

# STATE OF NEW YORK

2045

2017-2018 Regular Sessions

## IN SENATE

January 11, 2017

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to patient self-determination at end of life

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "patient  
2 self-determination act".

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

5 ARTICLE 28-F

6 AID IN DYING

7 Section 2899-d. Definitions.

8 2899-e. Written request for medication.

9 2899-f. Written request signed and witnessed.

10 2899-g. Attending physician responsibilities.

11 2899-h. Counseling referral.

12 2899-i. Medical record documentation requirements.

13 2899-j. Residency requirement.

14 2899-k. Protection of health care providers and facilities.

15 2899-l. Relation to other laws and contracts.

16 2899-m. Safe disposal of unused medications.

17 2899-n. Death certificate.

18 2899-o. Reporting.

19 2899-p. Severability.

20 § 2899-d. Definitions. As used in this article:

21 1. "Adult" means an individual who is twenty-one years of age or  
22 older.

23 2. "Attending physician" means the physician who has primary responsi-  
24 bility for the care of the patient and treatment of the patient's termi-  
25 nal disease.

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

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1 3. "Capacity" means the ability to understand and appreciate the  
2 nature and consequences of health care decisions, including the benefits  
3 and risks of and alternatives to any proposed health care, and to reach  
4 an informed decision and to communicate health care decisions to a  
5 physician, including communication through persons familiar with the  
6 patient's manner of communicating if those persons are available.

7 4. "Counseling" means one or more consultations as necessary between a  
8 state licensed psychiatrist or psychologist and a patient for the  
9 purpose of determining that the patient has capacity and is not suffer-  
10 ing from a psychiatric or psychological disorder or depression causing  
11 impaired judgment.

12 5. "Health care facility" means a general hospital, nursing home, or  
13 residential health care facility as defined in section twenty-eight  
14 hundred one of this chapter.

15 6. "Health care provider" means a person or entity licensed, certi-  
16 fied, or authorized by law to administer health care or dispense medica-  
17 tion in the ordinary course of business or practice of a profession.

18 7. "Impaired judgment" means that a person lacks the ability to under-  
19 stand and appreciate the nature and consequences of health care deci-  
20 sions, including the benefits and risks of and alternatives to any  
21 proposed health care, and to reach an informed decision.

22 8. "Medication" means medication capable of ending and to be used with  
23 the intent of ending the patient's life, including any ancillary medica-  
24 tion intended to minimize the patient's discomfort.

25 9. "Palliative care" means health care treatment, including interdis-  
26 ciplinary end-of-life care, and consultation with patients and family  
27 members, to prevent or relieve pain and suffering and to enhance the  
28 patient's quality of life, including hospice care under article forty of  
29 this chapter.

30 10. "Patient" means a person who is twenty-one years of age or older,  
31 a resident of New York state, and under the care of a physician.

32 11. "Physician" means an individual licensed to practice medicine in  
33 New York state.

34 12. "Terminal illness or condition" means an illness or condition  
35 which can reasonably be expected to cause death within six months,  
36 whether or not treatment is provided.

37 § 2899-e. Written request for medication. 1. An adult who has capaci-  
38 ty, is a resident of this state, and has been determined by the attend-  
39 ing physician and, if applicable, consulting physician to be suffering  
40 from a terminal illness or condition, may make a written request for and  
41 consent to self-administer medication for the purpose of ending his or  
42 her life in accordance with this article.

43 2. No person shall qualify under this article solely because of age or  
44 disability.

45 § 2899-f. Written request signed and witnessed. 1. A request for medi-  
46 cation under this article shall be signed and dated by the patient and  
47 witnessed by at least two individuals who, in the presence of the  
48 patient, attest that to the best of their knowledge and belief the  
49 patient has capacity, is acting voluntarily, and is not being coerced to  
50 sign the request. The department may develop a suggested form for a  
51 request under this article.

52 2. One of the witnesses shall be a person who is not:

53 (a) a relative of the patient by blood, marriage or adoption;

54 (b) a person who at the time the request is signed would be entitled  
55 to any portion of the estate of the patient upon death under any will or  
56 by operation of law; or

1 (c) an owner, operator or employee of a health care facility where the  
2 patient is receiving treatment or is a resident.

3 3. The patient's attending physician or, if applicable, consulting  
4 physician at the time the request is signed shall not be a witness.

