

SENATE, No. 1072

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 22, 2018

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

“Aid in Dying for the Terminally Ill Act”; permits qualified terminally ill patient to self-administer medication to end life in humane and dignified manner.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning aid in dying for the terminally ill, supplementing
2 Titles 45 and 26 of the Revised Statutes, and amending P.L.1991,
3 c.270 and N.J.S.2C:11-6.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through 21 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) shall be known and may
10 be cited as the “Aid in Dying for the Terminally Ill Act.”

11
12 2. (New section) The Legislature finds and declares that:

13 a. Recognizing New Jersey’s long-standing commitment to
14 individual dignity, informed consent, and the fundamental right of
15 competent adults to make health care decisions about whether to
16 have life-prolonging medical or surgical means or procedures
17 provided, withheld, or withdrawn, this State affirms the right of a
18 qualified terminally ill patient, protected by appropriate safeguards,
19 to obtain medication that the patient may choose to self-administer
20 in order to bring about the patient’s humane and dignified death;

21 b. Statistics from other states that have enacted laws to provide
22 compassionate aid in dying for terminally ill patients indicate that
23 the great majority of patients who requested medication under the
24 laws of those states, including more than 90% of patients in Oregon
25 since 1998 and between 72% and 86% of patients in Washington in
26 each year since 2009, were enrolled in hospice care at the time of
27 death, suggesting that those patients had availed themselves of
28 available treatment and comfort care options available to them at
29 the time they requested compassionate aid in dying;

30 c. The public welfare requires a defined and safeguarded
31 process in order to effectuate the purposes of this act, which will:

32 (1) guide health care providers and patient advocates who
33 provide support to dying patients;

34 (2) assist capable, terminally ill patients who request
35 compassionate aid in dying;

36 (3) protect vulnerable adults from abuse; and

37 (4) ensure that the process is entirely voluntary on the part of all
38 participants, including patients and those health care providers that
39 are providing care to dying patients; and

40 d. This act is in the public interest and is necessary for the
41 welfare of the State and its residents.

42
43 3. (New section) As used in P.L. , c. (C.) (pending
44 before the Legislature as this bill):

45 “Adult” means an individual who is 18 years of age or older.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 “Attending physician” means a physician licensed pursuant to
2 Title 45 of the Revised Statutes who has primary responsibility for
3 the treatment and care of a qualified terminally ill patient and
4 treatment of the patient's illness, disease, or condition.

5 “Capable” means having the capacity to make health care
6 decisions and to communicate them to a health care provider,
7 including communication through persons familiar with the
8 patient’s manner of communicating if those persons are available.

9 “Consulting physician” means a physician licensed pursuant to
10 Title 45 of the Revised Statutes who is qualified by specialty or
11 experience to make a professional diagnosis and prognosis
12 regarding a patient's illness, disease, or condition.

13 “Counseling” means one or more consultations as necessary
14 between a psychiatrist or psychologist licensed pursuant to Title 45
15 of the Revised Statutes and a patient for the purpose of determining
16 that the patient is capable and not suffering from a psychiatric or
17 psychological disorder or depression causing impaired judgment.

18 “Health care facility” means a health care facility licensed
19 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

20 “Health care professional” means a person licensed to practice a
21 health care profession pursuant to Title 45 of the Revised Statutes.

22 “Health care provider” means a health care professional or health
23 care facility.

24 “Informed decision” means a decision by a qualified terminally
25 ill patient to request and obtain a prescription for medication that
26 the patient may choose to self-administer to end the patient’s life in
27 a humane and dignified manner, which is based on an appreciation
28 of the relevant facts and after being fully informed by the attending
29 physician of:

- 30 (1) the patient’s medical diagnosis;
31 (2) the patient’s prognosis;
32 (3) the potential risks associated with taking the medication to
33 be prescribed;
34 (4) the probable result of taking the medication to be prescribed;
35 and
36 (5) the feasible alternatives to taking the medication, including,
37 but not limited to, additional treatment opportunities, palliative
38 care, comfort care, hospice care, and pain control.

39 “Medically confirmed” means that the medical opinion of the
40 attending physician has been confirmed pursuant to section 7 of
41 P.L. , c. (C.) (pending before the Legislature as this bill)
42 by a consulting physician who has examined the patient and the
43 patient's relevant medical records.

44 “Participate in this act” means to perform the duties of a health
45 care provider in accordance with the provisions of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), but does
47 not include: making an initial determination that a patient is
48 terminally ill and informing the patient of the medical prognosis;

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1 providing information about the provisions of P.L. , c. (C.)
2 (pending before the Legislature as this bill) to a patient upon the
3 patient's request; or providing a patient, upon the patient's request,
4 with a referral to another health care provider.

5 "Patient" means a person who is under the care of a physician.

6 "Qualified terminally ill patient" means a capable adult who is a
7 resident of New Jersey and has satisfied the requirements to obtain
8 a prescription for medication pursuant to P.L. , c. (C.)
9 (pending before the Legislature as this bill). A person shall not be
10 considered to be a qualified terminally ill patient solely because of
11 the person's age or disability or a diagnosis of any specific illness,
12 disease, or condition.

13 "Self-administer" means a qualified terminally ill patient's act of
14 ingesting medication that has been prescribed pursuant to
15 P.L. , c. (C.) (pending before the Legislature as this bill).

16 "Terminally ill" means that the patient is in the terminal stage of
17 an irreversibly fatal illness, disease, or condition with a prognosis,
18 based upon reasonable medical certainty, of a life expectancy of six
19 months or less.

