

STATE OF NEW YORK

3151

2017-2018 Regular Sessions

IN SENATE

January 20, 2017

Introduced by Sens. SAVINO, HOYLMAN -- 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 a terminally ill
patient's request for and use of medication for medical aid in dying

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

1 Section 1. This act shall be known and may be cited as the "medical
2 aid in dying act".

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

ARTICLE 28-F

MEDICAL AID IN DYING

Section 2899-d. Definitions.

8 2899-e. Request process.

9 2899-f. Attending physician responsibilities.

10 2899-g. Right to rescind request; requirement to offer opportu-
11 nity to rescind.

12 2899-h. Consulting physician responsibilities.

13 2899-i. Referral to mental health professional.

14 2899-j. Medical record documentation requirements.

15 2899-k. Form of written request and witness attestation.

16 2899-l. Protection and immunities.

17 2899-m. Permissible refusals and prohibitions.

18 2899-n. Relation to other laws and contracts.

19 2899-o. Safe disposal of unused medications.

20 2899-p. Death certificate.

21 2899-q. Reporting.

22 2899-r. Penalties.

23 2899-s. Severability.

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

24 1. "Adult" means an individual who is eighteen years of age or older.
25

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

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

4 3. "Capacity" or "capacity to make an informed decision" means the
5 ability to understand and appreciate the nature and consequences of
6 health care decisions, including the benefits and risks of and alterna-
7 tives to any proposed health care, and to reach an informed decision.

8 4. "Consulting physician" means a physician who is qualified by
9 specialty or experience to make a professional diagnosis and prognosis
10 regarding a person's terminal illness.

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

14 6. "Health care provider" means a person licensed, certified, or
15 authorized by law to administer health care or dispense medication in
16 the ordinary course of business or practice of a profession.

17 7. "Informed decision" means a decision by a patient who is suffering
18 from a terminal illness to request and obtain a prescription for medica-
19 tion that the patient may self-administer to end the patient's life that
20 is based on an understanding and acknowledgment of the relevant facts
21 and that is made after being fully informed of:

22 (a) the patient's medical diagnosis and prognosis;

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

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

26 (d) the possibility that the patient may choose not to obtain the
27 medication, or may obtain the medication but may decide not to self-ad-
28 minister it; and

29 (e) the feasible alternatives or additional treatment opportunities,
30 including palliative care and hospice care.

31 8. "Medical aid in dying" means the medical practice of a physician
32 prescribing medication to a qualified individual that the individual may
33 choose to self-administer to bring about death.

34 9. "Medically confirmed" means the medical opinion of the attending
35 physician that a patient has a terminal illness has been confirmed by a
36 consulting physician who has examined the patient and the patient's
37 relevant medical records.

38 10. "Medication" means medication prescribed by a physician under this
39 article.

40 11. "Mental health professional" means a physician, nurse practition-
41 er, physician assistant or psychologist, licensed or certified under the
42 education law acting within his or her scope of practice and who is
43 qualified, by training and experience, certification, or board certif-
44 ication or eligibility, to make a determination under section twenty-
45 eight hundred ninety-nine-i of this article; provided that in the case
46 of a nurse practitioner or physician assistant, the professional shall
47 not have a collaborative agreement or collaborative relationship with or
48 be supervised by the attending physician or consulting physician.

49 12. "Palliative care" means health care treatment, including interdis-
50 ciplinary end-of-life care, and consultation with patients and family
51 members, to prevent or relieve pain and suffering and to enhance the
52 patient's quality of life, including hospice care under article forty of
53 this chapter.

54 13. "Patient" means a person who is eighteen years of age or older
55 under the care of a physician.

1 14. "Physician" means an individual licensed to practice medicine in
2 New York state.

3 15. "Qualified individual" means a patient with a terminal illness,
4 who has capacity, has made an informed decision, and has satisfied the
5 requirements of this article in order to obtain a prescription for medi-
6 cation.

7 16. "Self-administer" means a qualified individual's affirmative,
8 conscious, and voluntary act of using medication under this article.

9 17. "Terminal illness" means an illness that will, within reasonable
10 medical judgment, result in death within six months, whether or not
11 treatment is provided.

