

Gov. Murphy Signs the Medical Aid in Dying for the Terminally Ill Act

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On Thursday, August 1, 2019, New Jersey became the eighth jurisdiction (seven states and the District of Columbia) to provide a means for terminally ill, capable adults to end their lives at a time of their choosing. *The Medical Aid in Dying for the Terminally Ill Act*, N.J.S.A. § 26:16-1-26:16-20 (the “Act”), makes clear that it does not authorize assisted suicide, euthanasia, or any form of mercy killing. It also does not permit a legal guardian, health care representative or any other third party to request the medication, unless specifically requested to do so by the patient. The Act authorizes terminal patients of sound mind to request and obtain a lethal prescription for medication to self-administer for the purpose of hastening their own death.

The Legislature declared that this Act follows New Jersey’s long established acknowledgment of each person’s fundamental right to make health care decisions and to choose or refuse or withdraw life prolonging medical treatments and procedures. The law affirms the right of a qualified terminally ill individual to obtain and self-administer medication to bring about his or her own death. A qualified individual under the Act is (1) a resident of the State of New Jersey, (2) terminally ill (with a life expectancy of six months or less), (3) capable of making healthcare decisions (the patient has legal capacity as determined by attending and consulting physicians perhaps including, a mental healthcare professional), (4) acting voluntarily, (5) making an informed decision after being advised of his/her diagnosis, prognosis, potential risks of self-administering the medication, probable result of the medication and feasible alternatives including concurrent or additional treatment, palliative care, comfort care, hospice care and pain control. The attending physician must refer the matter to a consulting physician who must provide a second opinion on capacity and prognosis. The physician may also choose to refer the patient to a mental health care professional. Attending physicians are instructed to recommend to their patient that the patient notify the patient’s next-of-kin of his/her request for the medication. However, understanding the Act’s goal of supporting each individual to unilaterally choose his/her own medical care, the patient’s request may not be denied if he/she decides not to inform his/her family. Again, the patient’s autonomy and right to self-determination is paramount.

The Act sets forth with specificity the multi-step procedure that terminal patients can follow to legally request a prescription for medication intended to bring on death quickly. The patient must make a written request, to be witnessed by two adults. The patient also must make two (2) oral requests to his/her attending physician, which must be at minimum 15 days apart. The request for this medication may be rescinded at any time; in fact, when the patient makes his/her second oral request, the physician must offer the patient an opportunity to withdraw the request for the medication. This multi-step process is intended to ensure that the process is voluntary on the part of the patient and the medical providers, and to avoid the risk of abuse of vulnerable people including the depressed, mentally compromised or otherwise incapable individuals.

Concern has been raised about "Aid in Dying" laws being in contradiction to physicians' medical ethics, which do not permit physicians to participate in terminating human life. Under the Act, participation by individual health care professionals and medical facilities must be entirely voluntary. Neither is required to participate in the "Aid in Dying" process. If a facility has existing policies and procedures that are contrary to the Act, the facility may notify its patients that it will not participate. Medical professionals working at facilities that "opt-out" cannot be compelled to participate, and will not face enforcement from the State. If a health care provider is unwilling or unable to comply with a patient's Aid in Dying request, the professional's only obligation is to make available the individual's medical records to another professional.

For terminally ill New Jersey residents, the Act provides another legal, medical choice as they face their future on their own terms.

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