SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO

[Third Reprint]
**ASSEMBLY, No. 2270**

# STATE OF NEW JERSEY

DATED: DECEMBER 15, 2014

The Senate Health, Human Services and Senior Services Committee reports favorably Assembly Bill No. 2270 (3R).

This bill would establish the "Aid in Dying for the Terminally Ill Act," which would allow an adult New Jersey resident, who has the capacity to make health care decisions and who has been determined by that individual's attending and consulting physicians to be terminally ill, to obtain medication that the patient may self-administer to terminate the patient's life. "Terminally ill" would be defined by the bill to mean the patient is in the terminal stage of an irreversibly fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less.

The bill provides, in particular, that, in order for a terminally ill patient to receive a prescription for medication that the patient may self-administer under the bill, the patient is required to make two oral requests and one written request for the medication, which requests must be directed to the patient's attending physician. At least 15 days must elapse between the initial oral request and the second oral request, and between the patient's initial oral request and the writing of a prescription for medication.

The patient may submit the written request for medication either when the patient makes the initial oral request, or at any time thereafter, but at least 48 hours must elapse between the attending physician's receipt of the written request and the writing of a prescription for medication. When a patient makes an initial oral request for medication under the bill's provisions, the attending physician is required to provide the patient with information about the risks, probable results, and alternatives to taking the medication; recommend that the patient participate in a consultation concerning additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options; and refer the patient to a health care professional who is qualified to discuss those alternative care and treatment options. The patient may choose, but is not required, to participate in such consultation. The attending physician is also

required to recommend that the patient notify their next of kin of their request, but medication may not be denied if a patient declines, or is unable to, notify their next of kin.

The attending physician is required to refer the patient to a consulting physician, in order to obtain confirmation of the attending physician's diagnosis, and both the attending physician and the consulting physician must verify that the patient is making an informed decision in relation to their request. When the patient makes the second oral request, the attending physician must offer the patient an opportunity to rescind the request; however, a request may also be rescinded by the patient at any other time, and in any manner, regardless of the patient's mental state, and the attending physician must notify the patient of this fact.

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

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

At least one of the witnesses must be a person who is not:

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

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

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

If the patient is a resident of a long-term care facility, one of the witnesses must be an individual designated by the facility. The patient's attending physician may not serve as a witness.

The written request must indicate whether the patient has informed their next-of-kin about the request for medication, and must also indicate whether additional treatment consultations have been recommended by the attending physician, or undertaken by the patient.

If the patient complies with the bill's oral and written request requirements, establishes State residency, and is found by both the attending physician and a consulting physician to be capable, to have a terminal illness, and to be acting voluntarily, the patient will be considered to be a "qualified terminally ill patient" who is eligible to receive a prescription for medication under the bill's provisions. A person will not be considered to be a "qualified terminally ill patient"

solely because of the person's age or disability, or diagnosis of any specific illness, disease, or condition.

If either the attending physician or the consulting physician believes that the patient may have a psychiatric or psychological disorder or depression, which causes impaired judgment, and which makes the patient incapable of making a request for medication under the bill's provisions, the physician will be required to refer the patient to a licensed psychiatrist or psychologist for counseling to determine whether the patient is capable. If such a referral is made, the attending physician is prohibited from issuing a prescription to the patient for medication under the bill unless the attending physician has received written notice, from the licensed psychiatrist or psychologist, stating that the patient is capable.

Prior to issuing a prescription for requested medication, the attending physician is required to ensure that all appropriate steps have been carried out, and requisite documentation submitted, in accordance with the bill's provisions. The patient's medical record would include documentation of: the patient's oral and written requests and the attending physician's offer to rescind the request; the attending physician's recommendation for alternative care and treatment consultations, and the patient's engagement therein; the attending physician's and consulting physician's medical diagnosis and prognosis, and their determinations that the patient is terminally ill, is capable of making the request, is acting voluntarily, and is making an informed decision; the results of any counseling sessions ordered for the patient; and a statement that all the bill's requirements have been satisfied.

A patient's request for, or the provision of, medication in compliance with the bill may not be used as the sole basis for the appointment of a guardian or conservator. The bill would specify, moreover, that a patient's guardian, conservator, or representative is not authorized to take any action on behalf of the patient in association with the making or rescinding of requests for medication under the bill's provisions, except to communicate the patient's own health care decisions to a health care provider upon the patient's request. The bill prohibits any contract, will, insurance policy, annuity, or other agreement from including a provision that conditions or restricts a person's ability to make or rescind a request for medication pursuant to the bill, and it further specifies that the procurement or issuance of life, health, or accident insurance policies or annuities, and the premium or rates charged therefor, may not be conditioned upon the making or rescinding of a request for medication under the bill's provisions. If an obligation is owing under a contract, will, insurance policy, annuity, or other agreement that was executed before the bill's effective date, however, such obligation will not be affected by a patient's request, or rescission of a request, for medication under the bill.

Any person who, without authorization of the patient, willfully alters or forges a request for medication pursuant to the bill, or conceals or destroys a rescission of that request, with the intent or effect of causing the patient's death, will be guilty of a crime of the second degree, which is punishable by imprisonment for a term of five to 10 years, a fine of up to $150,000, or both. Any person who coerces or exerts undue influence on a patient to request medication under the bill, or to destroy a rescission of such a request, will be guilty of a crime of the third degree, which is punishable by imprisonment for a term of three to five years, a fine of up to $15,000, or both. The bill also would not impose any limit on liability for civil damages in association with the negligence or intentional misconduct of any person.

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

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

The bill would require a patient's attending physician to notify the patient of the importance of taking the prescribed medication in the presence of another person, and in a non-public place, and it would further specify that, if any governmental entity incurs costs as a result of a patient's self-administration of medication in a public place, the governmental entity will have a claim against the patient's estate to recover those costs, along with reasonable attorney fees.

The attending physician would be authorized, if registered with the federal Drug Enforcement Administration, to dispense requested medication (including ancillary mediation designed to minimize discomfort) directly to the patient. Otherwise, with the patient's written consent, the attending physician may transmit the prescription (either personally, or by mail or electronic communication) to a pharmacist, and the pharmacist will be required to dispense the medication directly to the patient, or to the attending physician, or to

an expressly identified agent of the patient. Medication prescribed under the bill may not be dispensed by mail or other form of courier. Not later than 30 days after the dispensation of medication under the bill, the health care professional who dispensed the medication will be required to file a copy of the dispensing record with the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety.

Any medication prescribed under the bill, which the patient chooses not to self-administer, must be disposed of by lawful means. Not later than 30 days after the patient's death, the attending physician will be required to transmit documentation of the patient's death to the DCA. The DCA is required, to the extent practicable, to coordinate the reporting of dispensing records and records of patient death with the process used for the reporting of prescription monitoring information. The DCA would be required to annually prepare and make available on its Internet website, an annual statistical report of information collected pursuant to the bill's provisions, but it would be prohibited from including any identifying information therein.

A health care facility's existing policies and procedures would be required, to the maximum extent possible, to govern the taking of actions by health care providers under the bill. Any action that is undertaken by a health care professional or facility to carry out the provisions of this bill must be voluntary on the part of that individual or facility, as appropriate. If a health care professional is unable or unwilling to participate in a request for medication under the bill, the professional would be required to refer the patient to another health care provider, and provide the patient's medical records to that provider.

The bill would take effect on the first day of the fourth month next following the date of enactment.

As reported, this bill is identical to Senate Bill No. 382 (SCA) (Scutari/Sweeney), which the committee also reported favorably on this date.