STATE OF NEW YORK

2445--A

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sens. HOYLMAN-SIGAL, SCARCELLA-SPANTON, BRISPORT, BROUK, COMRIE, COONEY, FERNANDEZ, GIANARIS, GONZALEZ, HARCKHAM, JACKSON, KENNEDY, KRUEGER, MYRIE, RAMOS, RIVERA, SALAZAR, SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, do enact as follows:

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

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

ARTICLE 28-F

MEDICAL AID IN DYING

Section 2899-d. Definitions.

2899-e. Request process.

2899-f. Attending physician responsibilities.

2899-g. Right to rescind request; requirement to offer opportunity to rescind.

2899-h. Consulting physician responsibilities.

2899-i. Referral to mental health professional.

2899-j. Medical record documentation requirements.

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

2899-l. Protection and immunities.

2899-m. Permissible refusals and prohibitions.

2899-n. Relation to other laws and contracts.

2899-o. Safe disposal of unused medications.

2899-p. Death certificate.

2899-q. Reporting.

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

LBD02188-04-3

2899-r. Penalties.
2899-s. Severability.

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

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 illness or condition.

3. "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, including medical aid in dying, and to reach an informed decision.

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

5. "Health care facility" means a general hospital, nursing home, or residential health care facility as defined in section twenty-eight hundred one of this chapter, or a hospice as defined in section four thousand two of this chapter; provided that for the purposes of section twenty eight hundred ninety-nine-m of this article, "hospice" shall refer only to a facility providing in-patient hospice care or a hospice residence.

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

7. "Informed decision" means a decision by a patient who is suffering from a terminal illness or condition to request and obtain a prescription for medication that the patient may self-administer to end the patient's life that is based on an understanding and acknowledgment of the relevant facts and that is made voluntarily, of the patient's own volition and without coercion, after being fully informed of:

(a) the patient'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 the patient may choose not to obtain the medication, or may obtain the medication but may decide not to self-administer it; and

(e) the feasible alternatives and appropriate treatment options, including but not limited to palliative care and hospice care.

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

9. "Medically confirmed" means the medical opinion of the attending physician that a patient has a terminal illness or condition and has made an informed decision which has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

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

11. "Mental health professional" means a licensed physician, who is a diplomate or eligible to be certified by a national board of psychiatry, psychiatric nurse practitioner, or psychologist, licensed or certified under the education law acting within his or her scope of practice and who is qualified, by training and experience, certification, or board certification or eligibility, to make a determination under section twenty-eight hundred ninety-nine-i of this article.

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

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

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

15. "Qualified individual" means a patient with a terminal illness or condition, who has decision-making capacity, has made an informed decision, and has satisfied the requirements of this article in order to obtain a prescription for medication.

16. "Self-administer" means a qualified individual's affirmative, conscious, and voluntary act to ingest medication under this article. Self-administration does not include lethal injection or lethal infusion.

17. "Terminal illness or condition" means an incurable and irreversible illness or condition that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

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

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

(a) has been determined by the attending physician to have a terminal illness or condition and which has been medically confirmed by a consulting physician; and

(b) based on an informed decision, expresses voluntarily, of the patient's own volition and without coercion the request for medication to end his or her life.

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

(b) Both witnesses shall be adults who are not:

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

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

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

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

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

5. Requests for a medical aid-in-dying prescription must be made by the qualified individual and may not be made by any other individual, including the qualified individual's health care agent, or other agent or surrogate, or via advance healthcare directive.

§ 2899-f. Attending physician responsibilities. 1. The attending physician shall examine the patient and his or her relevant medical records and:

(a) make a determination of whether a patient has a terminal illness or condition, has decision-making capacity, has made an informed decision and has made the request voluntarily of the patient's own volition and without coercion;

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

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

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

(e) ensure that the patient is making an informed decision by discussing with the patient: (i) the patient's medical diagnosis and prognosis; (ii) the potential risks associated with taking the medication to be prescribed; (iii) the probable result of taking the medication to be prescribed; (iv) the possibility that the patient may choose to obtain the medication but not take it; (v) the feasible alternatives and appropriate treatment options, including but not limited to (1) information and counseling regarding palliative and hospice care and end-of-life options appropriate to the patient, including but not limited to: the range of options appropriate to the patient; the prognosis, risks and benefits of the various options; and the patient's legal rights to comprehensive pain and symptom management at the end of life; and (2) information regarding treatment options appropriate to the patient, including the prognosis, risks and benefits of the various treatment options;

(f) offer to refer the patient for other appropriate treatment options, including but not limited to palliative care and hospice care;

(g) provide health literate and culturally appropriate educational material regarding hospice and palliative care that has been prepared by the department in consultation with representatives of hospice and palliative care providers from all regions of New York state, and that is available on the department's website for access and download, provided, however, an otherwise eligible patient cannot be denied care under this article if these materials are not developed by the effective date of this article;

(h) discuss with the patient the importance of:

(i) having another person present when the patient takes the medication and the restriction that no person other than the patient may administer the medication;

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

(iii) informing the patient's family of the patient's decision to request and take medication that will end the patient's life; a patient who declines or is unable to notify family shall not have his or her request for medication denied for that reason;

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

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

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

2. Upon receiving confirmation from a consulting physician under section twenty-eight hundred ninety-nine-h of this article and subject to section twenty-eight hundred ninety-nine-i of this article, the attending physician who determines that the patient has a terminal illness or condition, has decision-making capacity and has made a voluntary request for medication as provided in this article, may personally, or by referral to another physician, prescribe or order appropriate medication in accordance with the patient's request under this article, and at the patient's request, facilitate the filling of the prescription and delivery of the medication to the patient.