12 § 2899-e. Request process. 1. Oral and written request. A patient
13 wishing to request medication under this article shall make an oral
14 request and submit a written request to the patient's attending physi-
15 cian.

16 2. Making a written request. A patient may make a written request for
17 and consent to self-administer medication for the purpose of ending his
18 or her life in accordance with this article if the patient:

19 (a) has been determined by the attending physician to have a terminal
20 illness and which has been medically confirmed by a consulting physi-
21 cian; and

22 (b) voluntarily expresses the request for medication.

23 3. Written request signed and witnessed. (a) A written request for
24 medication under this article shall be signed and dated by the patient
25 and witnessed by at least two adults who, in the presence of the
26 patient, attest that to the best of his or her knowledge and belief the
27 patient has capacity, is acting voluntarily, and is not being coerced to
28 sign the request. The written request shall be in substantially the form
29 described in section twenty-eight hundred ninety-nine-k of this article.

30 (b) One of the witnesses shall be an adult who is not:

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

32 (ii) a person who at the time the request is signed would be entitled
33 to any portion of the estate of the patient upon death under any will or
34 by operation of law; or

35 (iii) an owner, operator or employee of a health care facility where
36 the patient is receiving treatment or is a resident.

37 (c) The attending physician, consulting physician and, if applicable,
38 the mental health professional who provides a capacity determination of
39 the patient under this article shall not be a witness.

40 4. No person shall qualify for medical aid in dying under this article
41 solely because of age or disability.

42 § 2899-f. Attending physician responsibilities. 1. The attending
43 physician shall:

44 (a) make the determination of whether a patient has a terminal
45 illness, has capacity, has made an informed decision and has made the
46 request voluntarily and without coercion;

47 (b) inform the patient of the requirement under this article for
48 confirmation by a consulting physician, and refer the patient to a
49 consulting physician upon the patient's request;

50 (c) refer the patient to a mental health professional pursuant to
51 section twenty-eight hundred ninety-nine-i of this article if the
52 attending physician believes that the patient lacks capacity to make an
53 informed decision;

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

1 (e) ensure that the patient is making an informed decision by discuss-
2 ing with the patient: (i) the patient's medical diagnosis and prognosis;
3 (ii) the potential risks associated with taking the medication to be
4 prescribed; (iii) the probable result of taking the medication to be
5 prescribed; (iv) the possibility that the patient may choose to obtain
6 the medication but not take it; and (v) the feasible alternatives or
7 additional treatment opportunities, including but not limited to pallia-
8 tive care and hospice care;

9 (f) discuss with the patient the importance of:

10 (i) having another person present when the patient takes the medica-
11 tion; and

12 (ii) not taking the medication in a public place;

13 (g) inform the patient that he or she may rescind the request for
14 medication at any time and in any manner;

15 (h) fulfill the medical record documentation requirements of section
16 twenty-eight hundred ninety-nine-j of this article; and

17 (i) ensure that all appropriate steps are carried out in accordance
18 with this article before writing a prescription for medication.

19 2. Upon receiving confirmation from a consulting physician under
20 section twenty-eight hundred ninety-nine-h of this article and subject
21 to section twenty-eight hundred ninety-nine-i of this article, the
22 attending physician who makes the determination that the patient has a
23 terminal illness, has capacity and has made a request for medication as
24 provided in this article, may personally, or by referral to another
25 physician, prescribe or order appropriate medication in accordance with
26 the patient's request under this article, and at the patient's request,
27 facilitate the filling of the prescription and delivery of the medica-
28 tion to the patient.

29 3. In accordance with the direction of the prescribing or ordering
30 physician and the consent of the patient, the patient may self-adminis-
31 ter the medication to himself or herself. A health care professional or
32 other person shall not administer the medication to the patient.

33 § 2899-g. Right to rescind request; requirement to offer opportunity
34 to rescind. 1. A patient may at any time rescind his or her request for
35 medication under this article without regard to the patient's capacity.

36 2. A prescription for medication may not be written without the
37 attending physician offering the qualified individual an opportunity to
38 rescind the request.