20

21 4. (New section) A terminally ill patient may make a written
22 request for medication that the patient may choose to self-
23 administer pursuant to P.L. , c. (C.) (pending before the
24 Legislature as this bill), if the patient:

25 a. is an adult resident of New Jersey as demonstrated pursuant
26 to section 11 of P.L. , c. (C.) (pending before the
27 Legislature as this bill);

28 b. is capable and has been determined by the patient's
29 attending physician and a consulting physician to be terminally ill;
30 and

31 c. has voluntarily expressed a wish to receive a prescription for
32 medication pursuant to P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34

35 5. (New section) a. A valid written request for medication
36 under P.L. , c. (C.) (pending before the Legislature as this
37 bill) shall be in substantially the form set forth in section 20 of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 signed and dated by the patient and witnessed by at least two
40 individuals who, in the patient's presence, attest that, to the best of
41 their knowledge and belief, the patient is capable and is acting
42 voluntarily to sign the request.

43 b. At least one of the witnesses shall be a person who is not:

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

45 (2) at the time the request is signed, entitled to any portion of
46 the patient's estate upon the patient's death under any will or by
47 operation of law; and

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

3 c. The patient's attending physician at the time the request is
4 signed shall not serve as a witness.

5 d. If, at the time the written request is made, the patient is a
6 resident of a long-term care facility licensed pursuant to P.L.1971,
7 c.136 (C.26:2H-1 et seq.), one of the witnesses shall be an
8 individual designated by the facility.

9

10 6. (New section) a. The attending physician shall ensure that
11 all appropriate steps are carried out in accordance with the
12 provisions of P.L. , c. (C.) (pending before the Legislature
13 as this bill) before writing a prescription for medication that a
14 qualified terminally ill patient may choose to self-administer
15 pursuant to P.L. , c. (C.) (pending before the Legislature as
16 this bill), including such actions as are necessary to:

17 (1) make the initial determination of whether a patient is
18 terminally ill, is capable, and has voluntarily made the request for
19 medication pursuant to P.L. , c. (C.) (pending before the
20 Legislature as this bill);

21 (2) require that the patient demonstrate New Jersey residency
22 pursuant to section 11 of P.L. , c. (C.) (pending before the
23 Legislature as this bill);

24 (3) inform the patient of: the patient's medical diagnosis and
25 prognosis; the potential risks associated with taking the medication
26 to be prescribed; the probable result of taking the medication to be
27 prescribed; and the feasible alternatives to taking the medication,
28 including, but not limited to, additional treatment opportunities,
29 palliative care, comfort care, hospice care, and pain control;

30 (4) refer the patient to a consulting physician for medical
31 confirmation of the diagnosis and prognosis, and for a
32 determination that the patient is capable and acting voluntarily;

33 (5) refer the patient for counseling, if appropriate, pursuant to
34 section 8 of P.L. , c. (C.) (pending before the Legislature
35 as this bill);

36 (6) recommend that the patient participate in a consultation
37 concerning additional treatment opportunities, palliative care,
38 comfort care, hospice care, and pain control options for the patient,
39 and provide the patient with a referral to a health care professional
40 qualified to discuss these options with the patient;

41 (7) recommend that the patient notify the patient's next of kin of
42 the patient's decision to request the medication;

43 (8) advise the patient about the importance of having another
44 person present if and when the patient chooses to self-administer
45 medication prescribed under P.L. , c. (C.) (pending before
46 the Legislature as this bill) and of not taking the medication in a
47 public place;

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1 (9) inform the patient of the patient's opportunity to rescind the
2 request at any time and in any manner, and offer the patient an
3 opportunity to rescind the request at the time the patient makes a
4 second oral request as provided in section 10 of
5 P.L. , c. (C.) (pending before the Legislature as this bill);

6 (10) verify, immediately before writing the prescription for
7 medication under P.L. , c. (C.) (pending before the
8 Legislature as this bill), that the patient is making an informed
9 decision to request the medication; and

10 (11) fulfill the medical record documentation requirements of
11 P.L. , c. (C.) (pending before the Legislature as this bill).

12 b. The attending physician shall:

13 (1) dispense medication directly, including ancillary medication
14 intended to facilitate the desired effect to minimize the patient's
15 discomfort, if the attending physician is authorized under law to
16 dispense and has a current federal Drug Enforcement
17 Administration certificate of registration; or

18 (2) with the patient's written consent:

19 (a) contact a pharmacist to inform the latter of the prescription;
20 and

21 (b) transmit the written prescription personally, by mail, or by
22 permissible electronic communication to the pharmacist, who shall
23 dispense the medication directly to either the patient, the attending
24 physician, or an expressly identified agent of the patient.

25 Medication dispensed pursuant to this subsection shall not be
26 dispensed to the patient by mail or other form of courier.

27

28 7. (New section) A patient shall not be considered a qualified
29 terminally ill patient until a consulting physician has:

30 a. examined that patient and the patient's relevant medical
31 records;

32 b. confirmed, in writing, the attending physician's diagnosis
33 that the patient is terminally ill; and

34 c. verified that the patient is capable, is acting voluntarily, and
35 has made an informed decision to request medication that, if
36 prescribed, the patient may choose to self-administer pursuant to
37 P.L. , c. (C.) (pending before the Legislature as this bill).