5 § 2899-g. Attending physician responsibilities. 1. The attending  
6 physician shall:

7 (a) make the determination of whether a patient has a terminal illness  
8 or condition, has capacity, and has made the request voluntarily;

9 (b) request that the patient demonstrate New York state residency;

10 (c) refer the patient for counseling, if appropriate, under section  
11 twenty-eight hundred ninety-nine-h of this article;

12 (d) provide information and counseling under section twenty-nine  
13 hundred ninety-seven-c of this chapter; and

14 (e) fulfill the medical record documentation requirements of section  
15 twenty-eight hundred ninety-nine-i of this article.

16 2. Subject to section twenty-eight hundred ninety-nine-h of this arti-  
17 cle, the attending physician who makes the determination that the  
18 patient has a terminal illness or condition, has capacity and has made a  
19 request for medication as provided in section twenty-eight hundred nine-  
20 ty-nine-e of this article, may personally, or by direction to another  
21 physician, prescribe, dispense or order appropriate medication in  
22 accordance with the patient's request under this article, and at the  
23 patient's request, facilitate the filling of the prescription and deliv-  
24 ery of the medication to the patient.

25 3. In accordance with the direction of the prescribing, dispensing or  
26 ordering physician and the consent of the patient, the patient may  
27 administer the medication to himself or herself. A health care profes-  
28 sional shall not administer the medication to the patient but, acting  
29 within the scope of his or her lawful practice, may facilitate the  
30 patient in self-administering the medication.

31 § 2899-h. Counseling referral. If in the opinion of the attending  
32 physician a patient may be suffering from a psychiatric or psychological  
33 disorder or depression causing impaired judgment, such physician shall  
34 refer the patient for counseling. No medication to end a patient's life  
35 shall be prescribed, dispensed or ordered until the person performing  
36 the counseling determines that the patient is not suffering from a  
37 psychiatric or psychological disorder or depression causing impaired  
38 judgment and has capacity.

39 § 2899-i. Medical record documentation requirements. The following  
40 shall be documented or filed in the patient's medical record:

41 1. all oral requests by a patient for medication to end his or her  
42 life;

43 2. all written requests by a patient for medication to end his or her  
44 life;

45 3. the attending physician's diagnosis and prognosis, and determi-  
46 nation whether the patient has capacity and is acting voluntarily;

47 4. a report of the outcome and determinations made during counseling,  
48 if performed; and

49 5. a note by the attending physician indicating whether all require-  
50 ments under this article have been met and indicating the steps taken to  
51 carry out the request, including a notation of the medication  
52 prescribed, dispensed or ordered.

53 § 2899-j. Residency requirement. Only requests made by New York state  
54 residents under the provisions of this article shall be granted. Factors  
55 demonstrating New York state residency shall include but shall not be  
56 limited to:

1 1. Possession of a New York state driver's license;

2 2. Registration to vote in New York state;

3 3. Evidence that the person owns or leases property in New York state;

4 or

5 4. Filing of a New York state tax return for the most recent tax year.

6 § 2899-k. Protection of health care providers and facilities. 1. A  
7 physician, pharmacist, other health care professional or other person  
8 shall not be subject to civil or criminal liability or professional  
9 disciplinary action, and shall not be subject to discipline, suspension,  
10 loss of license, loss of privileges, or other penalty by any health care  
11 facility or health care provider, for taking any reasonable good-faith  
12 action or refusing to act under this article, including: (a) engaging in  
13 discussions with a patient relating to the risks and benefits of end-of-  
14 life options in the circumstances described in this article, (b) being  
15 present when a patient self-administers medication, (c) refraining from  
16 acting to prevent the patient from self-administering such medication,  
17 or (d) refraining from acting to resuscitate or rescue the patient after  
18 he or she self-administers such medication. However, paragraphs (c) and  
19 (d) of this subdivision shall not apply where there are reasonable  
20 grounds to believe, under the circumstances, that the patient has  
21 rescinded his or her request or consent to self-administer medication  
22 under this article or communicates a desire that the lethal action of  
23 the medication be reversed.

24 2. A physician, nurse, pharmacist, or other person shall not be under  
25 any duty, by law or contract, to participate in the provision of medica-  
26 tion to a patient under this article.