39 § 2899-h. Consulting physician responsibilities. Before a patient who
40 is requesting medication may receive a prescription for medication under
41 this article, a consulting physician must:

42 1. examine the patient and his or her relevant medical records;

43 2. confirm, in writing, to the attending physician: (a) that the
44 patient has a terminal illness; (b) that the patient is making an
45 informed decision; (c) that the patient has capacity, or provide
46 documentation that the consulting physician has referred the patient for
47 a determination under section twenty-eight hundred ninety-nine-i of this
48 article; and (d) that the patient is acting voluntarily and without
49 coercion.

50 § 2899-i. Referral to mental health professional. 1. If the attending
51 physician or the consulting physician believes that the patient may lack
52 capacity, the attending physician or consulting physician shall refer
53 the patient to a mental health professional for a determination of
54 whether the patient has capacity. The referring physician shall advise
55 the patient that the report of the mental health professional will be
56 provided to the attending physician and the consulting physician.

1 2. A mental health professional who evaluates a patient under this
2 section shall report, in writing, to the attending physician and the
3 consulting physician, his or her conclusions about whether the patient
4 has capacity to make an informed decision. If the mental health profes-
5 sional determines that the patient lacks capacity to make an informed
6 decision, the patient shall not be deemed a qualified individual, and
7 the attending physician shall not prescribe medication to the patient.

8 § 2899-j. Medical record documentation requirements. An attending
9 physician shall document or file the following in the patient's medical
10 record:

11 1. the dates of all oral requests by the patient for medication under
12 this article;

13 2. the written request by the patient for medication under this arti-
14 cle;

15 3. the attending physician's diagnosis and prognosis, determination of
16 capacity, and determination that the patient is acting voluntarily and
17 without coercion, and has made an informed decision;

18 4. if applicable, written confirmation of capacity under section twen-
19 ty-eight hundred ninety-nine-i of this article; and

20 5. a note by the attending physician indicating that all requirements
21 under this article have been met and indicating the steps taken to carry
22 out the request, including a notation of the medication prescribed or
23 ordered.

24 § 2899-k. Form of written request and witness attestation. 1. A
25 request for medication under this article shall be in substantially the
26 following form:

27 REQUEST FOR MEDICATION TO END MY LIFE

28 I, _____, am an adult who has capacity,
29 which means I understand and appreciate the nature and consequences of
30 health care decisions, including the benefits and risks of and alterna-
31 tives to any proposed health care, and to reach an informed decision and
32 to communicate health care decisions to a physician.

33 I am suffering from _____,
34 which my attending physician has determined is a terminal illness, which
35 has been medically confirmed by a consulting physician.

36 I have been fully informed of my diagnosis and prognosis, the nature
37 of the medication to be prescribed and potential associated risks, the
38 expected result, and the feasible alternatives or treatment opportu-
39 nities including palliative care and hospice care.

40 I request that my attending physician prescribe medication that will
41 end my life if I choose to take it, and I authorize my attending physi-
42 cian to contact another physician or any pharmacist about my request.

43 INITIAL ONE:

44 () I have informed or intend to inform my family of my decision.

45 () I have decided not to inform my family of my decision.

46 () I have no family to inform of my decision.

47 I understand that I have the right to rescind this request or decline
48 to use the medication at any time.

49 I understand the importance of this request, and I expect to die if I
50 take the medication to be prescribed. I further understand that although
51 most deaths occur within three hours, my death may take longer, and my
52 attending physician has counseled me about this possibility.

53 I make this request voluntarily, and without being coerced, and I
54 accept full responsibility for my actions.

1 Signed: _____

2 Dated: _____

3 DECLARATION OF WITNESSES

4 I declare that the person signing this "Request for Medication to End
5 My Life":

- 6 (a) is personally known to me or has provided proof of identity;
- 7 (b) voluntarily signed the "Request for Medication to End My Life" in
- 8 my presence or acknowledged to me that he or she signed it; and
- 9 (c) to the best of my knowledge and belief, has capacity and is not
- 10 being coerced to sign the "Request for Medication to End My Life".

11 I am not the attending physician or consulting physician of the person
12 signing the "Request for Medication to End My Life" or, if applicable,
13 the mental health professional who provides a capacity determination of
14 the person signing the "Request for Medication to End My Life" at the
15 time the "Request for Medication to End My Life" was signed.