38

39 8. (New section) a. If, in the medical opinion of the attending
40 physician or the consulting physician, a patient requesting
41 medication that the patient may choose to self-administer pursuant
42 to P.L. , c. (C.) (pending before the Legislature as this bill)
43 may not be capable because the patient may have a psychiatric or
44 psychological disorder or depression that causes impaired judgment,
45 the physician shall refer the patient to a licensed psychiatrist or
46 psychologist for counseling to determine whether the patient is
47 capable. A consulting physician who refers a patient to a licensed
48 psychiatrist or psychologist for counseling pursuant to this

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1 subsection shall provide written notice of the referral to the
2 attending physician.

3 b. If a patient has been referred to a licensed psychiatrist or
4 psychologist for counseling pursuant to subsection a. of this section,
5 the attending physician shall not write a prescription for medication
6 that the patient may choose to self-administer pursuant to
7 P.L. , c. (C.) (pending before the Legislature as this bill)
8 unless the attending physician has been notified in writing by the
9 licensed psychiatrist or psychologist of that individual's
10 determination that the patient is capable.

11
12 9. (New section) A qualified terminally ill patient shall not
13 receive a prescription for medication that the patient may choose to
14 self-administer pursuant to P.L. , c. (C.) (pending before
15 the Legislature as this bill) unless the attending physician has
16 recommended that the patient notify the patient's next of kin of the
17 patient's request for medication, except that a patient who declines
18 or is unable to notify the patient's next of kin shall not have the
19 request for medication denied for that reason.

20
21 10. (New section) a. In order to receive a prescription for
22 medication that a qualified terminally ill patient may choose to self-
23 administer pursuant to P.L. , c. (C.) (pending before the
24 Legislature as this bill), the patient shall make two oral requests and
25 one written request for the medication to the patient's attending
26 physician, subject to the following requirements:

27 (1) at least 15 days shall elapse between the initial oral request
28 and the second oral request;

29 (2) at the time the patient makes a second oral request, the
30 attending physician shall offer the patient an opportunity to rescind
31 the request;

32 (3) the patient may submit the written request to the attending
33 physician when the patient makes the initial oral request or at any
34 time thereafter;

35 (4) the written request shall meet the requirements of section 5
36 of P.L. , c. (C.) (pending before the Legislature as this
37 bill);

38 (5) at least 15 days shall elapse between the patient's initial oral
39 request and the writing of a prescription pursuant to
40 P.L. , c. (C.) (pending before the Legislature
41 as this bill) ; and

42 (6) at least 48 hours shall elapse between the attending
43 physician's receipt of the patient's written request and the writing
44 of a prescription pursuant to P.L. , c. (C.) (pending
45 before the Legislature as this bill).

46 b. A qualified terminally ill patient may rescind the request at
47 any time and in any manner without regard to the patient's mental
48 state.

1 c. At the time the patient makes an initial oral request for
2 medication that the patient may choose to self-administer pursuant
3 to P.L. , c. (C.) (pending before the Legislature as this
4 bill), the patient's attending physician shall recommend to the
5 patient that the patient participate in a consultation concerning
6 additional treatment opportunities, palliative care, comfort care,
7 hospice care, and pain control options, and provide the patient with
8 a referral to a health care professional qualified to discuss these
9 options with the patient. If the patient chooses to participate in such
10 consultation, the consultation shall include, to the extent the patient
11 consents to share such information, consideration of: the patient's
12 terminal illness; the patient's prognosis; current and past courses of
13 treatment prescribed for the patient in connection with the patient's
14 terminal illness, including the results of any such treatment; and any
15 palliative care, comfort care, hospice care, and pain control
16 treatment the patient is currently receiving or has received in the
17 past.

18 d. The attending physician shall ensure that the following items
19 are included in the patient's medical record:

20 (1) the determination that the patient is a qualified terminally ill
21 patient and the basis for that determination;

22 (2) all oral and written requests by the patient to the attending
23 physician for medication that the patient may choose to self-
24 administer pursuant to P.L. , c. (C.) (pending before the
25 Legislature as this bill);

26 (3) the attending physician's diagnosis and prognosis, and
27 determination that the patient is capable, is acting voluntarily, and
28 has made an informed decision;

29 (4) the consulting physician's diagnosis and prognosis, and
30 verification that the patient is capable, is acting voluntarily, and has
31 made an informed decision;

32 (5) if applicable, a report of the determination made by a
33 licensed psychiatrist or psychologist as to whether the patient is
34 capable pursuant to section 8 of P.L. , c. (C.) (pending
35 before the Legislature as this bill);

36 (6) the attending physician's recommendation that the patient
37 participate in a consultation concerning additional treatment
38 opportunities, palliative care, comfort care, hospice care, and pain
39 control options; the referral provided to the patient with a referral to
40 a health care professional qualified to discuss these options with the
41 patient; an indication as to whether the patient participated in the
42 consultation; and an indication as to whether the patient is currently
43 receiving palliative care, comfort care, hospice care, or pain control
44 treatments;

45 (7) the attending physician's offer to the patient to rescind the
46 patient's request at the time of the patient's second oral request; and

47 (8) a note by the attending physician indicating that all
48 requirements under P.L. , c. (C.) (pending before the

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1 Legislature as this bill) have been met and indicating the steps taken
2 to carry out the patient's request for medication, including a
3 notation of the medication prescribed.

4

5 11. (New section) A request for medication pursuant to
6 P.L. , c. (C.) (pending before the Legislature as this bill)
7 shall not be granted unless the qualified terminally ill patient has
8 documented that individual's New Jersey residency by furnishing to
9 the attending physician a copy of one of the following:

10 a. a driver's license or non-driver identification card issued by
11 the New Jersey Motor Vehicle Commission;

12 b. proof that the person is registered to vote in New Jersey;

13 c. a New Jersey resident gross income tax return filed for the
14 most recent tax year; or

15 d. any other government record that the attending physician
16 reasonably believes to demonstrate the individual's current
17 residency in this State.