27 3. A private health care facility may prohibit the self-administering  
28 of medication under the article while the patient is being treated or  
29 residing in the health care facility if:

30 (a) such prescribing, dispensing, ordering or self-administering is  
31 contrary to a formally adopted policy of such facility that is expressly  
32 based on sincerely held religious beliefs or sincerely held moral  
33 convictions central to the facility's operating principles;

34 (b) such facility has informed the patient of such policy prior to or  
35 upon admission, if reasonably possible; and

36 (c) if the patient requests, the patient is transferred promptly to  
37 another health care facility that is reasonably accessible under the  
38 circumstances and willing to permit the prescribing, dispensing, order-  
39 ing and self-administering of medication under this article with respect  
40 to the patient.

41 4. A health care facility that prohibits the self-administering of  
42 medication under this article while the patient is being treated or  
43 residing in the health care facility under this section may prohibit a  
44 physician from prescribing, dispensing or ordering medication for self-  
45 administering while the patient is being treated or residing in the  
46 health care facility, provided the health care facility has notified the  
47 physician in writing of its policy to prohibit such actions. Notwith-  
48 standing subdivision one of this section, any person who violates a  
49 policy established by a health care facility under this section may be  
50 subject to sanctions otherwise allowable under law, contract and facili-  
51 ty policy.

52 § 2899-l. Relation to other laws and contracts. 1. (a) A patient who  
53 self-administers medication under this article shall not be considered  
54 to be a person who is suicidal, and self-administering medication under  
55 this article shall not be deemed to be suicide, for any purpose.

1 (b) Action taken in accordance with this article shall not be  
2 construed for any purpose to constitute suicide, assisted suicide,  
3 attempted suicide, promoting a suicide attempt, mercy killing, or homi-  
4 cide under the law, including as an accomplice or accessory or other-  
5 wise.

6 2. A request by a patient to his or her attending physician to provide  
7 medication under this article shall not, by itself, provide the basis  
8 for the appointment of a guardian or conservator.

9 3. (a) No provision in a contract, will or other agreement, whether  
10 written or oral, to the extent the provision would affect whether a  
11 person may make or rescind a request for medication or take any other  
12 action under this article, shall be valid.

13 (b) No obligation owing under any contract shall be conditioned or  
14 affected by the making or rescinding of a request by a person for medi-  
15 cation or taking any other action under this article.

16 4. A person and his or her beneficiaries shall not be denied benefits  
17 under a life insurance policy for actions taken in accordance with this  
18 article.

19 5. An insurer shall not provide any information in communications made  
20 to a person about the availability of medication under this article  
21 absent a request by such person or by his or her attending physician  
22 upon the request of such person. Any communication shall not include  
23 both the denial of treatment and information as to the availability of  
24 medication under this article.

25 6. The sale, procurement, or issue of any professional malpractice  
26 insurance policy or the rate charged for the policy shall not be condi-  
27 tioned upon or affected by whether the insured does or does not take or  
28 participate in any action under this article.

29 § 2899-m. Safe disposal of unused medications. The department shall  
30 make regulations providing for the safe disposal of unused medications  
31 prescribed, dispensed or ordered under this article.

32 § 2899-n. Death certificate. In the event that a patient dies as a  
33 result of medication self-administered under this article, the death  
34 certificate shall indicate that the cause of death was the underlying  
35 terminal illness or condition of the patient. However, where there are  
36 reasonable grounds to believe, under the circumstances, that the patient  
37 rescinded his or her request or consent to self-administer medication  
38 under this article or communicated a desire that the lethal action of  
39 the medication be reversed, and the patient nevertheless died from the  
40 self-administration of the medication, the self-administration of the  
41 medication may be listed as the cause of death.

42 § 2899-o. Reporting. 1. The commissioner shall annually review a  
43 sample of the records maintained under section twenty-eight hundred  
44 ninety-nine-i of this article. The department may adopt regulations  
45 establishing reporting requirements for physicians taking action under  
46 this article to determine utilization and compliance with this article.  
47 The information collected under this section shall be confidential and  
48 shall be collected in a manner that protects the privacy of the patient,  
49 his or her family, and any health care provider acting in connection  
50 with such patient under this article.

51 2. The department shall prepare a report annually containing relevant  
52 data regarding utilization and compliance with this article and shall  
53 post such report on its website.

54 § 2899-p. Severability. If any provision of this article or any appli-  
55 cation of any provision of this article, is held to be invalid, or to  
56 violate or be inconsistent with any federal law or regulation, that

1 shall not affect the validity or effectiveness of any other provision of  
2 this article, or of any other application of any provision of this arti-  
3 cle, which can be given effect without that provision or application;  
4 and to that end, the provisions and applications of this article are  
5 severable.

6 § 3. This act shall take effect immediately.