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

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

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

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

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

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

§ 2899-i. Referral to mental health professional. 1. If the attending physician or the consulting physician determines that the patient may lack decision-making capacity to make an informed decision due to a condition, including, but not limited to, a psychiatric or psychological disorder, or other condition causing impaired judgement, the attending physician or consulting physician shall refer the patient to a mental health professional for a determination of whether the patient has decision-making capacity to make an informed decision. The referring physician shall advise the patient that the report of the mental health professional will be provided to the attending physician and the consulting physician.

2. A mental health professional who evaluates a patient under this section shall report, in writing, to the attending physician and the consulting physician, his or her independent conclusions about whether the patient has decision-making capacity to make an informed decision, provided that if, at the time of the report, the patient has not yet been referred to a consulting physician, then upon referral the attending physician shall provide the consulting physician with a copy of the mental health professional's report. If the mental health professional determines that the patient lacks decision-making capacity to make an

informed decision, the patient shall not be deemed a qualified individual, and the attending physician shall not prescribe medication to the patient.

3. A determination made pursuant to this section that an adult patient lacks decision-making capacity shall not be construed as a finding that the patient lacks decision-making capacity for any other purpose.

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

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

2. the written request by the patient for medication under this article, including the declaration of witnesses and interpreter's declaration, if applicable;

3. the attending physician's diagnosis and prognosis, determination of decision-making capacity, and determination that the patient is acting voluntarily, of the patient's own volition and without coercion, and has made an informed decision;

4. if applicable, written confirmation of decision-making capacity under section twenty-eight hundred ninety-nine-i of this article; and

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

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

REQUEST FOR MEDICATION TO END MY LIFE

I, _____, am an adult who has decision-making capacity, which means I understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, and to reach an informed decision and to communicate health care decisions to a physician.

I have been diagnosed with _____ (insert diagnosis), which my attending physician has determined is a terminal illness or condition, which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis and prognosis, the nature of the medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives and treatment options including but not limited to palliative care and hospice care.

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

INITIAL ONE:

(___) I have informed or intend to inform one or more members of my family of my decision.

(___) I have decided not to inform any member of 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 or decline to use the medication at any time.

I understand the importance of this request, and I expect to die if 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 attending physician has counseled me about this possibility.

I make this request voluntarily, of my own volition and without being coerced, and I accept full responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

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

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

(b) voluntarily signed the "Request for Medication to End My Life" in my presence or acknowledged to me that he or she signed it; and

(c) to the best of my knowledge and belief, has decision-making capacity and is making the "Request for Medication to End My Life" voluntarily, of his or her own volition and is not being coerced to sign the "Request for Medication to End My Life".

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

I further declare under penalty of perjury that the statements made herein are true and correct and false statements made herein are punishable.

_____ Witness 1, Date: _____

_____ (Printed name)

_____ (Address)

_____ (Telephone number)

I further declare that I am not (i) related to the above-named patient by blood, marriage or adoption, (ii) entitled at the time the patient signed the "Request for Medication to End My Life" to any portion of the estate of the patient upon his/her death under any will or by operation of law, or (iii) an owner, operator, employee or independent contractor of a health care facility where the patient is receiving treatment or is a resident.

_____ Witness 2, Date: _____

_____ (Printed name)

_____ (Address)

_____ (Telephone number)

I further declare that I am not (i) related to the above-named patient by blood, marriage or adoption, (ii) entitled at the time the patient

signed the "Request for Medication to End My Life" to any portion of the estate of the patient upon his/her death under any will or by operation of law, or (iii) an owner, operator, employee or independent contractor of a health care facility where the patient is receiving treatment or is a resident.

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

(b) Notwithstanding paragraph (a) of this subdivision, the written "Request for Medication to End My Life" may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English or with auxiliary aids or hearing, speech or visual aids, if the English language form includes an attached declaration by the interpreter of the conversation or consultation, which shall be in substantially the following form:

INTERPRETER'S DECLARATION

I, (insert name of interpreter) ,(mark as applicable):

( ) for a patient whose conversations or consultations or interpreted conversations or consultations were conducted in a language other than English and the "Request for Medication to End My Life" is in English: I declare that I am fluent in English and (insert target language). I have the requisite language and interpreter skills to be able to interpret effectively, accurately and impartially information shared and communications between the attending or consulting physician and (name of patient).

I certify that on (insert date), at approximately (insert time), I interpreted the communications and information conveyed between the physician and (name of patient) as accurately and completely to the best of my knowledge and ability and read the "Request for Medication to End My Life" to (name of patient) in (insert target language).