18

19 12. (New section) Any medication dispensed pursuant to
20 P.L. , c. (C.) (pending before the Legislature as this bill)
21 that a qualified terminally ill patient chooses not to self-administer
22 shall be disposed of by lawful means.

23

24 13. (New section) a. The Director of the Division of Consumer
25 Affairs in the Department of Law and Public Safety shall require
26 that a health care professional report the following information to
27 the division on a form and in a manner prescribed by regulation of
28 the director, in consultation with the Commissioner of Health:

29 (1) No later than 30 days after the dispensing of medication
30 pursuant to P.L. , c. (C.) (pending before the Legislature as
31 this bill), the health care professional who dispensed the medication
32 shall file a copy of the dispensing record with the division, and shall
33 otherwise facilitate the collection of such information as the
34 director may require regarding compliance with P.L. , c. (C.)
35 (pending before the Legislature as this bill).

36 (2) No later than 30 days after the date of the qualified
37 terminally ill patient's death, the attending physician shall transmit
38 to the division such documentation of the patient's death as the
39 director shall require.

40 (3) In the event that anyone required to report information to the
41 division pursuant to P.L. , c. (C.) (pending before the
42 Legislature as this bill) provides an inadequate or incomplete report,
43 the division shall contact the person to request a complete report.

44 (4) To the maximum extent practicable and consistent with the
45 purposes of this section, the division shall seek to coordinate the
46 process for reporting information pursuant to this subsection with
47 the process for reporting prescription monitoring information by a

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1 pharmacy permit holder pursuant to sections 25 through 30 of
2 P.L.2007, c.244 (C.45:1-45 through C.45:1-50).

3 b. Any information collected pursuant to subsection a. of this
4 section that contains material or data that could be used to identify
5 an individual patient or health care professional shall not be
6 included under materials available to public inspection pursuant to
7 P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5
8 et al.).

9 c. The division shall prepare and make available to the public
10 on its Internet website an annual statistical report of information
11 collected pursuant to subsection a. of this section.

12

13 14. (New section) a. A provision in a contract, will, insurance
14 policy, annuity, or other agreement, whether written or oral, made
15 on or after the effective date of P.L. , c. (C.) (pending
16 before the Legislature as this bill), shall not be valid to the extent
17 that the provision would condition or restrict a person's decision to
18 make or rescind a request for medication pursuant to
19 P.L. , c. (C.) (pending before the Legislature as this bill).

20 b. An obligation owing under a contract, will, insurance policy,
21 annuity, or other agreement, made before the effective date of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 shall not be affected by: the provisions of P.L. , c. (C.)
24 (pending before the Legislature as this bill); a person's making or
25 rescinding a request for medication pursuant to P.L. , c. (C.)
26 (pending before the Legislature as this bill); or any other action
27 taken pursuant to P.L. , c. (C.) (pending before the
28 Legislature as this bill).

29 c. On or after the effective date of P.L. , c. (C.)
30 (pending before the Legislature as this bill), procurement or
31 issuance of a life, health, or accident insurance policy or annuity, or
32 the premium or rate charged for the policy or annuity, shall not be
33 conditioned upon or otherwise take into account the making or
34 rescinding of a request for medication pursuant to
35 P.L. , c. (C.) (pending before the Legislature as this bill) by
36 any person.

37

38 15. (New section) Nothing in P.L. , c. (C.) (pending
39 before the Legislature as this bill) shall be construed to:

40 a. authorize a physician or any other person to end a patient's
41 life by lethal injection, active euthanasia, or mercy killing, or any
42 act that constitutes assisted suicide under any law of this State; or

43 b. lower the applicable standard of care to be provided by a
44 health care professional who participates in P.L. , c. (C.)
45 (pending before the Legislature as this bill).

46

47 16. (New section) A person shall not be authorized to take any
48 action on behalf of a patient for the purposes of P.L. , c. (C.)

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1 (pending before the Legislature as this bill) by virtue of that
2 person's designation as a guardian pursuant to N.J.S.3B:12-1 et
3 seq., a conservator pursuant to N.J.S.3B:13A-1 et seq., a health care
4 representative pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.), or
5 a patient's representative pursuant to P.L.2011, c.145 (C.26:2H-129
6 et al.), except for communicating the patient's health care decisions
7 to a health care provider if the patient so requests.

8
9 17. (New section) a. (1) Except as provided in sections 18 and
10 19 of P.L. , c. (C.) (pending before the Legislature as this
11 bill), a person shall not be subject to civil or criminal liability or
12 professional disciplinary action for any action taken in compliance
13 with the provisions of P.L. , c. (C.) (pending before the
14 Legislature as this bill), including being present when a qualified
15 terminally ill patient self-administers medication prescribed
16 pursuant to P.L. , c. (C.) (pending before the Legislature as
17 this bill). A person who substantially complies in good faith with
18 the provisions of P.L. , c. (C.) (pending before the
19 Legislature as this bill) shall be deemed to be in compliance with its
20 provisions.

21 (2) Any action taken in accordance with the provisions of
22 P.L. , c. (C.) (pending before the Legislature as this bill)
23 shall not constitute patient abuse or neglect, suicide, assisted
24 suicide, mercy killing, or homicide under any law of this State.

25 (3) A patient's request for, or the provision of, medication in
26 compliance with the provisions of P.L. , c. (C.) (pending
27 before the Legislature as this bill) shall not provide the sole basis
28 for the appointment of a guardian or conservator.

