF LIFE OPTIONS ACT

Section 2994-aaa. Definitions.

2994-bbb. Right to request aid-in-dying medication.

2994-ccc. Request process.

2994-ddd. Right to rescind request; requirement to offer opportunity to rescind.

2994-eee. Attending physician responsibilities.

2994-fff. Death certificate.

2994-ggg. Consulting physician confirmation.

2994-hhh. Counseling referral.

2994-iii. Informed decision required.

2994-jjj. Form of request.

2994-kkk. Standard of care.

2994-lll. Effect on construction of wills, contracts and statutes.

2994-mmm. Insurance or annuity policies.

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

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2994-nnn. Immunities; prohibitions on certain healthcare providers; notification; permissible sanctions.

2994-ooo. Non-sanctionable activities.

2994-ppp. Penalties.

2994-qqq. Severability.

§ 2994-aaa. 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. "Aid-in-dying medication" means medication prescribed by a physician to a qualified individual, which the patient may choose to self-administer to bring about a peaceful death if they find their suffering due to a terminal illness to be unbearable.

3. "Attending physician" means the physician who has primary responsibility for the care of an individual and treatment of the individual's terminal illness.

4. "Capacity" means that in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist the individual has the ability to make and communicate an informed decision to healthcare providers, including communication through a person familiar with the individual's manner of communicating if that person is available.

5. "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's illness.

6. "Counseling" means one or more consultations as necessary between an individual and a psychiatrist or psychologist licensed in this state for the purpose of determining that the individual is competent and is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

7. "Healthcare provider" or "provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer healthcare or dispense medication in the ordinary course of business or practice of a profession, nurse practitioners and physician assistants notwithstanding, and includes a healthcare facility.

8. "Informed decision" means a decision by a terminally ill individual to request and obtain a prescription for medication that the individual may self-administer to end the individual's life that is based on an understanding and acknowledgment of the relevant facts and that is made after being fully informed by the attending physician of:

(a) the individual's medical diagnosis and prognosis;

(b) the potential risks associated with taking the medication to be prescribed;

(c) the probable result of taking the medication to be prescribed;

(d) the possibility that they may not choose to obtain the medication, or may obtain the medication but may decide not to take it; and

(e) the feasible alternatives or additional treatment opportunities, including but not limited to comfort care, hospice care and pain management.

9. "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

10. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in this state.

11. "Qualified individual" means a terminally ill adult possessing capacity who has satisfied the requirements of this article.

12. "Self-administer" means a qualified individual's affirmative, conscious act of using the medication to bring about their own peaceful and humane death.

13. "Terminal illness" means an incurable and irreversible illness that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

§ 2994-bbb. Right to request aid-in-dying medication. 1. A qualified individual possessing capacity may make a documented request to receive a prescription for aid-in-dying medication if:

(a) the qualified individual's attending physician and a consulting physician have determined the qualified individual to be suffering from a terminal illness; and

(b) the qualified individual has voluntarily expressed the wish to receive a prescription for aid-in-dying medication.

2. A person may not qualify under the provisions of this article solely because of age or disability.

§ 2994-ccc. Request process. 1. A qualified individual wishing to receive a prescription for aid-in-dying medication pursuant to this article shall submit a written request and make an oral request to their attending physician.

2. A valid written request for aid-in-dying medication under this article must be:

(a) in substantially the form described in section twenty-nine hundred ninety-four-jjj of this article;

(b) signed and dated by the qualified individual seeking the medication; and

(c) witnessed by at least two other individuals who, in the presence of the qualified individual, attest that to the best of their knowledge and belief the qualified individual:

(i) possesses capacity;

(ii) is acting voluntarily; and

(iii) is not being coerced to sign the request.

3. One of the witnesses must be an individual who is not:

(a) related to the qualified individual by blood, marriage or adoption;

(b) at the time the request is signed, entitled to any portion of the qualified individual's estate upon death of the qualified individual under a will or any operation of law; or

(c) an owner, operator, or employee of a healthcare facility where the qualified individual is receiving medical treatment or where the qualified individual resides.

4. Neither the qualified individual's attending physician nor any consulting physician may be a witness to the signing of a written request.

§ 2994-ddd. Right to rescind request; requirement to offer opportunity to rescind. 1. A qualified individual may at any time rescind their request for aid-in-dying medication without regard to the qualified individual's mental state.

2. A prescription for aid-in-dying medication under this article may not be written without the attending physician offering the qualified individual an opportunity to rescind the request.

