ASSEMBLY, No. 1504

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman TIM EUSTACE
District 38 (Bergen and Passaic)
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Co-Sponsored by:
Assemblyman McKeon, Assemblywomen Mosquera, Jimenez, Chaparro,
Assemblyman Johnson, Assemblywoman Jasey, Assemblyman Holley and
Assemblywoman Murphy

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
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 1/30/2018)

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

2. (New section) The Legislature finds and declares that:
a. Recognizing New Jersey’s long-standing commitment to individual dignity, informed consent, and the fundamental right of competent adults to make health care decisions about whether to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn, this State affirms the right of a qualified terminally ill patient, protected by appropriate safeguards, to obtain medication that the patient may choose to self-administer in order to bring about the patient’s humane and dignified death;
b. Statistics from other states that have enacted laws to provide compassionate aid in dying for terminally ill patients indicate that the great majority of patients who requested medication under the laws of those states, including more than 90% of patients in Oregon since 1998 and between 72% and 86% of patients in Washington in each year since 2009, were enrolled in hospice care at the time of death, suggesting that those patients had availed themselves of available treatment and comfort care options available to them at the time they requested compassionate aid in dying;
c. The public welfare requires a defined and safeguarded process in order to effectuate the purposes of this act, which will:
   (1) guide health care providers and patient advocates who provide support to dying patients;
   (2) assist capable, terminally ill patients who request compassionate aid in dying;
   (3) protect vulnerable adults from abuse; and
   (4) ensure that the process is entirely voluntary on the part of all participants, including patients and those health care providers that are providing care to dying patients; and
d. This act is in the public interest and is necessary for the welfare of the State and its residents.

3. (New section) As used in P.L. , c. (C. ) (pending before the Legislature as this bill):
   “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.
“Attending physician” means a physician licensed pursuant to Title 45 of the Revised Statutes who has primary responsibility for the treatment and care of a qualified terminally ill patient and treatment of the patient’s illness, disease, or condition.

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

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

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

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

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

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

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

1. the patient’s medical diagnosis;
2. the patient’s prognosis;
3. the potential risks associated with taking the medication to be prescribed;
4. the probable result of taking the medication to be prescribed; and
5. the feasible alternatives to taking the medication, including, but not limited to, additional treatment opportunities, palliative care, comfort care, hospice care, and pain control.

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

“Participate in this act” means to perform the duties of a health care provider in accordance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), but does not include: making an initial determination that a patient is terminally ill and informing the patient of the medical prognosis;
providing information about the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) to a patient upon the patient’s request; or providing a patient, upon the patient’s request, with a referral to another health care provider.

“Patient” means a person who is under the care of a physician.

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

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

“Terminally ill” means that 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.

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

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

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

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

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

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

(1) a relative of the 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 under any will or by operation of law; and
(3) an owner, operator, or employee of a health care facility where the patient is receiving medical treatment or is a resident.

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

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

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

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

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

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

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

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

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

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

(8) advise the patient about the importance of having another person present if and when the patient chooses to self-administer medication prescribed under P.L. , c. (C. ) (pending before the Legislature as this bill) and of not taking the medication in a public place;
inform the patient of the patient’s opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind the request at the time the patient makes a second oral request as provided in section 10 of P.L., c. (C. ) (pending before the Legislature as this bill);

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

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

b. The attending physician shall:

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

(2) with the patient's written consent:

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

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

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

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

a. examined that patient and the patient’s relevant medical records;

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

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

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

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

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

10. (New section) a. In order to receive a prescription for
medication that a qualified terminally ill patient may choose to self-
administer pursuant to P.L. , c. (C. ) (pending before the
Legislature as this bill), the patient shall make two oral requests and
one written request for the medication to the patient’s attending
physician, subject to the following requirements:
(1) at least 15 days shall elapse between the initial oral request
and the second oral request;
(2) at the time the patient makes a second oral request, the
attending physician shall offer the patient an opportunity to rescind
the request;
(3) the patient may submit the written request to the attending
physician when the patient makes the initial oral request or at any
time thereafter;
(4) the written request shall meet the requirements of section 5
of P.L. , c. (C. ) (pending before the Legislature as this
bill);
(5) at least 15 days shall elapse between the patient’s initial oral
request and the writing of a prescription pursuant to
P.L. , c. (C. ) (pending before the Legislature
as this bill) ; and
(6) at least 48 hours shall elapse between the attending
physician’s receipt of the patient’s written request and the writing
of a prescription pursuant to P.L. , c. (C. ) (pending
before the Legislature as this bill).