29 b. Any action taken by a health care professional to participate
30 in P.L. , c. (C.) (pending before the Legislature as this bill)
31 shall be voluntary on the part of that individual. If a health care
32 professional is unable or unwilling to carry out a patient's request
33 under P.L. , c. (C.) (pending before the Legislature as this
34 bill), and the patient transfers the patient's care to a new health care
35 professional or health care facility, the prior health care
36 professional shall transfer, upon request, a copy of the patient's
37 relevant records to the new health care professional or health care
38 facility.

39
40 18. (New section) a. A person who, without authorization of
41 the patient, and with the intent or effect of causing the patient's
42 death, willfully alters or forges a request for medication pursuant to
43 P.L. , c. (C.) (pending before the Legislature as this bill) or
44 conceals or destroys a rescission of that request, is guilty of a crime
45 of the second degree.

46 b. A person who coerces or exerts undue influence on a patient
47 to request medication pursuant to P.L. , c. (C.) (pending

1 before the Legislature as this bill) or to destroy a rescission of a
2 request is guilty of a crime of the third degree.

3 c. Theft of medication prescribed to a qualified terminally ill
4 patient pursuant to P.L. , c. (C.) (pending before the
5 Legislature as this bill) shall constitute an offense involving theft of
6 a controlled dangerous substance as set forth in N.J.S.2C:20-2.

7 d. Nothing in P.L. , c. (C.) (pending before the
8 Legislature as this bill) shall limit liability for civil damages
9 resulting from the negligence or intentional misconduct of any
10 person.

11 e. The penalties set forth in this section shall not preclude the
12 imposition of any other criminal penalty applicable under law for
13 conduct that is inconsistent with the provisions of P.L. ,
14 c. (C.) (pending before the Legislature as this bill).

15

16 19. (New section) Any governmental entity that incurs costs
17 resulting from a qualified terminally ill patient choosing to self-
18 administer medication prescribed pursuant to P.L. , c. (C.)
19 (pending before the Legislature as this bill) in a public place has a
20 claim against the estate of the patient to recover those costs and
21 reasonable attorneys' fees related to enforcing the claim.

22

23 20. (New section) A written request for a medication as
24 authorized by P.L. , c. (C.) (pending before the Legislature
25 as this bill) shall be in substantially the following form:

26

27 REQUEST FOR MEDICATION TO END MY LIFE IN A
28 HUMANE AND DIGNIFIED MANNER

29

30 I, , am an adult of sound mind and a resident
31 of New Jersey.

32 I am suffering from , which my attending
33 physician has determined is a terminal illness, disease, or condition
34 and which has been medically confirmed by a consulting physician.

35 I have been fully informed of my diagnosis, prognosis, the nature
36 of medication to be prescribed and potential associated risks, the
37 expected result, and the feasible alternatives, including palliative
38 care, comfort care, hospice care, and pain control.

39 I request that my attending physician prescribe medication that I
40 may self-administer to end my life in a humane and dignified
41 manner and to contact any pharmacist as necessary to fill the
42 prescription.

43

44 INITIAL ONE:

45

46 I have informed my family of my decision and taken their
47 opinions into consideration.

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

1 I have no family to inform of my decision.

2

3 INITIAL ALL THAT APPLY:

4

5My attending physician has recommended that I participate
6 in a consultation concerning additional treatment opportunities,
7 palliative care, comfort care, hospice care, and pain control options,
8 and provided me with a referral to a health care professional
9 qualified to discuss these options with me.

10I have participated in a consultation concerning additional
11 treatment opportunities, palliative care, comfort care, hospice care,
12 and pain control options.

13 I am currently receiving palliative care, comfort care, or
14 hospice care.

15

16 I understand that I have the right to rescind this request at any
17 time.

18 I understand the full import of this request, and I expect to die if
19 and when I take the medication to be prescribed. I further
20 understand that, although most deaths occur within three hours, my
21 death may take longer and my physician has counseled me about
22 this possibility.

23 I make this request voluntarily and without reservation, and I
24 accept full responsibility for my decision.

25

26 Signed:

27

28 Dated:

29

30 DECLARATION OF WITNESSES

31

32 By initialing and signing below on or after the date the person
33 named above signs, we declare that the person making and signing
34 the above request:

35

36 Witness 1 Witness 2

37 Initials Initials

38

39 1. Is personally known to us or has provided proof of identity.

40

41 2. Signed this request in our presence on the date of the person's
42 signature.

43

44 3. Appears to be of sound mind and not under duress, fraud, or
45 undue influence.

46

47 4. Is not a patient for whom either of us is the attending physician.

48

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1 Printed Name of Witness 1:

2 Signature of Witness 1/Date:

3

4 Printed Name of Witness 2:

5 Signature of Witness 2/Date:

6

7 NOTE: At least one witness shall not be a relative by blood,
8 marriage, or adoption of the person signing this request, shall not be
9 entitled to any portion of the person's estate upon death, and shall
10 not own, operate, or be employed at a health care facility where the
11 person is a patient or resident. If the patient is a resident of a long-
12 term care facility, one of the witnesses shall be an individual
13 designated by the facility.

14

15 21. (New section) The Director of the Division of Consumer
16 Affairs in the Department of Law and Public Safety, pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), shall adopt such rules and regulations as are necessary to
19 implement the provisions of sections 1 through 20 of P.L. ,
20 c. (C.) (pending before the Legislature as this bill), including
21 the required reporting of information to the division by health care
22 professionals pursuant to section 13 of P.L. , c. (C.)
23 (pending before the Legislature as this bill).