§ 2994-eee. Attending physician responsibilities. The attending physician shall:

1. make the initial determination of whether an adult making a request under this article:

(a) has capacity;

1 (b) has a terminal illness; and
2 (c) has voluntarily made the request for aid-in-dying medication
3 pursuant to this article;

4 2. ensure to the greatest degree possible that the individual is
5 making an informed decision by discussing with the individual:

6 (a) the individual's medical diagnosis and prognosis;

7 (b) the potential risks associated with taking the aid-in-dying medi-
8 cation to be prescribed;

9 (c) the probable result of taking the aid-in-dying medication to be
10 prescribed;

11 (d) the possibility that they can choose to obtain the medication, but
12 not take it; and

13 (e) the feasible alternatives or additional treatment opportunities,
14 including but not limited to comfort care, hospice care, and pain
15 management;

16 3. refer the individual to a consulting physician for medical confir-
17 mation of the diagnosis, and for a determination that the individual
18 possesses capacity and is acting voluntarily;

19 4. refer the individual to counseling, if appropriate, pursuant to
20 section twenty-nine hundred ninety-four-hhh of this article;

21 5. ensure to the greatest degree possible that the individual's
22 request does not arise from coercion or undue influence by another
23 person;

24 6. counsel the individual about the importance of:

25 (a) having another person present when they take the aid-in-dying
26 medication prescribed pursuant to this article; and

27 (b) not taking the aid-in-dying medication in a public place;

28 7. inform the individual that they may rescind the request for aid-in-
29 dying medication at any time and in any manner;

30 8. offer the individual an opportunity to rescind the request for
31 medication before prescribing the aid-in-dying medication;

32 9. verify, immediately prior to writing the prescription for medica-
33 tion, that the individual is making an informed decision;

34 10. ensure that all appropriate steps are carried out in accordance
35 with this article before writing a prescription for aid-in-dying medica-
36 tion; and

37 11. prescribe aid-in-dying medication by, with the qualified individ-
38 ual's written consent, contacting a pharmacist, informing the pharmacist
39 of the prescription, and forwarding the written prescription to the
40 pharmacist, who shall dispense the medications to either the qualified
41 individual or a person expressly designated by the qualified individual.

42 § 2994-fff. Death certificate. 1. Unless otherwise prohibited by law,
43 the attending physician may sign the qualified individual's death
44 certificate.

45 2. The cause of death listed on a qualified individual's death certifi-
46 cate who uses aid-in-dying medication will be the underlying terminal
47 illness.

48 § 2994-ggg. Consulting physician confirmation. Before a patient is
49 qualified under the provisions of this article, a consulting physician
50 shall examine the patient and his or her relevant medical records and
51 confirm, in writing, the attending physician's diagnosis that the
52 patient is suffering from a terminal disease, and verify that the
53 patient is capable, is acting voluntarily and has made an informed deci-
54 sion.

55 § 2994-hhh. Counseling referral. If in the opinion of the attending
56 physician or the consulting physician an individual may be suffering

1 from a psychiatric or psychological disorder or depression causing
2 impaired judgment, either physician shall refer the patient for coun-
3 seling. No aid-in-dying medication shall be prescribed until the person
4 performing the counseling determines that the patient is not suffering
5 from a psychiatric or psychological disorder or depression causing
6 impaired judgment.

7 § 2994-iii. Informed decision required. An individual may not receive
8 a prescription for aid-in-dying medication pursuant to this article
9 unless they have made an informed decision as defined in this article.

10 § 2994-jjj. Form of request. 1. A request for aid-in-dying medication
11 as authorized by this article must be in substantially the following
12 form:

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

15 I, _____, am an adult of sound mind.
16 I am suffering from _____,
17 which my attending physician has determined is in its terminal phase and
18 which has been medically confirmed.

19 I have been fully informed of my diagnosis and prognosis, the nature
20 of the aid-in-dying medication to be prescribed and potential associated
21 risks, the expected result, and the feasible alternatives or additional
22 treatment opportunities including comfort care, hospice care and pain
23 management.

24 I request that my attending physician prescribe medication that will
25 end my life in a humane and dignified manner if I choose to take it, and
26 I authorize my attending physician to contact any pharmacist about my
27 request.

28 INITIAL ONE:

29 I have informed my family of my decision and taken their opinions
30 into consideration.

31 I have decided not to inform my family of my decision.

32 I have no family to inform of my decision.

33 I understand that I have the right to rescind this request at any
34 time.

35 I understand the full import of this request, and I expect to die if I
36 take the aid-in-dying medication to be prescribed. I further understand
37 that although most deaths occur within three hours, my death may take
38 longer, and my attending physician has counseled me about this possibil-
39 ity.

40 I make this request voluntarily and without reservation, and I accept
41 full moral responsibility for my actions.

42 Signed: _____

43 Dated: _____

44 2. Pursuant to paragraph (a) of subdivision two of section twenty-nine
45 hundred ninety-four-ccc of this article, each witness must complete
46 documentation in substantially the following form:

47 DECLARATION OF WITNESSES

48 We declare that the person signing this request:

49 (a) is personally known to us or has provided proof of identity;

50 (b) signed this request in our presence;

51 (c) is an individual whom we believe to be of sound mind and not under
52 duress, fraud, or undue influence; and

1 (d) is not an individual for whom either of us is the attending physi-
2 cian.

