STATE OF NEW YORK

3598

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

Introduced by M. of A. ROSENTHAL, GOTTFRIED, STECK, HOOPER, ORTIZ, HEVESI -- 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-CCCCC to read as follows:

ARTICLE 29-CCCCC
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;

(b) has a terminal illness; and

(c) has voluntarily made the request for aid-in-dying medication pursuant to this article;

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

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

(b) the potential risks associated with taking the aid-in-dying medication to be prescribed;

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

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

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

3. refer the individual to a consulting physician for medical confirmation of the diagnosis, and for a determination that the individual possesses capacity and is acting voluntarily;

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

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

6. counsel the individual about the importance of:

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

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

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

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

9. verify, immediately prior to writing the prescription for medication, that the individual is making an informed decision;

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

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

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

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

§ 2994-ggg. 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.

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

from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. No aid-in-dying medication 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.

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

§ 2994-jjj. Form of request. 1. A request for aid-in-dying medication as authorized by this article must 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 in its terminal phase and which has been medically confirmed.

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

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

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 if I take the aid-in-dying medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my attending 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: _____

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

DECLARATION OF WITNESSES

We declare that the person signing this request:

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

(b) signed this request in our presence;

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

(d) is not an individual for whom either of us is the attending physician.

Witness 1, Date: _____

Witness 2, Date: _____

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

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

§ 2994-lll. Effect on construction of wills, contracts and statutes. 1. A 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 aid-in-dying medication, is not valid.

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

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

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

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

2. A healthcare provider or professional organization or association may not subject an individual 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 this article.

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

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

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

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

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

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

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

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

§ 2994-ppp. Penalties. 1. A person who without authorization of the qualified individual 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 qualified individual's death is guilty of a class A felony.

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

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

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

5. The penalties in this article do not preclude criminal penalties applicable under other provisions of law for conduct that is inconsistent with this article.

§ 2994-qqq. 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 judgment shall have been rendered.

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