24

25 22. (New section) The State Board of Medical Examiners,
26 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
27 (C.52:14B-1 et seq.), shall adopt such rules and regulations as are
28 necessary to implement the provisions of sections 1 through 20 of
29 P.L. , c. (C.) (pending before the Legislature as this bill)
30 concerning the duties of a licensed physician pursuant thereto.

31

32 23. (New section) The New Jersey State Board of Pharmacy,
33 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.), shall adopt such rules and regulations as are
35 necessary to implement the provisions of sections 1 through 20 of
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 concerning the duties of a licensed pharmacist pursuant thereto.

38

39 24. (New section) The State Board of Psychological Examiners,
40 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
41 (C.52:14B-1 et seq.), shall adopt such rules and regulations as are
42 necessary to implement the provisions of sections 1 through 20 of
43 P.L. , c. (C.) (pending before the Legislature as this bill)
44 concerning the duties of a licensed psychologist pursuant thereto.

45

46 25. (New section) a. As used in this section:

47 "Health care facility" or "facility" means a health care facility
48 licensed pursuant to P.L.1971, c.,136 (C.26:2H-1 et seq.).

1 "Health care professional" means a person licensed to practice a
2 health care profession pursuant to Title 45 of the Revised Statutes.

3 b. (1) The existing policies and procedures utilized by a
4 health care facility shall, to the maximum extent possible, govern
5 the taking of any action by a health care professional pursuant to
6 sections 1 through 20 of P.L. , c. (C.) (pending before the
7 Legislature as this bill) on the premises owned by, or under the
8 direct control of, the facility, except as otherwise prescribed by
9 regulation of the Commissioner of Health pursuant to paragraph (4)
10 of this subsection.

11 (2) Any action taken by a health care facility to participate in
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 shall be voluntary on the part of the facility.

14 (3) A health care facility shall not be subject to a licensure
15 enforcement action by the Department of Health for any action
16 taken in compliance with the provisions of P.L. , c. (C.)
17 (pending before the Legislature as this bill).

18 (4) The Commissioner of Health, pursuant to the
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.), shall adopt such rules and regulations as are necessary to
21 implement the provisions of sections 1 through 20 of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 concerning their application to a health care facility and any action
24 taken by a health care professional on the premises owned by, or
25 under the direct control of, the facility.

26 (5) The provisions of this subsection shall not preclude a health
27 care facility or health care professional from providing to a patient
28 any health care services to which the provisions of sections 1
29 through 20 of P.L. , c. (C.) (pending before the Legislature
30 as this bill) do not apply.

31

32 26. Section 1 of P.L.1991, c.270 (C.2A:62A-16) is amended to
33 read as follows:

34 1. a. Any person who is licensed in the State of New Jersey to
35 practice psychology, psychiatry, medicine, nursing, clinical social
36 work, or marriage counseling, whether or not compensation is
37 received or expected, is immune from any civil liability for a
38 patient's violent act against another person or against himself unless
39 the practitioner has incurred a duty to warn and protect the potential
40 victim as set forth in subsection b. of this section and fails to
41 discharge that duty as set forth in subsection c. of this section.

42 b. A duty to warn and protect is incurred when the following
43 conditions exist:

44 (1) The patient has communicated to that practitioner a threat of
45 imminent, serious physical violence against a readily identifiable
46 individual or against himself and the circumstances are such that a
47 reasonable professional in the practitioner's area of expertise would
48 believe the patient intended to carry out the threat; or

1 (2) The circumstances are such that a reasonable professional in
2 the practitioner's area of expertise would believe the patient
3 intended to carry out an act of imminent, serious physical violence
4 against a readily identifiable individual or against himself.

5 A duty to warn and protect shall not be incurred when a qualified
6 terminally ill patient requests medication that the patient may
7 choose to self-administer in accordance with the provisions of
8 P.L. , c. (C.) (pending before the Legislature as this bill).

9 c. A licensed practitioner of psychology, psychiatry, medicine,
10 nursing, clinical social work, or marriage counseling shall discharge
11 the duty to warn and protect as set forth in subsection b. of this
12 section by doing **[any]** one or more of the following:

13 (1) Arranging for the patient to be admitted voluntarily to a
14 psychiatric unit of a general hospital, a short-term care facility, a
15 special psychiatric hospital, or a psychiatric facility, under the
16 provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);

17 (2) Initiating procedures for involuntary commitment to
18 treatment of the patient to an outpatient treatment provider, a short-
19 term care facility, a special psychiatric hospital, or a psychiatric
20 facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et
21 seq.);

22 (3) Advising a local law enforcement authority of the patient's
23 threat and the identity of the intended victim;

24 (4) Warning the intended victim of the threat, or, in the case of
25 an intended victim who is under the age of 18, warning the parent
26 or guardian of the intended victim; or

27 (5) If the patient is under the age of 18 and threatens to commit
28 suicide or bodily injury upon himself, warning the parent or
29 guardian of the patient.

30 d. A practitioner who is licensed in the State of New Jersey to
31 practice psychology, psychiatry, medicine, nursing, clinical social
32 work, or marriage counseling who, in complying with subsection c.
33 of this section, discloses a privileged communication, is immune
34 from civil liability in regard to that disclosure.

35 (cf: P.L.2009, c.112, s.21)

36
37 27. N.J.S.2C:11-6 is amended to read as follows:

38 2C:11-6. Aiding Suicide. A person who purposely aids another
39 to commit suicide is guilty of a crime of the second degree if his
40 conduct causes such suicide or an attempted suicide, and otherwise
41 of a crime of the fourth degree. Any action taken in accordance
42 with the provisions of P.L. , c. (C.) (pending before the
43 Legislature as this bill) shall not constitute suicide or assisted
44 suicide.