16 _____
Witness 1, Date:

17 _____
Witness 2, Date:

18 NOTE: Only one of the two witnesses may (i) be a relative (by blood,
19 marriage or adoption) of the person signing the "Request for Medication
20 to End My Life", (ii) be entitled to any portion of the person's estate
21 upon death under any will or by operation of law, or (iii) own, operate,
22 or be employed at a health care facility where the person is receiving
23 treatment or is a resident.

24 2. (a) The "Request for Medication to End My Life" shall be written in
25 the same language as any conversations, consultations, or interpreted
26 conversations or consultations between a patient and at least one of his
27 or her attending or consulting physicians.

28 (b) Notwithstanding paragraph (a) of this subdivision, the written
29 "Request for Medication to End My Life" may be prepared in English even
30 when the conversations or consultations or interpreted conversations or
31 consultations were conducted in a language other than English if the
32 English language form includes an attached declaration by the interpret-
33 er of the conversation or consultation, which shall be in substantially
34 the following form:

35 INTERPRETER'S DECLARATION

36 I, ~~[insert name of interpreter]~~ _____, am fluent in English and
37 ~~[insert target language]~~.

38 On ~~[insert date]~~, at approximately ~~[insert time]~~, I read the "Request
39 for Medication to End My Life" to ~~[name of patient]~~ in ~~[insert target~~
40 language].

41 ~~[Name of patient]~~ affirmed to me that he/she understood the content of
42 the "Request for Medication to End My Life" and affirmed his/her desire
43 to sign the "Request for Medication to End My Life" voluntarily and
44 without coercion and that the request to sign the "Request for Medica-
45 tion to End My Life" followed discussions with his/her attending and
46 consulting physicians.

1 I declare that I am fluent in English and [~~insert target language~~] and
2 further declare under penalty of perjury that the foregoing is true and
3 correct and that false statements made herein are punishable.

4 Executed at [~~insert city, county and state~~] on this [~~insert day of~~
5 month] of [~~insert month~~], [~~insert year~~].

6 _____ [~~Signature of Interpreter~~]

7 _____ [~~Printed name of Interpreter~~]

8 _____ [~~Address of Interpreter~~]

9 _____
10 (c) An interpreter whose services are provided under paragraph (b) of
11 this subdivision shall not (i) be related to the patient who signs the
12 "Request for Medication to End My Life" by blood, marriage or adoption,
13 (ii) be entitled at the time the "Request for Medication to End My Life"
14 is signed by the patient to any portion of the estate of the patient
15 upon death under any will or by operation of law, or (iii) be an owner,
16 operator or employee of a health care facility where the patient is
17 receiving treatment or is a resident.

18 § 2899-l. Protection and immunities. 1. A physician, pharmacist, other
19 health care professional or other person shall not be subject to civil
20 or criminal liability or professional disciplinary action by any govern-
21 ment entity for taking any reasonable good-faith action or refusing to
22 act under this article, including, but not limited to: (a) engaging in
23 discussions with a patient relating to the risks and benefits of end-of-
24 life options in the circumstances described in this article, (b) provid-
25 ing a patient, upon request, with a referral to another health care
26 provider, (c) being present when a qualified individual self-administers
27 medication, (d) refraining from acting to prevent the qualified individ-
28 ual from self-administering such medication, or (e) refraining from
29 acting to resuscitate the qualified individual after he or she self-ad-
30 ministers such medication.

31 2. Nothing in this section shall limit civil or criminal liability for
32 negligence, recklessness or intentional misconduct.

33 § 2899-m. Permissible refusals and prohibitions. 1. (a) A physician,
34 nurse, pharmacist, other health care provider or other person shall not
35 be under any duty, by law or contract, to participate in the provision
36 of medication to a patient under this article.

37 (b) If a health care provider is unable or unwilling to participate in
38 the provision of medication to a patient under this article and the
39 patient transfers care to a new health care provider, the prior health
40 care provider shall transfer or arrange for the transfer, upon request,
41 of a copy of the patient's relevant medical records to the new health
42 care provider.

43 2.(a) A private health care facility may prohibit the prescribing,
44 dispensing, ordering or self-administering of medication under this
45 article while the patient is being treated in or while the patient is
46 residing in the health care facility if:

47 (i) the prescribing, dispensing, ordering or self-administering is
48 contrary to a formally adopted policy of the facility that is expressly
49 based on sincerely held religious beliefs or moral convictions central
50 to the facility's operating principles; and

1 (ii) the facility has informed the patient of such policy prior to
2 admission or as soon as reasonably possible.