(Name of patient) affirmed to me his/her desire to sign the "Request for Medication to End My Life" voluntarily, of (name of patient)'s own volition and without coercion.

( ) for a patient with a speech, hearing or vision disability: I declare that I have the requisite language, reading and/or interpreter skills to communicate with the patient and to be able to read and/or interpret effectively, accurately and impartially information shared and communications that occurred on (insert date) between the attending or consulting physician and (name of patient).

I certify that on (insert date), at approximately (insert time), I read and/or interpreted the communications and information conveyed between the physician and (name of patient) impartially and as accurately and completely to the best of my knowledge and ability and, where needed for effective communication, read or interpreted the "Request for Medication to End my Life" to (name of patient).

(Name of patient) affirmed to me his/her desire to sign the "Request for Medication to End My Life" voluntarily, of (name of patient)'s own volition and without coercion.

I further declare under penalty of perjury that (i) the foregoing is true and correct; (ii) I am not (A) related to (name of patient) by blood, marriage or adoption, (B) entitled at the time (name of patient)

signed the "Request for Medication to End My Life" to any portion of the estate of (name of patient) upon his/her death under any will or by operation of law, or (C) an owner, operator, employee or independent contractor of a health care facility where (name of patient) is receiving treatment or is a resident, except that if I am an employee or independent contractor at such health care facility, providing interpreter services is part of my job description at such health care facility or I have been trained to provide interpreter services and (name of patient) requested that I provide interpreter services to him/her for the purposes stated in this Declaration; and (iii) false statements made herein are punishable.

Executed at (insert city, county and state) on this (insert day of month) of (insert month), (insert year).

_____ (Signature of Interpreter)

_____ (Printed name of Interpreter)

_____ (ID # or Agency Name)

_____ (Address of Interpreter)

_____ (Language Spoken by Interpreter)

(c) An interpreter whose services are provided under paragraph (b) of this subdivision shall not (i) be related to the patient who signs the "Request for Medication to End My Life" by blood, marriage or adoption, (ii) be entitled at the time the "Request for Medication to End My Life" is signed by the patient to any portion of the estate of the patient upon death under any will or by operation of law, or (iii) be an owner, operator, employee or independent contractor of a health care facility where the patient is receiving treatment or is a resident; provided that an employee or independent contractor whose job description at the health care facility includes interpreter services or who is trained to provide interpreter services and who has been requested by the patient to serve as an interpreter under this article shall not be prohibited from serving as a witness under this article.

§ 2899-l. Protection and immunities. 1. A physician, pharmacist, other health care professional or other person shall not be subject to civil or criminal liability or professional disciplinary action by any government entity for taking any reasonable good-faith action or refusing to act under this article, including, but not limited to: (a) engaging in discussions with a patient relating to the risks and benefits of end-of-life options in the circumstances described in this article, (b) providing a patient, upon request, with a referral to another health care provider, (c) being present when a qualified individual self-administers medication, (d) refraining from acting to prevent the qualified individual from self-administering such medication, or (e) refraining from acting to resuscitate the qualified individual after he or she self-administers such medication.

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

§ 2899-m. Permissible refusals and prohibitions. 1. (a) A physician, nurse, pharmacist, other health care provider or other person shall not

be under any duty, by law or contract, to participate in the provision of medication to a patient under this article.

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

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

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

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

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

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

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

(b) Action taken in accordance with this article shall not be construed for any purpose to constitute suicide, assisted suicide, attempted suicide, promoting a suicide attempt, euthanasia, mercy killing, or homicide under the law, including as an accomplice or accessory or otherwise.

2. (a) 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 or take any other action under this article, shall be valid.

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

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

(b) Notwithstanding the provisions of any law or contract, the sale, procurement or issuance of a life or health insurance or annuity policy, or the rate charged for a policy, shall not be conditioned upon or affected by a patient making or rescinding a request for medication under this article.

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

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

§ 2899-o. Safe disposal of unused medications. A person who has custody or control of any unused medication prescribed under this article after the death of the qualified individual shall personally deliver the unused medication for disposal to the nearest qualified facility that properly disposes of controlled substances or shall dispose of it by lawful means in accordance with regulations made by the commissioner, regulations made by or guidelines of the commissioner of education, or guidelines of a federal drug enforcement administration approved take-back program. A qualified facility that properly disposes of controlled substances shall accept and dispose of any medication delivered to it as provided hereunder regardless of whether such medication is a controlled substance. The commissioner may make regulations as may be appropriate for the safe disposal of unused medications prescribed, dispensed or ordered under this article as provided in this section.

§ 2899-p. Death certificate. 1. If otherwise authorized 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 dies after self-administering medication under this article will be the underlying terminal illness or condition.

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

2. The commissioner shall prepare a report annually containing relevant data regarding utilization and compliance with this article and shall send such report to the legislature, and post such report on the department's website.

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

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

§ 2899-s. Severability. If any provision of this article or any application of any provision of this article, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this article, or of any other application of any provision of this article, which can be given effect without that provision or application; and to that end, the provisions and applications of this article are severable.

§ 3. This act shall take effect immediately.