45 (cf: P.L.1978, c.95, s.2C:11-6)

46
47 28. This act shall take effect on the first day of the fourth month
48 next following the date of enactment, but the Director of the

1 Division of Consumer Affairs in the Department of Law and Public
2 Safety, the Commissioner of Health, the State Board of Medical
3 Examiners, the New Jersey State Board of Pharmacy, and the State
4 Board of Psychological Examiners may take such anticipatory
5 administrative action in advance thereof as shall be necessary for
6 the implementation of this act.

7

8

9

STATEMENT

10

11 This bill establishes the “Aid in Dying for the Terminally Ill Act,”
12 which will allow an adult New Jersey resident, who has the capacity to
13 make health care decisions and who has been determined by that
14 individual’s attending and consulting physicians to be terminally ill, to
15 obtain medication that the patient may self-administer to terminate the
16 patient’s life. Under the bill, “terminally ill” is defined to mean the
17 patient is in the terminal stage of an irreversibly fatal illness, disease,
18 or condition with a prognosis, based upon reasonable medical
19 certainty, of a life expectancy of six months or less.

20 In order for a terminally ill patient to receive a prescription for
21 medication under the bill, the patient is required to make two oral
22 requests and one written request to the patient’s attending physician
23 for the medication. The bill requires at least 15 days to elapse between
24 the initial oral request and the second oral request, and between the
25 patient’s initial oral request and the writing of a prescription for the
26 medication. The patient may submit the written request for medication
27 either when the patient makes the initial oral request, or at any time
28 thereafter, but a minimum of 48 hours are to elapse between the
29 attending physician’s receipt of the written request and the writing of a
30 prescription for medication.

31 When a patient makes an initial oral request for medication under
32 the bill’s provisions, the attending physician is required to provide the
33 patient with information about the risks, probable results, and
34 alternatives to taking the medication; recommend that the patient
35 participate in a consultation concerning additional treatment
36 opportunities, palliative care, comfort care, hospice care, and pain
37 control options; and refer the patient to a health care professional who
38 is qualified to discuss those alternative care and treatment options. The
39 patient may choose, but is not required, to participate in such
40 consultation. The attending physician is also required to recommend
41 that the patient notify the patient’s next of kin of the request, but
42 medication may not be denied if a patient declines, or is unable to,
43 provide this notification.

44 The attending physician is required to refer the patient to a
45 consulting physician for the purpose of obtaining confirmation of the
46 attending physician’s diagnosis. Both the attending physician and the
47 consulting physician are required to verify that the patient has made an
48 informed decision when requesting medication under the bill. When

1 the patient makes the second oral request, the attending physician is to
2 offer the patient an opportunity to rescind the request. In addition, the
3 attending physician is required to notify the patient that a request may
4 be rescinded at any time and in any manner, regardless of the patient's
5 mental state.

6 A patient may make a written request for medication, in
7 accordance with the bill's provisions, so long as the patient: is an
8 adult resident of New Jersey, as demonstrated through documentation
9 submitted to the attending physician; is capable; is terminally ill, as
10 determined by the attending physician and confirmed by the consulting
11 physician; and has voluntarily expressed a wish to receive a
12 prescription for the medication.

13 The bill requires a valid written request for medication to be in a
14 form that is substantially similar to the form set forth in the bill. The
15 bill requires the written request to be signed and dated by the patient
16 and witnessed by at least two individuals who attest, in the patient's
17 presence, that, to the best of their knowledge and belief, the patient is
18 capable and is acting voluntarily.

19 The bill requires at least one of the witnesses to be a person who is
20 not:

21 (1) a relative of the qualified patient by blood, marriage, or
22 adoption;

23 (2) at the time the request is signed, entitled to any portion of the
24 patient's estate upon the patient's death; or

25 (3) an owner, operator, or employee of a health care facility where
26 the patient is receiving medical treatment or is a resident.

27 The bill additionally requires that, if the patient is a resident of a
28 long-term care facility, one of the witnesses is to be an individual
29 designated by the facility. The patient's attending physician may not
30 serve as a witness.

31 A written request form will be required to include an indication as
32 to whether the patient has informed the patient's next-of-kin about the
33 request for medication and an indication as to whether additional
34 treatment consultations have been recommended by the attending
35 physician or undertaken by the patient.

36 If the patient complies with the bill's oral and written request
37 requirements, establishes State residency, and is found by both the
38 attending physician and a consulting physician to be capable, to have a
39 terminal illness, and to be acting voluntarily, the patient will be
40 considered to be a "qualified terminally ill patient" who is eligible to
41 receive a prescription for medication. The bill expressly provides that
42 a person is not be considered to be a "qualified terminally ill patient"
43 solely on the basis of the person's age or disability or the diagnosis of
44 a specific illness, disease, or condition.

45 If either the attending physician or the consulting physician
46 believes that the patient may have a psychiatric or psychological
47 disorder or depression, which causes impaired judgment, and which
48 makes the patient incapable of making a request for medication, the

1 physician will be required to refer the patient to a licensed psychiatrist
2 or psychologist for counseling to determine whether the patient is
3 capable. If such a referral is made, the attending physician is
4 prohibited from issuing a prescription to the patient for medication
5 under the bill unless the attending physician has received written
6 notice, from the licensed psychiatrist or psychologist, affirming that
7 the patient is capable.

