

**Date**: May 1, 2019

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**From**: Karen S. Ali, Esq.

General Counsel

Theresa Edelstein

Vice President, Post-Acute Care Policy & Special Initiatives

**Subject: Medical Aid in Dying for the Terminally Ill Act of 2019**

Governor Phil Murphy signed the “Medical Aid in Dying for the Terminally Ill Act” (the “[Act](https://www.njleg.state.nj.us/2018/Bills/AL19/59_.HTM)”) into law on April 12, 2019. The Act affirms the rights of qualified terminally ill patients to obtain and self-administer medication to bring about their own humane and dignified death. The [Act](https://www.njleg.state.nj.us/2018/Bills/AL19/59_.HTM) takes effect Aug. 1, 2019.

**Medical Aid in Dying Requirements for Qualified Terminally Ill Patients**

The Act permits “qualified terminally ill patients” to request a prescription for medication that they may choose to self-administer. Qualified terminally ill patients are defined as capable,[[1]](#footnote-1) adult residents of New Jersey who are terminally ill. The Act defines “terminally ill” patients as those “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 (6) months or less.” This prognosis must be confirmed by both an attending physician[[2]](#footnote-2) and a consulting physician.[[3]](#footnote-3)

**I. Patient Responsibilities**

To obtain a prescription for medication, qualified terminally ill patients must:

* **Make two** **oral requests** to their attending physician at least 15 days apart; and
* **Submit a signed, dated written request** (at the same time as the first oral request or any time) to the attending physician.

The written request must be witnessed by at least two individuals in the patient’s presence who can attest the patient: (1) is capable; and (2) is acting voluntarily when executing the request. Attending physicians may not serve as a witness to the written request.

One of the witnesses must be a person who is **not**:

* Related to the patient in any way (by blood, marriage or adoption);
* At the time the request is signed, entitled to any portion of the patient’s estate upon death pursuant to a will or operation of law; or
* An owner, operator or employee of a healthcare facility – other than a long-term care facility[[4]](#footnote-4) – where the patient is receiving medical treatment or is a resident.

The Act provides model forms to use for the written request and witness declarations. Patients may rescind the request at any time and in any manner, regardless of mental state.

Patients must designate a person who is responsible for the lawful disposal of the medication. If a patient chooses not to self-administer any dispensed medication, the patient must dispose of the medication consistent with state and federal guidelines or surrender the medication at a prescription medication drop-off receptacle.

The Act makes it clear that no other person – including a guardian, conservator, healthcare representative or patient representative – may make a request for medication on behalf of the patient. They may only communicate a patient’s healthcare decision to a provider at the request and direction of the patient.

**II. Physician Responsibilities**

A. Attending Physicians

Prior to writing a prescription for medication, the attending physician must:

1. Make the initial determination that the patient is terminally ill, capable and has voluntarily made the request for medication;
2. Require proof of current New Jersey residency (driver’s license or non-driver identification card, voter registration, most recent year’s state tax return or any other government record the physician believes demonstrates current residency);
3. Inform the patient of the medical diagnosis and prognosis, including the risks and results of taking this medication and feasible alternatives to taking the medication including concurrent or 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, prognosis and a determination that the patient is capable and acting voluntarily;
5. Refer the patient to a mental healthcare professional,[[5]](#footnote-5) if the patient is not capable;
6. Recommend the patient’s participation in a consultation regarding concurrent or additional treatment opportunities, palliative care, comfort care, hospice care and pain control options and provide a referral to a healthcare professional who can discuss these options;
7. Advise the patient about the importance of having another person present if the patient chooses to self-administer the prescribed medication;
8. Advise the patient he or she may not self-administer the medication in public;
9. Advise the patient of the **opportunity to rescind the request** at any time, in any manner;
10. Offer the patient the **opportunity to rescind** **the request** at the time the second oral request is made;
11. Recommend the patient notify the next of kin about the medication request (the patient’s refusal or inability to notify kin may not serve as the basis for denying the request); and
12. Obtain a written determination from the mental healthcare professional that the patient is capable if the patient was referred to the professional by the attending or consulting physician for this determination.

Once the attending physician determines that all requirements have been met, the attending physician may write a prescription for the medication if: (1) 15 days have elapsed between the initial oral request and the writing of the prescription and (2) at least 48 hours has elapsed between receipt of the patient’s written request and the writing of the prescription.

The attending physician may dispense the medication including ancillary medication intended to minimize patient discomfort directly to the patient if the physician is authorized by law to do so and has a current DEA certificate of registration. The attending physician may also contact a pharmacist to dispense the medication, inform the pharmacist about the prescription and transmit the prescription (personally, by mail or permissible electronic transmission). The medication may not be dispensed by mail or via courier.

B. Consulting Physicians

Pursuant to the Act, the consulting physician must:

1. Examine the patient and relevant medical records;
2. Confirm, in writing, the attending physician’s diagnosis that the patient is terminally ill;
3. Refer the patient to a mental healthcare professional, if the patient is not capable; and
4. Verify the patient is capable, acting voluntarily and has made an informed decision to request the medication.