3 (b) Where a facility has adopted a prohibition under this subdivision,
4 if a patient who wishes to use medication under this article requests,
5 the patient shall be transferred promptly to another health care facili-
6 ty that is reasonably accessible under the circumstances and willing to
7 permit the prescribing, dispensing, ordering and self-administering of
8 medication under this article with respect to the patient.

9 3. Where a health care facility has adopted a prohibition under this
10 subdivision, any health care provider or employee of the facility who
11 violates the prohibition may be subject to sanctions otherwise available
12 to the facility, provided the facility has previously notified the
13 health care provider or employee of the prohibition in writing.

14 § 2899-n. Relation to other laws and contracts. 1. (a) A patient who
15 requests medication under this article shall not, because of that
16 request, be considered to be a person who is suicidal, and self-adminis-
17 tering medication under this article shall not be deemed to be suicide,
18 for any purpose.

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

24 2. (a) No provision in a contract, will or other agreement, whether
25 written or oral, to the extent the provision would affect whether a
26 person may make or rescind a request for medication or take any other
27 action under this article, shall be valid.

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

31 3. (a) A person and his or her beneficiaries shall not be denied bene-
32 fits under a life insurance policy for actions taken in accordance with
33 this article.

34 (b) The sale, procurement or issuance of a life or health insurance or
35 annuity policy, or the rate charged for a policy may not be conditioned
36 upon or affected by a patient making or rescinding a request for medica-
37 tion under this article.

38 4. An insurer shall not provide any information in communications made
39 to a patient about the availability of medication under this article
40 absent a request by the patient or by his or her attending physician
41 upon the request of such patient. Any communication shall not include
42 both the denial of coverage for treatment and information as to the
43 availability of medication under this article.

44 5. The sale, procurement, or issue of any professional malpractice
45 insurance policy or the rate charged for the policy shall not be condi-
46 tioned upon or affected by whether the insured does or does not take or
47 participate in any action under this article.

48 § 2899-o. Safe disposal of unused medications. The department shall
49 make regulations providing for the safe disposal of unused medications
50 prescribed, dispensed or ordered under this article.

51 § 2899-p. Death certificate. 1. If otherwise authorized by law, the
52 attending physician may sign the qualified individual's death certifi-
53 cate.

54 2. The cause of death listed on a qualified individual's death certifi-
55 cate who dies after self-administering medication under this article
56 will be the underlying terminal illness.

1 § 2899-q. Reporting. 1. The commissioner shall annually review a
2 sample of the records maintained under section twenty-eight hundred
3 ninety-nine-j of this article. The commissioner shall adopt regulations
4 establishing reporting requirements for physicians taking action under
5 this article to determine utilization and compliance with this article.
6 The information collected under this section shall not constitute a
7 public record available for public inspection and shall be confidential
8 and collected and maintained in a manner that protects the privacy of
9 the patient, his or her family, and any health care provider acting in
10 connection with such patient under this article, except that such infor-
11 mation may be disclosed to a governmental agency as authorized or
12 required by law relating to professional discipline, protection of
13 public health or law enforcement.

14 2. The commissioner shall prepare a report annually containing rele-
15 vant data regarding utilization and compliance with this article and
16 shall post such report on the department's website.

17 § 2899-r. Penalties. 1. Nothing in this article shall be construed to
18 limit professional discipline or civil liability resulting from conduct
19 in violation of this article, negligent conduct, or intentional miscon-
20 duct by any person.

21 2. Conduct in violation of this article shall be subject to applicable
22 criminal liability under state law, including, where appropriate and
23 without limitation, offenses constituting homicide, forgery, coercion,
24 and related offenses, or federal law.

25 § 2899-s. Severability. If any provision of this article or any appli-
26 cation of any provision of this article, is held to be invalid, or to
27 violate or be inconsistent with any federal law or regulation, that
28 shall not affect the validity or effectiveness of any other provision of
29 this article, or of any other application of any provision of this arti-
30 cle, which can be given effect without that provision or application;
31 and to that end, the provisions and applications of this article are
32 severable.

33 § 3. This act shall take effect immediately.