8 Prior to issuing a prescription for requested medication, the
9 attending physician is required to ensure that all appropriate steps have
10 been carried out, and requisite documentation submitted, in accordance
11 with the bill's provisions. The patient's medical record is to include
12 documentation of: the patient's oral and written requests and the
13 attending physician's offer to rescind the request; the attending
14 physician's recommendation for alternative care and treatment
15 consultations, and whether the patient participated in a consultation;
16 the attending physician's and consulting physician's medical diagnosis
17 and prognosis, and their determinations that the patient is terminally
18 ill, is capable of making the request, is acting voluntarily, and is
19 making an informed decision; the results of any counseling sessions
20 ordered for the patient; and a statement that all the requirements under
21 the bill have been satisfied.

22 A patient's request for, or the provision of, medication in
23 compliance with the bill may not be used as the sole basis for the
24 appointment of a guardian or conservator. The bill specifies that a
25 patient's guardian, conservator, or representative is not authorized to
26 take any action on behalf of the patient in association with the making
27 or rescinding of requests for medication under the bill's provisions,
28 except to communicate the patient's own health care decisions to a
29 health care provider upon the patient's request. The bill prohibits any
30 contract, will, insurance policy, annuity, or other agreement from
31 including a provision that conditions or restricts a person's ability to
32 make or rescind a request for medication pursuant to the bill, and
33 further specifies that the procurement or issuance of, or premiums or
34 rates charged for, life, health, or accident insurance policies or
35 annuities may not be conditioned upon the making or rescinding of a
36 request for medication under the bill's provisions. An obligation
37 owing under a contract, will, insurance policy, annuity, or other
38 agreement executed before the bill's effective date will not be affected
39 by a patient's request, or rescission of a request, for medication under
40 the bill.

41 Any person who, without the patient's authorization, willfully
42 alters or forges a request for medication pursuant to the bill, or
43 conceals or destroys a rescission of that request, with the intent or
44 effect of causing the patient's death, will be guilty of a crime of the
45 second degree, which is punishable by imprisonment for a term of five
46 to 10 years, a fine of up to \$150,000, or both. A person who coerces
47 or exerts undue influence on a patient to request medication under the
48 bill, or to destroy a rescission of a request, will be guilty of a crime of

1 the third degree, which is punishable by imprisonment for a term of
2 three to five years, a fine of up to \$15,000, or both. The bill does not
3 impose any limit on liability for civil damages in association with the
4 negligence or intentional misconduct of any person.

5 The bill provides immunity from civil and criminal liability, and
6 from professional disciplinary action, for any action that is undertaken
7 in compliance with the bill, including the act of being present when a
8 qualified terminally ill patient takes the medication prescribed to the
9 patient under the bill's provisions. Any action undertaken in
10 accordance with the bill will not be deemed to constitute patient abuse
11 or neglect, suicide, assisted suicide, mercy killing, or homicide under
12 any State law, and the bill expressly exempts actions taken pursuant to
13 the bill from the provisions of N.J.S.2C:11-6, which makes it a crime
14 to purposely aid a person in committing suicide. Nothing in the bill is
15 to be construed to authorize a physician or other person to end a
16 patient's life by lethal injection, active euthanasia, or mercy killing.

17 The bill amends section 1 of P.L.1991, c.270 (C.2A:62A-16),
18 which establishes a "duty to warn" when a health care professional
19 believes that a patient intends to carry out physical violence against the
20 patient's own self or against another person, in order to specify that
21 that "duty to warn" provisions are not applicable when a qualified
22 terminally ill patient requests medication under the bill.

23 The bill requires a patient's attending physician to notify the
24 patient of the importance of taking the prescribed medication in the
25 presence of another person and in a non-public place. The bill
26 specifies that, if any governmental entity incurs costs as a result of a
27 patient's self-administration of medication in a public place, the
28 governmental entity will have a claim against the patient's estate to
29 recover those costs, along with reasonable attorney fees.

30 The bill authorizes attending physicians, if registered with the
31 federal Drug Enforcement Administration, to dispense requested
32 medication, including ancillary medication designed to minimize
33 discomfort, directly to the patient. Otherwise, with the patient's
34 written consent, the attending physician may transmit the prescription
35 to a pharmacist, who will be required to dispense the medication
36 directly to the patient, to the attending physician, or to an expressly
37 identified agent of the patient. Medication prescribed under the bill
38 may not be dispensed by mail or other form of courier. Not later than
39 30 days after the dispensation of medication under the bill, the health
40 care professional who dispensed the medication will be required to file
41 a copy of the dispensing record with the Division of Consumer Affairs
42 (DCA) in the Department of Law and Public Safety.

43 Any medication prescribed under the bill, which the patient
44 chooses not to self-administer, is required to be disposed of by lawful
45 means. Not later than 30 days after the patient's death, the attending
46 physician will be required to transmit documentation of the patient's
47 death to the DCA. The DCA is required, to the extent practicable, to
48 coordinate the reporting of dispensing records and records of patient

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1 death with the process used for the reporting of prescription
2 monitoring information. The DCA will be required to annually
3 prepare and make available on its Internet website a statistical report
4 of information collected pursuant to the bill's provisions; information
5 made available to the public will not include personal or identifying
6 information.

7 A health care facility's existing policies and procedures will be
8 required, to the maximum extent possible, to govern actions taken by
9 health care providers pursuant to the bill. Any action taken by a health
10 care professional or facility to carry out the provisions of the bill is to
11 be voluntary. If a health care professional is unable or unwilling to
12 participate in a request for medication under the bill, the professional
13 will be required to refer the patient to another health care provider and
14 provide the patient's medical records to that provider.