3 Witness 1, Date:

4 Witness 2, Date:

5 NOTE: One witness may not be a relative (by blood, marriage or
6 adoption) of the person signing this request, may not be entitled to any
7 portion of the person's estate upon death, and may not own, operate, or
8 be employed at a healthcare facility where the person is a patient or
9 where the person resides.

10 § 2994-kkk. Standard of care. Physicians and medical personnel shall
11 provide medical services under this article that meet the standard of
12 care for end of life medical care.

13 § 2994-lll. Effect on construction of wills, contracts and statutes.

14 1. A provision in a contract, will or other agreement, whether written
15 or oral, to the extent the provision would affect whether a person may
16 make or rescind a request for aid-in-dying medication, is not valid.

17 2. An obligation owing under any currently existing contract may not
18 be conditioned or affected by an individual making or rescinding a
19 request for aid-in-dying medication.

20 § 2994-mmm. Insurance or annuity policies. 1. The sale, procurement or
21 issuance of a life, health or accident insurance or annuity policy, or
22 the rate charged for a policy may not be conditioned upon or affected by
23 a person making or rescinding a request for aid-in-dying medication.

24 2. A qualified individual's act of self-administering aid-in-dying
25 medication may not have an effect upon a life, health, or accident
26 insurance or annuity policy other than that of a natural death from the
27 underlying illness.

28 § 2994-nnn. Immunities; prohibitions on certain healthcare providers;
29 notification; permissible sanctions. 1. A person is not subject to civil
30 or criminal liability or professional disciplinary action for partic-
31 ipating in good faith compliance with this article, including an indi-
32 vidual who is present when a qualified individual self-administers the
33 prescribed aid-in-dying medication.

34 2. A healthcare provider or professional organization or association
35 may not subject an individual to censure, discipline, suspension, loss
36 of license, loss of privileges, loss of membership or other penalty for
37 participating or refusing to participate in good faith compliance with
38 this article.

39 3. A request by an individual for or provision by an attending physi-
40 cian of medication in good faith compliance with the provisions of this
41 article does not constitute neglect or elder abuse for any purpose of
42 law, or provide the sole basis for the appointment of a guardian or
43 conservator.

44 4. A healthcare provider may choose whether to participate in provid-
45 ing aid-in-dying medication to a qualified individual pursuant to this
46 article. If a healthcare provider is unable or unwilling to carry out an
47 individual's request under this article and the individual transfers
48 care to a new healthcare provider, the prior healthcare provider shall
49 transfer, upon request, a copy of the individual's relevant medical
50 records to the new healthcare provider.

51 5. Nothing in this section shall prevent a healthcare provider from
52 providing an individual with healthcare services that do not constitute
53 participation in this article.

54 § 2994-ooo. Non-sanctionable activities. A healthcare provider may not
55 be sanctioned for:

1 1. making an initial determination that an individual has a terminal
2 illness and informing them of the medical prognosis;

3 2. providing information about the New York End of Life Options Act to
4 a patient upon the request of the individual;

5 3. providing an individual, upon request, with a referral to another
6 physician; or

7 4. contracting with an individual to act outside the course and scope
8 of the provider's capacity as an employee or independent contractor of a
9 healthcare provider that prohibits activities under this article.

10 § 2994-ppp. Penalties. 1. A person who without authorization of the
11 qualified individual willfully alters or forges a request for medication
12 or conceals or destroys a rescission of that request with the intent or
13 effect of causing the qualified individual's death is guilty of a class
14 A felony.

15 2. A person who coerces or exerts undue influence on a qualified indi-
16 vidual to request medication to end the qualified individual's life, or
17 to destroy a rescission of a request, is guilty of a class A felony.

18 3. Except as provided in subdivisions one and two of this section, it
19 shall be a class A misdemeanor for a person without authorization of the
20 individual to willfully alter, forge, conceal or destroy an instrument,
21 the reinstatement or revocation of an instrument, or any other evidence
22 or document reflecting the individual's desires and interests with the
23 intent or effect of affecting a healthcare decision.

24 4. This article does not limit further liability for civil damages
25 resulting from other negligent conduct or intentional misconduct by any
26 person.

27 5. The penalties in this article do not preclude criminal penalties
28 applicable under other provisions of law for conduct that is inconsist-
29 ent with this article.

30 § 2994-qqq. Severability. If any clause, sentence, paragraph, section
31 or part of this article shall be adjudged by any court of competent
32 jurisdiction to be invalid, such judgment shall not affect, impair or
33 invalidate the remainder thereof, but shall be confined in its operation
34 to the clause, sentence, paragraph, section or part thereof, directly
35 involved in the controversy in which such judgment shall have been
36 rendered.

37 § 3. This act shall take effect on the ninetieth day next succeeding
38 the date upon which it shall have become a law.