b. A qualified terminally ill patient may rescind the request at
any time and in any manner without regard to the patient’s mental
state.
c. At the time the patient makes an initial oral request for medication that the patient may choose to self-administer pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), the patient’s attending physician shall recommend to the patient that the patient participate in a consultation concerning additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options, and provide the patient with a referral to a health care professional qualified to discuss these options with the patient. If the patient chooses to participate in such consultation, the consultation shall include, to the extent the patient consents to share such information, consideration of: the patient’s terminal illness; the patient’s prognosis; current and past courses of treatment prescribed for the patient in connection with the patient’s terminal illness, including the results of any such treatment; and any palliative care, comfort care, hospice care, and pain control treatment the patient is currently receiving or has received in the past.

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

1. the determination that the patient is a qualified terminally ill patient and the basis for that determination;

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

3. the attending physician’s diagnosis and prognosis, and determination that the patient is capable, is acting voluntarily, and has made an informed decision;

4. the consulting physician’s diagnosis and prognosis, and verification that the patient is capable, is acting voluntarily, and has made an informed decision;

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

6. the attending physician’s recommendation that the patient participate in a consultation concerning additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options; the referral provided to the patient with a referral to a health care professional qualified to discuss these options with the patient; an indication as to whether the patient participated in the consultation; and an indication as to whether the patient is currently receiving palliative care, comfort care, hospice care, or pain control treatments;

7. the attending physician’s offer to the patient to rescind the patient’s request at the time of the patient’s second oral request; and

8. a note by the attending physician indicating that all requirements under P.L. , c. (C. ) (pending before the
Legislature as this bill) have been met and indicating the steps taken
to carry out the patient’s request for medication, including a
notation of the medication prescribed.

11. (New section) A request for medication pursuant to
P.L. , c. (C. ) (pending before the Legislature as this bill)
shall not be granted unless the qualified terminally ill patient has
documented that individual’s New Jersey residency by furnishing to
the attending physician a copy of one of the following:
   a. a driver’s license or non-driver identification card issued by
the New Jersey Motor Vehicle Commission;
   b. proof that the person is registered to vote in New Jersey;
   c. a New Jersey resident gross income tax return filed for the
most recent tax year; or
   d. any other government record that the attending physician
reasonably believes to demonstrate the individual’s current
residency in this State.

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

13. (New section) a. The Director of the Division of Consumer
Affairs in the Department of Law and Public Safety shall require
that a health care professional report the following information to
the division on a form and in a manner prescribed by regulation of
the director, in consultation with the Commissioner of Health:
   (1) No later than 30 days after the dispensing of medication
pursuant to P.L. , c. (C. ) (pending before the Legislature as
this bill), the health care professional who dispensed the medication
shall file a copy of the dispensing record with the division, and shall
otherwise facilitate the collection of such information as the
director may require regarding compliance with P.L. , c. (C. )
pending before the Legislature as this bill).
   (2) No later than 30 days after the date of the qualified
terminally ill patient’s death, the attending physician shall transmit
to the division such documentation of the patient’s death as the
director shall require.
   (3) In the event that anyone required to report information to the
division pursuant to P.L. , c. (C. ) (pending before the
Legislature as this bill) provides an inadequate or incomplete report,
the division shall contact the person to request a complete report.
   (4) To the maximum extent practicable and consistent with the
purposes of this section, the division shall seek to coordinate the
process for reporting information pursuant to this subsection with
the process for reporting prescription monitoring information by a
pharmacy permit holder pursuant to sections 25 through 30 of

b. Any information collected pursuant to subsection a. of this
section that contains material or data that could be used to identify
an individual patient or health care professional shall not be
included under materials available to public inspection pursuant to
et al.).

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

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

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

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

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

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

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

16. (New section) A person shall not be authorized to take any
action on behalf of a patient for the purposes of P.L. , c. (C. )
(pending before the Legislature as this bill) by virtue of that person’s designation as a guardian pursuant to N.J.S.3B:12-1 et seq., a conservator pursuant to N.J.S.3B:13A-1 et seq., a health care representative pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.), or a patient’s representative pursuant to P.L.2011, c.145 (C.26:2H-129 et al.), except for communicating the patient’s health care decisions to a health care provider if the patient so requests.