If the consulting physician refers a patient to a mental healthcare professional, the consulting physician must provide written notice of the referral to the attending physician.

C. Voluntary Participation

The Act clarifies that healthcare professionals must voluntarily participate in the process. If a healthcare professional is unable or unwilling to assist with a patient’s request, the healthcare professional has a duty to transfer a copy of the patient’s relevant records to the new healthcare professional or healthcare facility.

D. Medical Record Documentation

Attending physicians are required to ensure the patient’s medical record includes:

1. The determination that the patient is a qualified terminally ill patient, including the basis for the determination;
2. All oral and written requests for medication;
3. The attending physician’s diagnosis, prognosis and determination that the patient is capable, acting voluntarily and has made an informed decision;
4. The consulting physician’s diagnosis, prognosis and determination that the patient is capable, acting voluntarily and has made an informed decision;
5. Any report of the determination made by a mental healthcare professional as to whether the patient is capable;
6. The attending physician’s recommendation regarding consultation regarding concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options; the referral to a healthcare professional who could discuss these options and an indication as to whether the patient participated in the consultation.;
7. An indication noting if the patient is currently receiving palliative care, comfort care, hospice care or pain control treatments;
8. The attending physician’s offer to rescind the second oral request; and
9. A note by the attending physician that all the Act’s requirements have been met, the steps taken to carry out the patient’s request for medication and a notation of the medication prescribed.

**III. Healthcare Facility Responsibilities**

The Act provides that the healthcare facility’s participation in the medical aid in dying process must be voluntary. The Act further notes that the facility’s existing policies and procedures govern the actions of healthcare professionals while on premises owned by or under direct control of the facility. Finally, the Act provides that healthcare facilities are not subject to N.J. Department of Health (“DOH”) licensure enforcement procedures for any actions taken in compliance with the Act.

**IV. Reporting Requirements**

The following information must be reported to the DOH by the attending physician or pharmacist on a form that will be issued by the Commissioner of Health:

* 1. Copy of the dispensing record sent by the attending physician or pharmacist who dispensed the medication, no later than 30 days after dispensing; and
  2. Documentation of the patient’s death sent by the attending physician, no later than 30 days after the patient’s death.

Pursuant to the Act, the DOH is required to coordinate the process for reporting information with the Prescription Monitoring Program (“PMP”). The information collected will be reported in an annual statistical report available on the department’s website. Any information that could be used to identify a patient or healthcare professional will not be included in materials available for public inspection.

**V. Liability**

The Act does not authorize a physician or any other person to end a patient’s life by lethal injection, active euthanasia, mercy killing, or any other act that constitutes assisted suicide under the laws of New Jersey. Moreover, the Act does not lower any applicable standard of care that is provided by a healthcare professional who participates in this process.

Absent acts of gross negligence, recklessness, or willful misconduct, the Act shields all individuals from civil and criminal liability, professional disciplinary action, censure, discipline, suspension, or loss of any licensure, certification, privileges, or membership, for any action taken in compliance with the Act including being present when the medication is self-administered.

The Act further provides that actions taken under the Act will not constitute patient abuse, neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide under New Jersey law.

The Act does not limit liability for civil damages resulting from negligence or intentional misconduct of any person. Additionally, government entities that incur costs because a patient self-administers medication in a public place have the right to make a claim against the patient’s estate for costs and attorney’s fees.

The Act provides for criminal charges under certain circumstances:

1. If a person willfully alters or forges a request for medication with the intent or effect of causing a patient’s death or conceals or destroys a rescission of that request, the person is guilty of a crime of the second degree.
2. If a person exerts undue influence on a patient to request medication or destroy their rescission of a request, the person is guilty of a crime of the third degree.
3. If a person steals medication prescribed to a qualified terminally ill patient, the offense is considered theft of a controlled dangerous substance.

**VI. Issuance of Proposed Regulations**

The Act requires DOH; the Director, Division of Consumer Affairs, Department of Law and Public Safety and the state boards of Medical Examiners, Pharmacy, Psychological Examiners, Social Work Examiners to adopt rules and regulations regarding the responsibilities of physicians, pharmacists, healthcare professionals, healthcare facilities and long-term care facilities.

Members are encouraged to contact the following NJHA staff with questions: Karen Ali, kali@njha.com, 609-275-4089, or Theresa Edelstein, tedelstein@njha.com, 609-275-4102.

1. Patients are considered “capable” if they have the capacity to make healthcare decisions and communicate those decisions to providers. [↑](#footnote-ref-1)
2. Attending physicians have “primary responsibility for the treatment and care of a qualified terminally ill patient and treatment of the patient's illness, disease, or condition.” [↑](#footnote-ref-2)
3. Consulting physicians are “qualified by specialty or experience to make a professional diagnosis and prognosis regarding a patient’s illness, disease or condition.” [↑](#footnote-ref-3)
4. Long-term care facilities include nursing homes, assisted living residences, comprehensive personal care home, residential healthcare facility and dementia care homes. [↑](#footnote-ref-4)
5. Mental healthcare professionals are licensed psychiatrists, psychologists or clinical social workers. [↑](#footnote-ref-5)