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

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

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

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

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

b. A person who coerces or exerts undue influence on a patient to request medication pursuant to P.L. , c. (C. ) (pending
before the Legislature as this bill) or to destroy a rescission of a request is guilty of a crime of the third degree.

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

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

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

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

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

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

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

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

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

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

INITIAL ONE:

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

..... I have decided not to inform my family of my decision.
I have no family to inform of my decision.

INITIAL ALL THAT APPLY:

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

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

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

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

I understand the full import of this request, and I expect to die if and when 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 physician has counseled me about this possibility.

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

Signed:.................

Dated:.................

DECLARATION OF WITNESSES

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

Witness 1  
Initials  

Witness 2  
Initials  

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

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

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

4. Is not a patient for whom either of us is the attending physician.
NOTE: At least one witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person’s estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is a resident of a long-term care facility, one of the witnesses shall be an individual designated by the facility.

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

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

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

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

25. (New section) a. As used in this section: “Health care facility” or “facility” means a health care facility licensed pursuant to P.L.1971, c.,136 (C.26:2H-1 et seq.).
“Health care professional” means a person licensed to practice a health care profession pursuant to Title 45 of the Revised Statutes.

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

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

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

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

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

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

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

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

(1) The patient has communicated to that practitioner a threat of imminent, serious physical violence against a readily identifiable individual or against himself and the circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out the threat; or
(2) The circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out an act of imminent, serious physical violence against a readily identifiable individual or against himself. A duty to warn and protect shall not be incurred when a qualified terminally ill patient requests medication that the patient may choose to self-administer in accordance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

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

28. This act shall take effect on the first day of the fourth month next following the date of enactment, but the Director of the
Division of Consumer Affairs in the Department of Law and Public Safety, the Commissioner of Health, the State Board of Medical Examiners, the New Jersey State Board of Pharmacy, and the State Board of Psychological Examiners may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill establishes the “Aid in Dying for the Terminally Ill Act,” which will 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. Under the bill, “terminally ill” is defined 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.

In order for a terminally ill patient to receive a prescription for medication under the bill, the patient is required to make two oral requests and one written request to the patient’s attending physician for the medication. The bill requires at least 15 days to 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 the 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 a minimum of 48 hours are to 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 the patient’s next of kin of the request, but medication may not be denied if a patient declines, or is unable to, provide this notification.

The attending physician is required to refer the patient to a consulting physician for the purpose of obtaining confirmation of the attending physician’s diagnosis. Both the attending physician and the consulting physician are required to verify that the patient has made an informed decision when requesting medication under the bill. When
the patient makes the second oral request, the attending physician is to
offer the patient an opportunity to rescind the request. In addition, the
attending physician is required to notify the patient that a request may
be rescinded at any time and in any manner, regardless of the patient’s
mental state.

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 the 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
bill requires the written request to 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.

The bill requires at least one of the witnesses to 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.

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

A written request form will be required to include an indication as
to whether the patient has informed the patient’s next-of-kin about the
request for medication and an indication as to 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. The bill expressly provides that
a person is not be considered to be a “qualified terminally ill patient”
solely on the basis of the person’s age or disability or the diagnosis of
a 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, the
A 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, affirming 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 is to 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 whether the patient participated in a consultation;
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 requirements under
the bill 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 specifies 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
further specifies that the procurement or issuance of, or premiums or
rates charged for, life, health, or accident insurance policies or
annuities may not be conditioned upon the making or rescinding of a
request for medication under the bill’s provisions. An obligation
owing under a contract, will, insurance policy, annuity, or other
agreement executed before the bill’s effective date will not be affected
by a patient’s request, or rescission of a request, for medication under
the bill.

Any person who, without the patient’s authorization, 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. A person who coerces
or exerts undue influence on a patient to request medication under the
bill, or to destroy a rescission of 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 does 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 State law, and the bill expressly exempts actions taken pursuant to
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 is
to be construed to authorize a physician or other person to end a
patient’s life by lethal injection, active euthanasia, or mercy killing.

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 requires 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. The bill
specifies 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 bill authorizes attending physicians, if registered with the
federal Drug Enforcement Administration, to dispense requested
medication, including ancillary medication designed to minimize
discomfort, directly to the patient. Otherwise, with the patient’s
written consent, the attending physician may transmit the prescription
to a pharmacist, who will be required to dispense the medication
directly to the patient, 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, is required to 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 will be required to annually
prepare and make available on its Internet website a statistical report
of information collected pursuant to the bill’s provisions; information
made available to the public will not include personal or identifying
information.

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